

Should you attend a plaintiff's deposition?

Theodor B. Rais, MD, and Alina R. Rais, MD

Sometimes your physical presence during a plaintiff's deposition might prevent any misstatements or false allegations

A psychiatrist named in a malpractice suit may doubt the need to attend the deposition of the plaintiff and his hired experts. In a time when many psychiatrists are handling busy private practices, you may be tempted to skip the plaintiff's deposition because often the law does not require you to attend.

However, based on our forensic psychiatry, expert witness, and risk management experience, we highly recommend that psychiatrists involved in a malpractice lawsuit attend plaintiff's depositions for several reasons.

Counteract countertransference

One of the most often encountered ingredients of a malpractice lawsuit is negative transference toward the defendant psychiatrist and/or negative countertransference by the psychiatrist toward the plaintiff.¹ Attending the deposition gives you the opportunity to identify and analyze these reactions, consider how they could impair your objectivity, and allow you and your attorney to put together the best defense.²

Identify errors

Listening to depositions lets you identify errors, misunderstandings, misinterpretations, or distortions of facts in the plaintiff's allegations or his experts' testimony and supply your attorney fuel for an effective cross-examination.²⁻⁴

Make your presence known

Sometimes your physical presence during the deposition might prevent any misstatements or false allegations.

Assess your case

Attending a plaintiff's deposition is an excellent opportunity to see and assess the case as a whole while deepening your and your attorney's understanding of the malpractice lawsuit.^{2,5}

Discuss your decision to attend the deposition with your attorney. If you choose not to attend, be sure to carefully read the transcripts of all depositions and use this information when preparing for your deposition.

Although attending the plaintiff's deposition is optional, your presence during a malpractice trial is mandatory. Your expertise is most valuable when your attorney cross-examines witnesses. Your presence in the courtroom is necessary to establish your credibility, professionalism, and personality. In most trials jurors will assess the defendant psychiatrist, and not showing up could damage your case.

References

1. Malmquist CP, Notman MT. Psychiatrist-patient boundary issues following treatment termination. *Am J Psychiatry*. 2001;158(7):1010-1018.
2. Meadow W. Evidence-based expert testimony. *Clin Perinatol*. 2005;32(1):251-275, ix.
3. Bettman JW. A lexicon for the expert witness and defendant. *Surv Ophthalmol*. 1988;32(6):433-434.
4. Critelli N. Head injury—cervical strain—carpal tunnel syndrome—a videotaped evidence deposition of plaintiff's neurosurgeon—direct and cross-examination. *Med Trial Tech Q*. 1982;29(1):114-136.
5. Epstein JJ. Pathologists and the judicial process: how to avoid it. *Am J Surg Pathol*. 2001;25(4):527-537.



Want to know more?

See this article at CurrentPsychiatry.com

Deposition dos and don'ts

MARCH 2008

Dr. Theodor B. Rais is a board-certified forensic psychiatrist and program director of the child psychiatry residency training program, University of Toledo, OH. Dr. Alina R. Rais is director of the Psychogeriatric Center at the University of Toledo Medical Center, OH.