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# **The Doctor's Deposition**

## **From Plaintiff & Defendant Perspective**

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**The Doctor's Deposition:**  
**From Plaintiff & Defendant's Perspective**

Trial Notebook Tips  
Law & Practical Advice  
For Plaintiff's and Defendants

**The Doctor's Deposition**

The Doctor's Deposition is an Expert Witness Deposition. It is however an expert witness deposition like no other expert witness deposition. Each Doctor's deposition offers fertile ground to build a body of experience and technique, and an opportunity to make each future effort more productive than the last.

The Doctor's Deposition often is the most significant consideration in jury deliberations.

**The Doctor as an Expert:**

For Plaintiff:

The treating physician may have more credibility than a retained expert, simply because you have not 'retained' him. He is there because he sought to help your client. Obviously this can 'cut both ways' and you need to evaluate early in the process how best to maximize the presentation of the Doctor's 'plusses' and minimize the impact of any possible negatives.

For Defendant:

Be cautious before diving into the pool of Retained Defense Experts:

Most defendant clients believe that there needs to be a presentation of a 'defense' after the plaintiff rests their case. Nearly as many believe that if Plaintiff has a Doctor, then 'we' need a Doctor. Maybe so but not always.

Consider the inconsistency of arguing that poor defendant has been sued for something he didn't do, causing injuries that don't really exist. But, he has hired this hi-powered expensive

Doctor to refute plaintiff's allegations. Be cautious when handing the Plaintiff the argument that ".....if there is nothing to this, why did they hire an expert?"

Whenever possible work to make defendant's case through the cross examination of plaintiff's Doctor. (And remember to Voir Dire, and Open explaining to the panel of prospective jurors and the final jury that they will hear Defendant's contentions during cross examination)

**Voir Dire Suggestion for Plaintiff:** "Ladies and Gentlemen, Doctor \_\_\_\_ treated my client and will testify by Deposition. Is there anyone on the panel who does not think I should bring you the testimony of my client's treating physician? Let me explain that I did not hire Dr. \_\_\_\_ for this trial...."

**Voir Dire Suggestion for Defendant:** "A juror once told me after a trial that he listened to the plaintiff's attorney talk about the scales of Justice and he was waiting for me to put more witnesses and more documents on my side of the scale. Does anyone on this panel believe that that is a fair way to measure burden of proof? Let me explain how we are really going to proceed."

### **Preparation:**

Preparation for the Doctor's deposition begins when you make the decision to handle personal injury cases, and continues throughout your practice.

Build a body of knowledge:

Build a Library, a body of Materials:

Merck Manual

Taber's Encyclopedia

DSM 4

Internet

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: The Doctor's Deposition: From Plaintiff and Defendant Perspective

Also available as part of the eCourse

[Car Crash Cases, Part II: Power Strike Voir Dire; Framing Your Case; Killer Cross Examinations; plus The Doctor's Deposition](#)

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