

# CONTENT NOT FOR REUS

## MCN FOCUS ON LEGAL ISSUES

### Defining Depositions

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A deposition is one of several tools attorneys use during the discovery process of a lawsuit (see "Nursing And The Discovery Process," *MCN*, January/February 1988). A deposition is oral testimony given under oath in the presence of attorneys for both sides of the suit. The attorneys ask the person giving the deposition questions, and the answers are recorded and transcribed.

There are three purposes nurses' depositions serve. They establish the facts that relate to the issues in the lawsuit. They enable attorneys to assess how effective the nurse giving the deposition will be as a witness, both in terms of her ability to communicate her testimony and her credibility. Credibility is based on the content of the nurse's testimony and how she acts while giving it. Facial expressions, appearance, and manner all affect an attorney's perception of a nurse's credibility. And, depositions enable attorneys to pin down the content of a nurse's testimony so that they will be prepared for what she says if the case goes to trial.

Questions asked during the deposition process usually focus on three main areas. First, the attorneys ask questions that establish the nurse's credentials. Typically, inquiries spotlight her education and experience. Often, attorneys ask a series of questions directed at establishing the level of the nurse's expertise with the particular patient population involved in the case. For example, in a case that alleges that the nurse did not sufficiently monitor a pre-eclamptic woman, an attorney may ask, "How many patients have you cared for during labor?" Or, "How many times have you treated pre-eclampsia?"

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Second, the nurse is given the medical record and asked detailed questions about its contents and her recollection of the events documented in the record, a line of questioning that is often quite lengthy. Attorneys may ask the nurse to read and interpret specific entries and notes contained in the medical record.

The third line of questioning pertains to the specific incident on which the lawsuit is based. The nurse reviews the medical record, further discusses her recollections, and examines other documents related to the incident. She may be asked to suggest other documents or resources to explain specific procedures. Also, attorneys may ask hypothetical questions to test the nurse's knowledge and judgment. "Suppose the patient's blood pressure is 186/110. What should the nurse do?" is an example.

A nurse may be asked to give a deposition or she may receive a subpoena that compels her to appear for this purpose. In either case, she notifies her supervisor and consults with an attorney before giving her deposition. Depositions are usually taken in an attorney's office or in the hospital or agency where the nurse is employed. It's imperative that the nurse review the patient's record, particularly her own entries, beforehand.

There are several rules that a nurse

asked to give a deposition will find useful. Most important is to tell the truth. It is far more damaging to lie or to attempt to conceal information than it is to reveal the truth. Do not respond according to whether a truthful answer seems to help or hinder the case; simply answer truthfully. Other recommendations include:

- Do not state what you don't know. Do not attempt to guess or estimate an answer. Respond "I don't know."
- Don't apologize, attempt to explain, or justify an answer.
- Give information that is readily available. The witness's role does not include researching or providing additional detail for answers.
- Do not provide documents such as policies, procedures, or accreditation standards to opposing attorneys unless your attorney has agreed.
- Do not joke, get angry, or get excited. Factual, matter-of-fact responses are the best answers to questions. Some attorneys will try to make witnesses angry or defensive; be aware of this tactic and be prepared for it.
- Do not give an opinion unless you are asked to be an expert witness.
- Take your time answering questions. Feel free to ask attorneys to repeat or clarify questions.
- If your attorney begins to speak when you are about to answer a question or while you are in the midst of your answer, let the attorney make her statement or objection, then wait for her to tell you whether to continue.
- Do not volunteer information.

Because nurses can play an important role in establishing the facts of a situation that led to a lawsuit, they are being asked to give depositions more and more often. Nurses are uniquely qualified to provide information essential to the legal process and can fulfill this role with competence and professionalism.