



## **Cooling the Hot Seat: Preparing For the Defense**

You have heard how to avoid being sued. Now that the inevitable letter from the plaintiff's attorney has arrived, what can you expect? This session will walk the participant through the legal tangle of preparing to go to and through the trial.

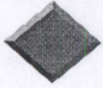
- Choose a competent attorney.
- Describe the steps involved in preparing for defense, including depositions, pre-trial testimony, and other issues.

TU-61  
Tuesday, October 12, 1999  
8:00 AM - 8:55 AM  
Room # N223  
Las Vegas Convention Center

## **FACULTY**

Daniel J Sullivan, MD, JD, FACEP

Assistant Professor, Department of Emergency Medicine, Cook County Hospital/Rush Medical College, Chicago, Illinois; President, Midwest Emergency Associates, Ltd.; Chairman, Department of Emergency Medicine, Ingalls Memorial Hospital, Harvey, Illinois; President, The Sullivan Group; Co-Editor, ACEP's *Emergency Medicine Risk Management Text, Second Edition*; Author, *Yearbook of Law and Medicine*; Author, *High-Risk Acute Care: The Failure to Diagnose*; Co-Author, ACEP's *Before You Sign: Contract Basics for the Emergency Physician*



## *Under the Legal Gun*

**Instructor:**

**Daniel J. Sullivan, MD, JD, FACEP**

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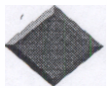
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## **COURSE OBJECTIVES**

- ❖ Understand the components of **malpractice** litigation
- ❖ Define **the elements of credible court testimony**
- ❖ Explain the pitfalls **in giving** depositions
- ❖ List **the** important elements in delivering **good court** testimony

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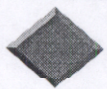
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## *The System*

### ❖ **Jurisdiction**

-state court

-**Federal Court**

-**Out-of-State Court**

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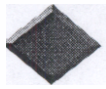
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### *What Must Be Proved Against You?*

- ❖Duty
- ❖Breach
- \*Proximate Cause
- ❖Injury

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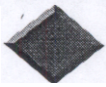
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### *The Litigation Process*

- ❖The Complaint
- ❖Discovery
- ❖The Trial
- \*Appeal

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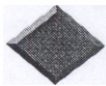
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### *The Complaint*

- ❖The Summons
- ❖Notice of Attorney's Lien
- ❖Rumors

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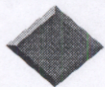
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### *Prior to Discovery*

- ❖ Medical Records
- ❖ The Attorney
- ❖ Co-Defendants
- ❖ Settle of Defend?

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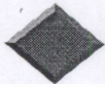
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### *Interrogatories*

- \*Written questions- written replies
- ❖ Copies of medical records
- ❖ Medical literature
- ❖ List of potential witnesses
- ❖ Names of experts, with opinions
- ❖ Training and background

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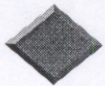
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### *Your Deposition*

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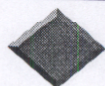
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### *Reasons to Take a Deposition*

- ❖ To preserve testimony.
- ❖ Prevent faulty memory, unexplainable changes of heart, influence of adversary.
- ❖ To evaluate the adversaries case.

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### *Reasons to Take a Deposition*

- ❖ To determine the strength of an opposing witness or expert.
- ❖ To evaluate you as a witness.
- ❖ May lead to “admissions” from the adverse party.
- ❖ Acquire unknown facts.

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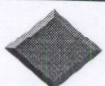
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### *Reasons to Take a Deposition*

- \*Commits the deponent to a definite version of the facts
- ❖ To determine if all parties have been joined

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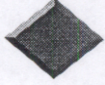
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### ***The Deposition***

- ❖ Definition
- ❖ Scope of questioning
- ❖ Who can give a deposition?
- ❖ Types of depositions
- ❖ Who may be present?

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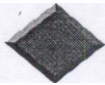
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### ***Preparing for a Deposition***

- ❖ Consult your attorney
- ❖ Study the patient's records
- ❖ Refresh your memory
- ❖ Review the literature
- ❖ Attend other depositions
- ❖ Prepare yourself mentally

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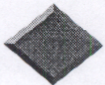
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### ***Deposition Testimony***

- ❖ Give truthful answers - no less, no more
- ❖ If a question is ambiguous, ask for clarification
- ❖ When in doubt, consult the record

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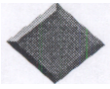
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### ***Deposition Testimony***

- ❖ **“Authoritative Text”**
- ❖ **Avoid concurring with generalizations**

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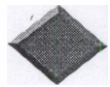
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### ***Deposition Testimony***

- ❖ **Beware of leading questions**
- ❖ **Never lose control of your emotions**
- ❖ **“I don’t know” and “I don’t remember”**

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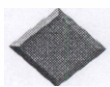
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### ***Deposition Testimony***

- ❖ **Give no additional information**
- \* **Stress favorable facts**
- \* **Don’t exaggerate the truth**

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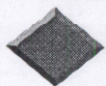
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### ***Deposition Testimony***

- ❖ “Uh-uh” and “Uh-huh”
- ❖ Memorize the record
- ❖ Let your attorney make objections

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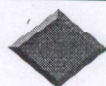
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### ***Deposition Testimony***

- ❖ Beware of “what if” and “assume this happened” questions
- ❖ Stop the deposition!

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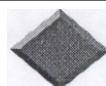
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### ***Prepare for Customary Questions***

- ❖ Review your curriculum vitae
- ❖ Description of the ED at the time of the incident
- ❖ Discussion with anyone about the incident
- ❖ Who was present, who has knowledge of the incident

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
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# *The Trial*

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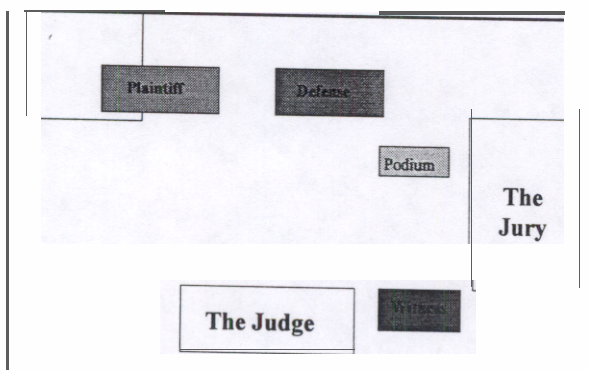
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
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# *The Trial*

- ❖ Jury instructions
- \*Opening arguments
- ❖ Presentation of evidence
- \*Closing arguments
- ❖ Jury instructions and verdict

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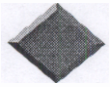
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## *The Trial*

- ❖ **Your appearance**
- ❖ **Your conduct**

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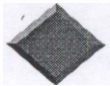
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## *Trial Testimony*

- ❖ **Adverse Witness**
- ❖ **Case in Chief**

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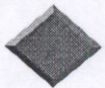
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## *Your Trial Testimony*

- ❖ **Speak to the jury**
- \***Make your answers complete**
- ❖ **Beware leading questions**
- ❖ **Do not contradict your deposition**

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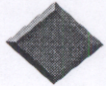
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### ***Your Trial Testimony***

- ❖ Do not lose control of your emotions
- ❖ If your attorney objects, stop talking
- ❖ Follow your attorney's lead
- ❖ No surprises!

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