**Deposition Critique 1**

Read and critique the passages below. The questioner was the defense attorney. The first sentence of each passage is listed below. Click on the link to read the rest of the dialogue. The person being questioned was the expert witness for the plaintiff. Determine where the expert went wrong. The answers are at the end. Names and dates have been changed, but otherwise these passages are quoted verbatim. This person was NOT a Med League expert.

## Deposition Critique 1.1

Read and critique the passages below. The questioner was the defense attorney. The person being questioned was the expert witness for the plaintiff. Determine where the expert went wrong. The answers are at the end. Names and dates have been changed.

1. Q: You would agree that he was assessed for a risk of falls on October 2, 2003?
2. A: October 2. I know she had a Braden scale and hopefully I will run across it in one second. Do you happen to have a copy of her fall risk assessment?
3. Q: Not handy. I just know there was one done.
4. A: I know there was one done, but I don’t know if it was done on October 2.
5. Q: Well, let me ask you to assume for the purposes of this question that a fall assessment was done on October 2, 2003. Her risk assessment was 22, which would have indicated she was at moderate risk for falls. Would you agree or disagree with that assessment?
6. A: I think she was at high risk.
7. Q: Okay. So you disagree?
8. A: I just think she was at high risk as opposed to moderate risk.
9. Q: You would have assessed her at being at high risk?
10. A: But I can’t see the form. Yeah. I just can’t find the form, but I know…I know I’ve seen it. It was in the Braden scale, I thought, but…
11. Q: The next…..
12. A: Maybe I just made a mistake.

### Where did the expert go wrong?

**Being Disorganized**

This expert did not have her papers organized, indexed, and tabbed. Not being able to put her hands on the Braden scale shook her confidence. As a result, at the end of the passage, when she was not asked a specific question about the Braden scale, she made an unnecessary admission that she might have been wrong (line 12).

## Deposition Critique 1.2

Read and critique the passages below. The questioner was the defense attorney. The person being questioned was the expert witness for the plaintiff. Determine where the expert went wrong. The answers are at the end. Names and dates have been changed.

1. Q: If you appear at trial, what will your expenses be or what will your charge be for the plaintiff?
2. A: 200 dollar per hour.
3. Q: Are you going to bill also for the travel time down here?
4. A: Only one way.
5. Q: And what is the rate of billing for that gonna be?
6. A: 100 an hour.
7. Q: Let me show…
8. A: And you might even luck up and I’m not that ugly.

### Where did the expert go wrong?

Propositioning the Attorney

There is never an appropriate time to proposition the attorney who is taking the expert’s deposition. The attorney was so flabbergasted by this that he simply ignored her and moved on.

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Deposition Critique 1.3

hand on bibleRead and critique the passages below. The questioner was the defense attorney. The person being questioned was the expert witness for the plaintiff. Determine where the expert went wrong. The answers are at the end. Names and dates have been changed.

Q: What was Mrs. Hodge’s weight on admission?

A: 138 pounds

Q: What was her ideal body weight at that time?

A: I want to say 154.

Q: So she was 16 pounds below her ideal body weight when she came in?

A: correct.

Q: She was suffering from organic brain syndrome…

A: But she was able to eat independently.

Q: Can you just answer the question? Suffering from organic brain syndrome…

A: Do you need to be rude? I don’t mean to be rude. I’m trying to answer your question as best I can.

Where did the expert go wrong?

Chastising the Attorney

The attorney was trying to get the expert to answer the question that was asked. In some instances, the attorney may say, “I move to strike the answer as non-responsive.” The attorney’s mild redirection of the expert (line 8) was met with an attack about being rude. This type of expert behavior is likely to serve to increase the attorney’s anger and cause him to bear down harder on the expert.

## Deposition Critique 1.4

Read and critique the passages below. The questioner was the defense attorney. The person being questioned was the expert witness for the plaintiff. Determine where the expert went wrong. The answers are at the end. Names and dates have been changed.

1. Q: Now, from November 20, 2003 to February 18, 2004, a period of almost three months, there is no evidence in this case whatsoever that she fell at any time, correct?
2. A: She did not fall. She eloped.
3. Q: Can you answer my question?
4. A: I did answer the question.
5. 5. Q: No ma’am. I want to know if there is any evidence of a fall between November 20, 2003 and February 18, 2004. Can you answer that question yes or no?
6. A: Are you gonna yell at me?
7. Q: I want an answer.
8. A: I don’t think that is appropriate. I did not yell at you.
9. Plaintiff attorney: Okay. Well, let me..I feel sort of like a referee.
10. A: And I am not a simple person.
11. Plaintiff attorney: Okay. Listen to the question, now. Is there any evidence between the dates indicated in the medical records that you reviewed of a fall?
12. A: Not between November 20 and whatever day it was, the 28th or whatever.
13. Q: Thank you.
14. A: But you’re not going to yell at me anymore, correct?
15. Q: I’ll try not to.
16. 16. A: Because I don’t think the Bar appreciates that with experts.

### Where did the expert go wrong?

Losing It

In the same deposition, when the expert again appeared to not answer the question at line 2 (although she did), the attorney was less patient. This led to an acrimonious exchange, ending with the expert threatening to report the attorney to the Bar Association. This is never a wise move. At line 4, the expert could have simply said, “I did answer your question. She did not fall.” Another way to handle this to defuse the situation, is to say, “I’m sorry. Perhaps I was not clear. She did not fall.”

This expert’s behavior considerably weakened the plaintiff’s case. The expert was fortunate that the defense attorney was mild-mannered and did not lose his temper. Being courteous to the attorney taking the deposition goes a long way to avoiding this type of dialogue.