



THE HEALTHCARE PROFESSIONALS LEGAL  
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## HOW SHOULD A HEALTHCARE PROVIDER RESPOND WHEN SERVED WITH A SUBPOENA?

*Part Two – This continues our prior discussion regarding subpoenas served on healthcare providers. This section discusses deposition subpoenas and, briefly, trial subpoenas.\**

**W**ith respect to a subpoena for deposition, the physician or healthcare provider should generally always contact an attorney and/or their malpractice insurance carrier. This is especially true if the underlying litigation involves a medical malpractice case. Typically, the subpoena will include the case caption and if it includes physicians or hospitals, this will typically indicate that it is a malpractice lawsuit.

A deposition subpoena typically seeks a physician or healthcare provider's sworn testimony on treatment of his or her patient. This may arise in several different circumstances. For example, an individual may have been involved in automobile accidents and

the subpoenaed physician has simply treated the patient at some point and the deposing attorney wants to obtain information on the treatment, which may be relevant to the patient/plaintiff's claim for damages. Such depositions are usually fairly straightforward, but there are advantages to having an attorney represent you for such depositions. For example, the attorney can assist in coordinating the deposition and ensuring that you get paid your professional fee for your time, rather than the typical witness fee of less than \$50. An attorney can help prepare you for your deposition and provide you with insights into the process and prepare you for what may be asked at the deposition. This will typically allow you to give an efficient deposition and

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Kristopher Rath is a partner at Hutchison & Steffen who leads the Firm's Healthcare Professionals Advocacy Group. He practices primarily in medical malpractice, healthcare professionals advocacy, administrative law, commercial and business litigation, insurance coverage, and insurance defense. Kristopher and other attorneys at the Firm work closely with healthcare professionals (including physicians, chiropractors, dentists, and nurses)

and healthcare organizations on a range of legal issues, from practice formation and compliance and employee relations, to practitioner licensing and board representation, to collections, creditor rights, and asset protection.

This newsletter highlights topics of interest for healthcare professionals. We invite you to contact the Firm to learn more.



...continued.

can decrease the amount of time it takes to complete the deposition.

With respect to medical malpractice cases, it is more important that the healthcare provider contact his or her attorney. In addition to trying to uncover evidence of the plaintiff's damages, the opposing attorney may also wish to see how the care of the physician being deposed impacted the patient's medical condition and whether that may have been the cause of the patient's damages, as opposed to his client's actions. It

is possible that, after a treating physician's deposition has been taken, that the physician could be brought into a medical malpractice case as a new defendant.

That is why it is particularly important in such cases to contact an attorney who can thoroughly prepare you and defend you at the time of deposition. An attorney defending you during the course of the deposition can help to keep questioning fair and appropriate and assist in avoiding harassing or irrelevant questioning.

Additionally, if a physician receives a deposition subpoena, it is critical that he or she at least report this to their malpractice insurance carrier. Some carriers require this and use this as a triggering event for a potential claim if there is a later lawsuit. Such a determination will typically impact insurance coverage for a later lawsuit, if there is one.

With respect to trial subpoenas, an attorney cannot represent you while you are being questioned on the stand at trial. However, an attorney can be helpful in assisting the coordination of the appearance to make sure you do not have to wait for hours or days at a courthouse to testify. An attorney can help you prepare for your trial testimony and make it more efficient, as in the case of a deposition subpoena. Also, an attorney can assist you in making sure you get paid your professional fee instead of the typical witness fee.

Also, it should be noted that many malpractice insurance carriers will pay the expenses of an attorney for assisting and representing the healthcare provider at a deposition. This is more often the case when a medical malpractice lawsuit is at issue, but insurance carriers will sometimes pay for representation for other depositions.

The foregoing discussion presents the general guidelines on receipt of subpoenas. You should consult an attorney or, in some cases, your medical malpractice insurance company, for any specific questions related to specific issues. ■



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