
Practice Makes Perfect

By Matthew Bauer, JD

Physicians often feel anxious and fearful when faced with a medical malpractice lawsuit, even when they have rendered appropriate medical care and committed no medical mistake. This anxiety and fear likely stems from physicians' belief that they have little or no control over the outcome of their case. To many physicians, the legal system is unfamiliar territory and can even appear unfair at times. However, it is important for physicians to understand that they have the power to influence the outcome of their case. In fact, the most important piece of evidence in medical malpractice cases is typically the physician-defendant's testimony. Moreover, many of the characteristics that make physicians effective health care providers are also the same characteristics that make physicians effective defendants in medical malpractice cases.

For example, no one can become a physician without hard work and diligent preparation. Correspondingly, no one can testify effectively at deposition or trial without hard work and diligent preparation. The case below demonstrates the importance of hard work and diligent preparation for depositions, and the devastating effect a physician's deposition testimony can have upon the plaintiff's overall theory of the medical malpractice case when the physician presents as a knowledgeable, thoughtful, credible, and persuasive witness.

A 50-year-old male patient had a rare degenerative condition of his cervical spine, causing severe stenosis at the C2 through C4 levels, and cervical myelopathy. At his neurosurgical consultation with Dr. Dawson^[1], the patient had limited range of motion in his neck, limited fine motor movements in his left hand, and negative Lhermitte's sign with neck extension and flexion. After consultation and obtaining informed consent, Dr. Dawson performed C2 through C4 laminectomy and fusion. Unfortunately, the patient had left hemiparesis post-operatively, and the patient filed a medical malpractice lawsuit against Dr. Dawson, the anesthesiologist, and the hospital. The complaint did not allege any breach in the standard of care with respect to Dr. Dawson's surgical technique. Rather, the complaint alleged the surgical team failed to properly intubate the patient and failed to properly monitor the patient's blood pressure intraoperatively causing left hemiparesis.

Once her deposition was scheduled, Dr. Dawson diligently worked with her defense attorney at multiple pre-deposition meetings to prepare for her deposition. As a result, Dr. Dawson was confident and well-prepared for the questions posed by the plaintiff's attorney. If possible, a plaintiff's attorney will attempt to pit defendants against one another, hoping defendants will start "pointing fingers" at one another. First, the plaintiff's attorney questioned Dr. Dawson regarding intubation in an attempt to get Dr. Dawson to

admit a mistake or to be critical of the anesthesiologist. Dr. Dawson testified she thoroughly discussed the patient's medical condition and surgical procedure with anesthesia. While maintaining that the selection of the intubation method was ultimately the anesthesiologist's decision, Dr. Dawson testified the intubation method selected by the anesthesiologist was appropriate in this case because of the patient's clinical presentation, which showed the patient had no Lhermitte's phenomena upon neck extension or flexion. The plaintiff's medical expert had opined that a different intubation method should have been utilized. However, Dr. Dawson was able to explain succinctly and forcefully why the intubation method proposed by the plaintiff's medical expert was contraindicated based upon its associated risks and the nature of the surgical procedure performed. Second, the plaintiff's attorney asked Dr. Dawson questions about intraoperative blood pressure monitoring. While Dr. Dawson again testified that she relied upon the anesthesiologist to monitor the patient's blood pressure intraoperatively, Dr. Dawson was able to rebut the criticisms leveled by the plaintiff's medical expert based upon her knowledge of the medical records and from a causation standpoint.

Defense counsel's assessment of Dr. Dawson's testimony and performance at deposition was glowing. Defense counsel remarked that Dr. Dawson did an excellent job of explaining and addressing the various criticisms and medical issues raised by the plaintiff's attorney in a knowledgeable, thoughtful, credible, and persuasive manner. Defense counsel noted the pre-deposition conferences played a significant role in boosting Dr. Dawson's confidence level while decreasing her anxiety level.

The assessment of Dr. Dawson's deposition testimony by plaintiff's attorney was apparently the same. A few months after Dr. Dawson's deposition, the plaintiff's attorney voluntarily dismissed the lawsuit. In discussions with defense counsel as to why the lawsuit was voluntarily dismissed, the plaintiff's attorney stated he did not believe he had strong enough expert proof to maintain the lawsuit after Dr. Dawson's deposition.

In defense counsel's estimation, Dr. Dawson's deposition testimony, more than anything else, prompted the plaintiff's attorney to reevaluate the merits of the case and conclude the medical evidence simply did not support the conclusion that Dr. Dawson committed medical malpractice. In other words, Dr. Dawson's knowledgeable, thoughtful, credible, and persuasive deposition testimony was devastating to the plaintiff's overall theory of the medical malpractice case as outlined by the plaintiff's medical expert.

In conclusion, while the legal system may be unfamiliar territory, physicians can feel confident, instead of anxious and fearful, because many of the characteristics that make physicians effective health care providers, such as hard work and diligent preparation, are also the same characteristics that make physicians effective defendants in medical malpractice cases. Physicians can also feel confident that SVMIC and their defense counsel will provide them with the best possible resources and support throughout the course of their medical malpractice lawsuit.

[1] All names have been changed.

The contents of The Sentinel are intended for educational/informational purposes only and do not constitute legal advice. Policyholders are urged to consult with their personal attorney for legal advice, as specific legal requirements may vary from state to state and/or change over time.