

Risk Tip: Trial Testimony

The case didn't get dismissed, and it didn't settle. You are on trial.

Now — finally — you can tell your story to the jury. Now — finally — you can do one of the things that you do best, which is teach. Most doctors excel at this. You are trained to do it, and your attorney will give you the opportunity to do so.

Trial testimony is different than deposition testimony because now you can answer the questions more fully. It's also more civilized because the judge won't let the plaintiff's attorney be rude or nasty. In fact, the plaintiff's attorney won't want to look that way in front of the jury either. So, while the attorney will still be tough, he or she will also have to be polite.

A Few Practical Tips:

1. **Make eye contact with the jury.** It makes you look as though you are sincere and have nothing to hide from them.
2. **Remain calm.** Stay calm no matter how the plaintiff's attorney tries to rattle you or insult you. If you remain calm, it makes the attorney look worse. Juries hate to see anyone treated rudely, so they will hold it against attorneys who do this.
3. **Stick to your story.** Don't let the plaintiff's attorney change it for you. Practice with your attorney before the trial to find the best way to make a statement. I once defended a cardiologist in a cardiac ablation case where the patient had several abnormal electrical pathways that caused an abnormal electrical conduction in the atria. The medical jargon for stopping that abnormal electrical pathway is "burning" it. This is accurate. The electro physiologists do, in fact, burn a very tiny piece of cardiac tissue. But we had to find another word besides "burning" the heart tissue — what a horrible mental image! We used the term "interrupting" the aberrant pathway instead. Articulate your theory of what happened and stick with it.
4. **Trust your attorney.** If the plaintiff's attorney does get you to slip up or make an unfortunate remark, your attorney can help fix that. Your attorney will "rehabilitate" your testimony but you have to trust him. Don't get alarmed or panic if you say something incorrect. Your attorney will allow you to correct it.
5. **Dress conservatively in a dark suit or dress.** Wear little jewelry, have neatly combed hair and wear understated makeup. You need to look professional and competent

Remember, every nuance of your manner, your facial expression, your courtesy and even your clothes will be carefully scrutinized by the jurors. It is essential that, regardless of what the plaintiff's attorney asks or how he asks it, you remain calm and pleasant. You cannot show any feelings of hostility or anger you might feel toward the plaintiff's attorney, the case or even possibly the patient. Be polite, be nice.