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Audio Book Section

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Editor's recommendation — this book carries the editor's "must buy" recommendation.

GOOD VALUE FOR MONEY

Achieving Success as a Medical Witness - A comprehensive training program for physicians and health care professionals (A set of Six Audio Cassette Tapes and Resource Manual), by Steven Babitsky, Esquire, Christopher R. Brigham, MD and Geoffrey Shapiro, Esquire.

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Figure 1: Achieving Success as a Medical Witness
(A set of Six Audio Cassette Tapes and Resource Manual)
[Click to enlarge]



A medical witness is an expert witness who has to testify in the court to help the court in the administration of justice. The testimony that he provides in the court is very important in helping the court in the medical matters. But in our practice we have found that the doctors are generally afraid to testify in the courts. This is mainly because of two reasons: one as they are not familiar of the legal procedures and two because they are afraid to be grilled in the court by the lawyers. As a result many times the attitude of the doctor while testifying in the court is to finish the testimony and go back, irrespective of the outcome. The beneficiaries in such cases are the culprits who have to be acquitted because of lack of evidence. As a result the training of the doctors is necessary to make them more competent while testifying in the court. Therefore the present collection is an attempt in the right direction.

This collection consists of six audiocassettes. Each of the cassettes goes on to describe one issue at a time. Let us now see what is there in each cassette and how much of practical use it is for the physicians.

Tape 1A

The audio starts off with a brief introduction of what is present in each of the tapes. Following this Attorney Babitsky describes the qualifications required to be a medical witness. He mentions that it

is the court's prerogative to see whether the doctor testifying in the court is qualified enough to do so. He mentions that this depends on case-to-case basis and the same person can be fit to testify in one case but not so in another case. The criteria also vary depending on whether it is a civil or a criminal case. The qualifications required are knowledge, skill, education, experience or training. The key word here is "or" meaning that the presence of any of these qualifications can make a person fit to testify. This is important as it gives the doctor an idea whether he can testify or not. Then there are examples of cases where the court has allowed or disallowed a doctor to testify. This gives an idea about the way the court thinks and so the doctor can himself decide what all cases he can deal with.

> *...Attorney Babitsky has described how the various simple terms used in the common language and having straightforward meaning are not the same when used in legal perspective. And its this differing meaning of words that the attorneys use to confuse the doctors...*

The next thing is how the doctor can find out how he can prevent testifying in a case in which he is not supposed to do so. The first thing for this is honesty. He mentions that the doctor should be honest in his CV. He should not exaggerate his degrees or experience. He should also discuss the case thoroughly with the attorney and should accept it only if he feels comfortable with it. In complex cases the doctor should be prepared for lengthy cross-examination and so he should accept them only if he has the relevant experience in the particular field.

Tape 1B

This tape mentions the "key medical - legal terms". The importance of this side we have already mentioned at the start of the review. Attorney Babitsky has described how the various simple terms used in the common language and having straightforward meaning are not the same when used in legal perspective. And its this differing meaning of words that the attorneys use to confuse the doctors. This is the biggest threat to the testifying physician and against which he has to guard himself. The description of what the doctor should do when he is confronted with words that he is not aware of or he is not sure of their meaning is extremely important and useful. How subtle differences between terms like aggravation and exaggeration can change the whole testimony gives an idea of the importance of fully understanding these words. This we think is one of the high points of the whole endeavor.

Tape 2A and 2B

This whole tape has been devoted to the procedures of independent medical examinations. On side A, the methods of medical examination are described. It has described the requirements that are expected of a doctor. It informs about the questions that are generally asked of the doctors. Things like whether the diagnosis is correct or not, the cause and effect relationship between the incident and the current problems, the prognosis of the disease etc. All this gives the physician an idea about the kind of work he will be required to do when he performs an independent medical examination. He can also get prepared for the possible questions that can be asked during the cross-examination. An important issue that the author has described here is regarding the personal biases that every individual can have. He has given an example of how the same injury can be looked at differently depending on the person who is examining the patient. Such biases are bound to be there and the physician should not be too disheartened by them. Things like the difference between impairment

and disability, functional disability and work capacity etc. have been very properly explained. The description of the methods of conducting the examination, how the records are to be maintained, what is to be done when the medical records are not complete, what if the patient is not cooperating, if he insists on bringing the relatives or wants to video graph the entire examination etc.

> *...All this gives the physician an idea about the kind of work he will be required to do when he performs an independent medical examination. He can also get prepared for the possible questions that can be asked during the cross-examination...*

On side B the method of writing an independent medical examination report has been described. The authors have described the methods of examination viz. pre-evaluation, evaluation and post-evaluation beautifully. Here we would like to make a brief mention of the book titled "THE COMPEHENSIVE IME SYSTEM" from the same publishing house that we had reviewed earlier. That book has described the method of independent medical examination very well. We would like to recommend the readers to that book to complement the information given in the tape.

Tape 3A

In this tape the author describe how to testify in the court. This we think is the most important part of the whole series. This is because, as we have already mentioned, testifying in the court is a harrowing experience for the doctors if they are not well versed with the procedures of the court. The tape starts of by mentioning the seven reasons for which deposition is done. This gives the doctor an idea why the deposition is taking place and what all he can expect during the deposition. Having got an idea of what is going to happen in the court, the next step is to prepare for that. Dr. Brigham states that the most important qualification for testifying is the truthfulness of the doctor. He then proceeds to tell about the ways of preparing and answering the questions. Things like how to present oneself, things that are to be done and not to be done, what all is to be avoided, etc. have been explained very comprehensively. Also described in the tape is the method of dressing during the testimony and the court proceedings. The description about the importance of maintaining the confidence has been described very efficiently.

Tape 3B

The topic of this tape is "trial techniques". Here the authors have described the techniques that would help the doctors in being a better witness. The first thing that has been touched upon is that the attorney should not be interrupted while he is asking the questions. This is important as many times the doctor thinks that by answering the question early, he can end the testimony early and can go back early. But what he forgets is that this can be counterproductive as instead of leading to early deposition, it can cause a delay in the proceedings and also gives a bad impression that he is in a hurry. The other things that have been explained are things like how to answer the open-ended questions, how the questions posed by the attorneys are to be approached, how to deal with long questions with multiple sub-parts, whether a doctor should object to the questions or not etc. These are the kind of questions that, if not answered properly, can turn a good doctor into a bad witness.

> *...Attorney Babitsky has described how the various simple terms used in the common language and having straightforward meaning are not the same when used in legal perspective. And its this differing meaning of words that the attorneys use to confuse the doctors...*

Tape 4A

In this tape the ways in which the lawyer is going to attack the doctor have been described. Here the authors start off by describing the ten (10) fundamental techniques that the attorneys usually use. The knowledge about these techniques helps the doctor in being prepared for these things and helps him in answering the questions in a better and more efficient way. The second part of the tape is presented in the form of a trial where attorney Babitsky asks questions that are answered by Dr. Brigham. This serves two purposes. First it gives an idea about the difficult questions that are asked and secondly it tells the ways in which these questions are answered. Attorney Shapiro has explained the description at the end of the tape about the role of a witness and the difference between and expert witness and a lay witness very effectively.

Tape 4B

In this tape the authors have described the legal perspective from the point of view of the lawyer. In this they have described about their role in the medico-legal system, their duties, how to approach cross-examination etc. A couple of things need to be mentioned here. First of all, attorney Shapiro has discussed about the payment of doctor's fee. He states that the attorney can compel the doctor to testify in the court and the only option for him is to co-operate. He has told how the lawyer can force the doctor in testifying without payment but has not described how the doctor can face this situation and get out of it. Secondly the question 'how can physicians protect themselves from liability when testifying', mentioned in the manual, has not been explained properly. Otherwise we feel that this part has been pretty well explained. The description regarding the ways an attorney can play games with the doctor, especially the example is worth mentioning.

Tape 5A & 5B

In this tape the authors have described about the ways the doctor can avoid being abused. There are various ways in which a doctor can be abused. These include things like non-payment of fee, when a quick report is required, when questions regarding personal problems are asked etc. the answers to these questions are very important as they are extremely important problems that have to be tackled by the doctor everyday. Most of the problems generally relate to the non-payment of fee either for deposition or for the delay in the courtroom. When a doctor is asked to testify beyond the area of expertise, the problem is what he can do to save his skin. Its answer gives the doctor the confidence of dealing with them. On side B the authors have described about some practical issues. Instead of practical issues they are more of marketing strategies. In today's highly competitive world, the doctor has to market himself properly to survive. How to market one, how much fee is to be asked, the billing and collection procedures etc. have been explained. The agreement letter that has been described can be of great help especially for those who are just starting their practice and are not experienced enough to know the secretes of the trade.

Tape 6A & 6B

It is our belief that no amount of studying and reading can replace the practical examples. Same is the case with the present material. Unless one witnesses a proper deposition or a courtroom trial, he can't be confident enough to face one. Experience is irreplaceable; but nobody is born experienced. There is always a first time for everyone and to face that first time, the practical exposure is a must. It is in this respect that this tape assumes importance. All the material that has

been taught or mentioned in the previous tapes would come to naught without this last tape. In this tape a deposition has been enacted with Dr. Brigham being the expert witness and attorneys Babitsky and Shapiro doing the direct and cross-examination. Here it has been shown how the lawyers can go to any length to bully the doctor and how the doctor has to maintain his calm to offset them. "The worst thing for an attorney is the smiling face of a doctor during deposition or trial" are the words of attorney Shapiro at the end of the tape. This should give an idea of how a deposition has to be approached by a doctor. The question and answer session at the end of the (mock) trial helps in removing any doubts that may have been left unanswered.

The Manual

Generally in attempts like these the manuals are there just to provide some written material. But in this case, it is not so. Here the manual is not just a written material but it complements the audio pretty well. The cases that have been mentioned in the first tape have been described in the manual. The hypothetical evaluation report of the case that has been discussed in the last tape has also been provided in the manual. Also a synopsis of every tape is present in the manual in tabular form so that it is easy to understand and apply. All in all, it is a splendid effort.

We as forensic experts, have to deal with the court and its proceedings on an almost daily basis. So we are aware of the legal procedures and are also reasonably well versed with the type of cross-examination that is going to take place. But for someone who doesn't deal with the law with such regularity, this material is a must buy. This is because for them the only way of getting familiarized with the legal natters is to either study law or get some material that describes the procedures. And in our practice we have not been able to lay our hands on a better material. So in the end all that we would like to say is that if you foresee yourself as a doctor who is going to testify or attend court proceedings as an expert witness, go ahead and buy this tape as this is one of the best methods of preparing for the same.

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-Editor-in-Chief