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How should nursing home employees act in court?

Posted on: 7.6.2009 10:19:17 AM Posted by **Jonathan Rosenfeld, LTC Lawyer**

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"A little bit of knowledge is a dangerous thing." In the case of nursing home employees—RNs, CNAs, and administrators—frequently, their knowledge of the law can be more problematic for a facility than anyone would like to admit. Sure, it's important to understand the basic organizational structure of the facility and have at least some familiarity with applicable state and federal standards—but that is it. Trying to out-law a lawyer is probably going to cause a lot heartache for your facility and will likely lead to further problems down the road.



In my line of work, I usually come into contact with administrators in, hopefully, an unfamiliar setting for them—a deposition. A deposition is when a person sits for oral questioning pursuant to court order and under oath during the course of litigation. A court reporter takes down everything said and then types the conversation up into a transcript. For all purposes, the responses elicited in a deposition are essentially written in stone. Therefore, before sitting for a deposition, it is particularly important to learn some basic ground rules.

After seeing many nursing home employees in a deposition setting, I have come to the conclusion that facilities and employees should become less focused on the applicable law itself and more attuned to some basic characteristics of being a good witness.

Be nice. Right off the bat, I suggest that everyone take an extra dose of their nice medicine. When a sense of courtesy and civility is interjected into a deposition setting, lawyers are more focused on the facts than ripping into a witness. Further, in the back of their head, most lawyers realize that a nice person will play well before a jury.

Be quiet. 'A fish only gets caught, when he opens his mouth.' Obviously, people need to speak at a deposition. However, answer the question and then stop. If the lawyer wants to sit in silence—let him. Never feel that there can't be any 'dead air.' Some of the worst witnesses for a facility are those who run their mouth without focusing on the question at hand and begin to volunteer unneeded information.

Understand the question. For some reason there's a sense that whatever a lawyer says must make sense. Despite this inherent belief, you're just plain wrong. Many times, lawyers have gotten so disconnected with how 'real people' speak that their questions have become so convoluted and full of legal jargon that they're impossible to understand. Nonetheless, once a question is answered, it is essentially written in stone. Speak up if you don't understand the question and ask the lawyer to repeat it or ask in another way.

Saying "I don't know" is a fine response—just because a question is asked, don't feel obligated to have a response. There should be questions that you just plain don't know. As soon a witness begins to answer all questions it is usually a tip off to most lawyers that the witness probably is making stuff up.

Look them in the eye. Maybe my parents were right in telling me to look people straight in the eye when making their acquaintance. There is something refreshingly honest about a person who looks at you. When they don't there seems to be something suspect about them and their

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veracity. In the age of videotaped depositions, witnesses who fail to make eye contact with the camera typically get penalized by the jury. <http://www.jdsupra.com/post/documentViewer.aspx?fid=36e54bce-3c62-4082-b121-e46ce9968648>

While the above suggestions could certainly be addressed by an attorney for your facility, I firmly believe many of the common deposition mistakes could be avoided with some advance preparation.

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