

Recovery & Resolution



A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS

Graham Lundberg & Peschel *Founded 1979*

Civil Rule 30 – The Dreaded Deposition

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A deposition is a tool used by attorneys to discover information about the other party's case. While they can be intimidating to those unfamiliar with the process, depositions are generally nothing more than question and answer sessions between attorneys and witnesses who have knowledge relevant to the case. Healthcare providers are often called upon to give deposition testimony regarding their patients, so a basic understanding of the deposition rules can eliminate some of the jitters next time you are subpoenaed.

Depositions are permitted under Civil Rule 30, which requires that the person to be deposed be given reasonable notice, in writing, of not less than five days, exclusive of weekends and court holidays. The rule also requires that the notice specify the time and place of the deposition. So next time you get a phone call on Friday afternoon telling you to be at a deposition on Monday morning at 8:00 a.m., you can politely refer the caller to CR 30(b)(1) and decline their invitation!

Deposition notices are usually served with a subpoena duces tecum requiring you to bring your entire patient file with you to the deposition. Also, you can charge the party requesting your deposition reasonable compensation for your time.

Depositions are usually taken in the presence of a court reporter, but

they do not necessarily have to be in person. CR 30(b)(7) provides that the parties may stipulate or the court may order that the deposition be taken by telephone or by other electronic means. If you are camera shy, you should be aware that videotaping of depositions is allowed under CR 30(b)(8). This rule states that any party may videotape the deposition of a witness without even getting a court order, provided that 20 days' notice is given to the deponent and that the notice specifically state that the deposition will be recorded on videotape. Videotape depositions are sometimes referred to as "preservation" depositions, and an edited version of the tes-

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Plan to Attend Our Legal Educational Seminar...

What You Need to Know About... Independent Medical Exams

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M.D. IME on D.C. Treatment

Under Court Rule 35, when your patient has been treated exclusively with chiropractic, a medical doctor is allowed to perform an Independent Medical Examination (IME) for the defense only if a lawsuit has been filed. In contrast, in a first-party personal injury protection (PIP) situation, an M.D. is not allowed to perform an IME regarding a chiropractor's treatment (Washington Administrative Code 284-30-395(3)(a)). If an injury claim cannot be resolved amicably with the responsible party's liability insurance carrier, a lawsuit will have to be filed. When a lawsuit is filed, your patient, the Plaintiff, makes his or her injuries the subject of the lawsuit. The Defendant is then allowed to have a CR 35 exam. As a result, Civil Rule CR 35 allows a Defendant to request an examination by a physician of their choice.

When the Defendant chooses to have a medical doctor perform an IME in a chiropractic case, it can often backfire. In a case that our firm

handled, after the CR 35 Medical Examiner, an M.D., testified that conservative care should have only lasted six to eight weeks and that the Plaintiff should have been fixed and stable by then, we spent over an hour going through the chiropractor's records with him on cross-examination, page by page, line by line. The M.D. had to state repeatedly that he did not understand the records and, in fact, did not understand chiropractic. We specifically questioned him about the chiropractor's findings in the examinations. Unfortunately for the doctor and for the defense, he

could not interpret any of those findings.

Upon closing our cross-examination, we took a chance by asking the M.D. if he had ever referred a patient to a chiropractor. His answer was yes. We asked him specifically in what situation he did refer to a chiropractor, and he told us that he referred his wife to a chiropractor after he could not cure her pains himself. We ended by saying, "No further questions."

The jurors gave very little weight to the medical doctor's testimony, and the Plaintiff was awarded what we had requested.

Civil Rule 30, continued from page 1

testimony can be prepared to show at trial or arbitration. A preservation deposition is most often used by the Plaintiff's attorney to avoid problems in scheduling live testimony at trial.

As a healthcare provider, your deposition testimony will most likely require that you give your opinion about your patient's injuries, treatment and recovery. Therefore, you are testifying as an "expert," which is defined generally under Evidentiary Rule 702 as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

But remember this key point: you are giving your expert opinion about an issue; you are not allowed to speculate or engage in conjecture. Furthermore, your opinion must be within the parameters of

your qualifications. For example, a treating doctor would not be allowed to express the personal opinion that the driver who ran the red light should have been paying closer attention to his driving!

Depositions are an important part of the discovery process when litigation of a case becomes necessary. While they can certainly be disruptive to your schedule and seemingly tedious in nature, the testimony you give on behalf of your patient can be tantamount to assuring that they recover fair and reasonable damages. The rules do allow some flexibility in scheduling, and they provide alternative methods of preserving testimonial evidence. Your patient's attorney should be available to assist in accommodating your scheduling needs, and you should expect to spend some time with that attorney preparing for the deposition. The attorneys at Graham Lundberg & Peschel are always eager to meet with our clients' healthcare providers to discuss all aspects of deposition preparation and testimony.



CR 35 Exam Different from a PIP IME

A medical examination ordered under Civil Rule (CR) 35 *is different* from a Personal Injury Protection (PIP) Independent Medical Examination (IME) in the way the results of the examination are utilized and when each examination is applicable.

A PIP IME is a tool that the insurance company uses to determine whether or not they will continue to pay bills under the PIP policy. In contrast, a CR 35 examiner's report is a discovery tool used by the defense in a litigation case as evidence in the case. This evidence can be used by the defense at trial, arbitration or mediation. Once a lawsuit has been filed in a personal injury case, the defense attorney is allowed, under CR 35 of the Superior Court Rules, to seek an **order** to require the Plaintiff to submit to a physical examination by a physician, or to a mental examination by a psychiatrist or psychologist.

CR 35 allows protections to the Plaintiff to ensure that an accurate assessment of what occurred at the examination is reflected in the examiner's report, such as allowing the Plaintiff to have a "representative" present at the examination, and allowing for an audiotaped and possibly a videotaped recording of the examination.

Representative Present: The party being examined may have a "representative" present at the examination. The "representative" may observe, *but may not interfere* with or obstruct the examination.

Exam May Be Recorded or Videotaped: Unless otherwise ordered by the court, the party being examined or that party's represen-



tative may make an audiotape recording of the examination, which shall be made in an unobtrusive manner. A videotape recording of the examination may be made on agreement of the parties or by order of the court.

After the examination, CR 35 requires the examining physician to deliver his or her report within 45 days of the examination, and in no event less than thirty days prior to trial. The report must set out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition, whether or not the examining physician or psychologist will be called to testify at trial.

The attorneys at Graham Lundberg & Peschel **always** have a "Representative" of our law firm present at a CR 35 examination to take notes and audiotape the examination. Videotaping of the examination is also regularly performed.

The key points to remember are: first, the results of a CR 35 examination are used differently than that of a PIP IME; and, second, the CR 35 examination is a discovery tool used by the defense as allowed under the Civil Court Rules **only** if a lawsuit has been filed.

FREE SEMINARS

Graham Lundberg & Peschel welcome you and your office staff to attend a **FREE** Educational Seminar.

Join us in a discussion regarding:

What You Need to Know About... Independent Medical Exams

This is one seminar you cannot afford to miss! Sign up today.

Thursday, April 1
Everett – Howard Johnson Hotel

Wednesday, April 7
Olympia – Mercato's Restaurant

Thursday, April 8
Bellevue – Red Lion Bellevue Inn

Wednesday, April 14
Tacoma – Cliff House Restaurant

Thursday, April 15
Federal Way – Verrazano's Restaurant

Thursday, April 22
Renton – Holiday Inn

Wednesday, April 28
Steilacoom – E.R. Rogers Mansion

Thursday, April 29
Port Orchard – McCormick Woods Country Club

Thursday, May 6
Seattle – Best Western Executive

Enclosed is an RSVP form. Plan to attend this informative seminar!

- All Seminars: 12:30 – 2 pm
- Complimentary Lunch Will be Served
- This Seminar is for Doctors, Therapists and their staff!
- Doctors of Chiropractic, Massage Therapists, Physical Therapists will earn 1.5 CE credits





We are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

Our Attorneys

- John Graham
 - Scott F. Lundberg
 - Brian J. Peschel
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 - Kenneth Barry Dore
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 - John D. Webber
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 - Rodney G. Zerr
- *admitted in Ohio only

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CONVENIENTLY LOCATED

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn 253-931- 1111**
- Bellevue 425-827- 1111**
- Burien 206-241- 1708**
- Everett 425-252- 1111**
- Federal Way . . . 253-946- 1111**
- Gig Harbor 253-853- 5005**
- Lakewood 253-274- 1111**
- Lynnwood 425-775- 1111**
- Marysville 360-658- 1111**
- Olympia 360-786- 1717**
- Port Orchard . . . 360-876- 5005**
- Puyallup 253-845- 1112**
- Renton 425-235- 1111**
- Seattle 206-448- 1992**
- Tacoma 253-627- 7701**

Or Call Toll Free

North Puget Sound area including King & Snohomish Counties
800-422-4610

South Puget Sound area including Pierce, Kitsap & Thurston Counties
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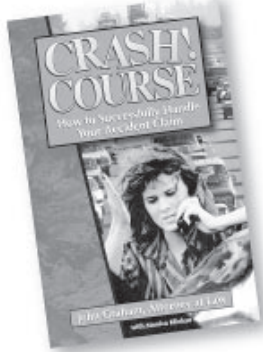
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www.glpattorneys.com

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