Expert Medical Testimony for *Your* Injured Patient  
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Legal Issues for Physicians

**Different Sets of Rules**

- **Criminal Law**
  - Some law has been broken  
  - Police involved

- **Civil Law**
  - Injury with loss occurring  
  - Filed by injured  
  - Request being made whole

**Burden of Proof**

- Large disconnect between Lawyers and MDs  
- Scientific burden of proof  
  - $<0.05$  
  - 95% certain or sure  
- Civil litigation burden of proof  
  - “More likely than not”  
  - $>50.1\%$ certain  
  - Reasonable degree of medical certainty

**Deposition**

- Out-of-court oral testimony of a witness that is reduced to writing for later use in court or for discovery purposes  
- Depositions are a part of the discovery process in which litigants gather information in preparation for trial  
- Judge not present

**Subrogation**

- Subrogation in its most common usage refers to circumstances in which an insurance company tries to recoup expenses for a claim it paid out when another party should have been responsible for paying at least a portion of that claim

**Anatomy of a Personal Injury Claim**

- Injury/ event has occurred  
- Measurable loss has occurred (missed work, medical expenses, permanent loss of function  
- Responsible party clearly identified  
- Recoverable assets  
- Money available (insurance company)

**Plaintiff**

- Your patient. Represented by plaintiff’s lawyer.

**Defendant**

- Alleged guilty party. Often an insurance company represented by counsel

**What is My Role in All of This?**
Written response to questions posed by the patient’s (plaintiff) attorney
Give a narrative of injury and medical care
   Brief synopsis
   How has this affected the patient? What do you see in the future?

**Payment for Services**
In civil litigation it is entirely appropriate to request adequate compensation for your time and effort in meeting these needs. Payment contingent on the outcome of litigation is *inappropriate*.
Have a fee schedule and stick to it

**Discovery Deposition**

**Expert Witness**
Expert Witness vs Treating Physician
You are obliged to be a treating physician or factual witness. You are not required to provide any opinions. If you are an expert witness you may have to file a written legal report to support your opinions and potentially review outside documents. You can be both

**Alt Privilege (Wisconsin only)**
You cannot be forced to give opinions (expert witness) against your will
You can elect to be a treating physician only (provide details of injury and treatment)

**Illustrative case - Head on crash with Utility Truck**
   21 yo female, MVA, splenic rupture, liver lac, 1st responders thought patient was dead
   **Orthopedic Injuries**
   Right femoral neck fracture, open fractures of right femur, femoral condyle, patella and ankle
   **Legal Follow Up**
   Loss had occurred. Fault identified. Claim thought to be in $1 million range.
   I provided details of injuries. Helped quantify degree of loss and tried to predict future medical needs. Answered a list of written questions (legal letter) and participated in a discovery deposition. Settled in mediation.
   $500,000 up front
   $800/month for next 20 years

**Take Home Points**
1. You or your medical care is *not* on trial! No need to be testy about it. Often you are assisting the parties in understanding what the medical record actually means or says.
2. You have information that the attorney needs to do his/ her job (for your patient). Providing information and well thought out opinions can help getting these matters resolved (often with no trial being needed).
3. Orthopedic Surgery as a profession is based on helping the patient. Working to resolve these claims fulfills that mission. You have a patient story to tell. You were there from beginning to end. **Patients feel better once claim resolved.**
4. Expert witness? I would bristle a little bit when I would be referred to as the plaintiff’s expert witness (hired gun). I would explain that the only reason I was testifying is because I am the treating MD. I often function as both (you have a choice!)