



Volume 2, No. 2
March, 2001

This issue
**Exhibits in the
Courtroom**

featuring excerpts
from two of our
best-selling titles,
**Elements of Trial
Practice and Nursing
Malpractice** (Second
Edition).

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telephone: (800) 209-7109 • fax: (800) 330-8795

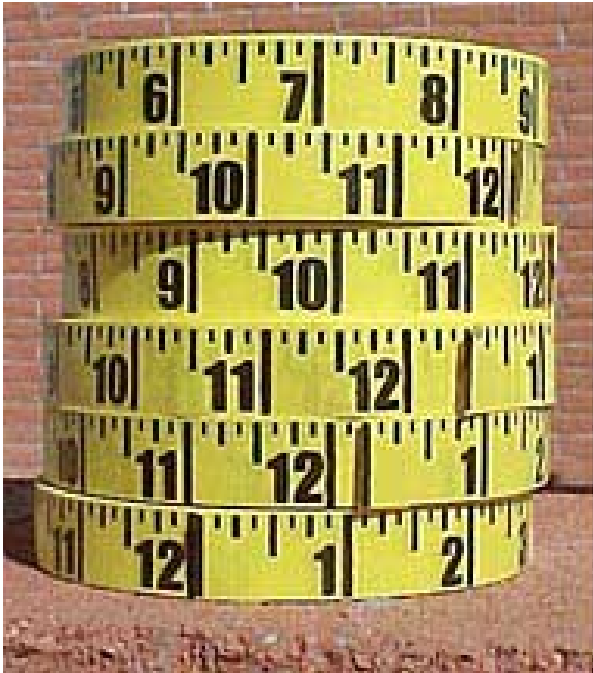
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Drugs of Abuse Slide Chart

Steve Weintraub

Packed with informative statistics!
 This newly revised and updated calculator is loaded with information on drugs of abuse. Now one simple tool will give you trafficking penalties, street names, CSA Regulatory Requirements, and more. All the information contained in volumes of books and regulations is right at your fingertips. Side one lists the trade and street names of narcotics, depressants, stimulants, hallucinogens, and cannabis, along with the effects, withdrawal symptoms, and overdose effects. Also included are the medical use and physical appearance of the drug, methods of administration, detection time in urine, and physical or psychological dependence. Side two provides the CSA Regulatory Requirements and Federal Trafficking Penalties Guide. All information compiled from DEA, CSA, and National Institute on Drug Abuse Data.

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8 1/2" x 11", 2001.



Exhibits in the Courtroom

The law, by tradition, has been a profession of words and oratory in the courtroom, but we are living in a visual society today. The “baby boomers” and Generation Xers have been brought up in front of television sets. They are more accustomed to seeing and hearing news than reading it from a printed page. The success of the newspaper *USA Today* is an example of color visual support (in the form of maps, charts and graphics) to supplement the printed story. Even the television medium itself has maximized the use of visual support for the spoken word, by going to the video of the actual event as opposed to the reporter’s summary and retelling of the events. When introducing a story for a news segment, there will usually be a graphic icon or symbol of some kind on the screen next to the reporter to visually anchor the general theme of the story.

As recently as ten years ago, the use of demonstrative evidence in a typical malpractice case would consist of enlarged photographs of the plaintiff, the site of the incident, radiographic studies, portions of the medical chart, and bar graphs used by the economist. The defense bar frequently abstained from the presentation of any visual support except for chart enlargements. Over the last decade, however, there has been an explosion in the frequency, quality and array of demonstrative evidence techniques being used by both sides. Claims adjusters are seeing the value in paying for visual support for their trial attorneys because the techniques work. Newer tools such as computer animations and videos intended for medical teaching purposes allow the finders of the facts to fully understand the complex issues they need to evaluate.

from *Nursing Malpractice*, Chapter 27

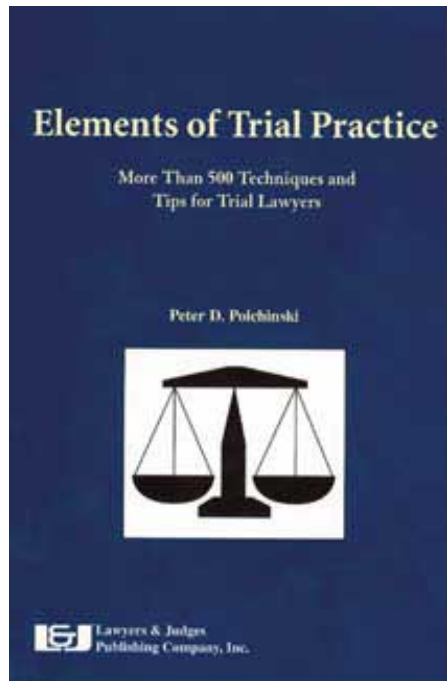
Elements of Trial Practice

Peter D. Polchinski, Esq.

To win at trial, you must present your case clearly, simply, persuasively, and fairly while you undermine your adversary's case in the same manner. Achieving excellence in trial advocacy is a lifelong pursuit. Nevertheless, trial skills and a basic understanding of this art can be learned quickly.

Short and persuasive, this book wastes no words. You'll discover how to select a favorable jury, prepare your witnesses, deliver powerful opening statements, conduct an effective direct examination, cross-examine any witness, introduce exhibits, impeach their witnesses, control consulting experts, and win the case on summation. *Elements of Trial Practice* will become your essential, instant-access reference for trial. Armed with its many valuable techniques, you will approach trial practice with new enthusiasm and confidence.

Topics covered include: Direct examination • Introduction of exhibits • Witness preparation • Cross-examination • Expert witnesses • Opening statement • Summation



ABOUT THE AUTHOR

Peter D. Polchinski, a solo lawyer on Wall Street for more than ten years, is a former homicide prosecutor with the Manhattan District Attorney's Office. As trial counsel to law firms, corporations and public authorities, he tries cases for plaintiffs and defendants. Mr. Polchinski received his J.D. from Fordham University and his LL.M. from New York University. In addition to trying cases, he teaches in trial programs held at Hofstra Law School and the Manhattan District Attorney's Office, and conducts the PDP Trial Workshop.

Elements of Trial Practice: Chapter 2

Introduction of Exhibits

A picture is worth a thousand words.
—Chinese proverb

1. Have your exhibit marked for identification.

Trial exhibits are often essential and almost always powerful as evidence. They corroborate the testimony and give the jury something to look at and hold. When you introduce and use exhibits correctly, you advance your case and win favor with the judge and jury.

Before the trial begins, determine whether the court wants the exhibits pre-marked for identification. If the judge wants them *pre-marked*, then ask the court reporter (not *stenographer*) to mark them. Plaintiffs and prosecutors use *numbers* and defendants, civil or criminal, use *letters*.

When the exhibits have not been pre-marked, the first time you handle an exhibit, ask to have it marked.

Counsel: *Your Honor, with the court's permission, I would like to have this photograph marked as Plaintiff's Number 1 for identification.*

or

Counsel: *Your Honor, may I please have this document marked as Defendant's Exhibit A for identification.*

Although you need not show the exhibit to opposing counsel until you offer it in evidence, the better practice is to show it to counsel after it has been marked for identification.

Hand the exhibit to the clerk or court officer. One of them will probably step forward to accept the exhibit and hand it to the court reporter. *Stop talking while the court reporter marks the exhibit.* After the exhibit has been marked, ask that it be shown to the witness. If the clerk and court officer want you to handle the exhibit yourself, then do so.

Return to the lectern before you ask questions about the exhibit.

Stand away from the witness whenever you are asking questions. Your voice and the witness's voice will drop in volume when you are two feet from each other, and the examination will sound like a private conversation.

2. Ask the proper foundation questions and have your exhibit admitted in evidence.

You must ask the correct introductory or *foundation* questions to get your exhibit before the jury. Write the following questions on a legal pad or on index cards for easy reference at trial.

Introduce ordinary objects.

For ordinary objects such as a weapon, a book, or a handbag, you should ask the following questions.

Q. *I show you (People’s 1) for identification; do you recognize it?* **A.** Yes, I do.

Q. *What is (People’s 1)?* **A.** It’s the (pistol) I recovered from the defendant.

Q. *How do you recognize it?* **A.** From my initials, which I (carved in the handle).

Counsel: *I offer (People’s 1) in evidence.*

Foundation questions go to *admissibility* and are for the judge, not the jury. Do not ask more foundation questions than necessary. Further questions about the above pistol—such as the brand, caliber or firearm identification test results —go to *weight*, not *admissibility*, and they should be asked after the exhibit is in evidence.

Admit photographs and diagrams.

For photographs and diagrams, ask the following questions.

Q. *I show you (Defendant’s A) for identification; can you identify it?* **A.** Yes.

Q. *What is (Defendant’s A)?* **A.** It’s a photograph of (the intersection of Wall Street and Broadway).

Q. *Does the photograph fairly and accurately show how the (intersection) looked on the day of the accident?*

A. Yes.

Counsel: *I offer (Defendant's A) in evidence.*

When there are differences between a photograph and how the scene appeared on the day of the event in question, indicate the differences.

Q. *Aside from the (weather and the traffic conditions), does (Defendant's A) show how the (intersection) looked on the day of the accident?* **A.** *Yes, it does.*

Ask if a diagram was drawn to scale.

Q. *Is (Defendant's B) drawn to scale or is it a general layout of the intersection?* **A.** *Just a general layout.*

Offer demonstrative evidence.

For demonstrative evidence, ask whether the exhibit will help the witness to explain the testimony.

Q. *(Dr. Jones), is (Plaintiff's 2) a fair and accurate (model of the human leg)?* **A.** *Yes.*

Q. *Would it be helpful for you to use (Plaintiff's 2) to show the jury (the ankle joint)?* **A.** *Yes, it would.*

Counsel: *Your Honor, I offer (Plaintiff's 2) as demonstrative evidence.*

Introduce business records.

For business records, use the following language. The judge will want to hear the last three questions.

Q. *I show you (Plaintiff's 5) for identification, do you recognize it?* **A.** Yes.

Q. *What is (Plaintiff's 5)?* **A.** It's the (attendance record of employee Jones).

Q. *Is it part of the regular course of (ABC Company's) business to keep such a record?* **A.** Yes, it is.

Q. *And was (Plaintiff's 5) kept in the ordinary course of (ABC's) business?* **A.** Yes.

Q. *Was it prepared on or about the time of the (entries shown)?* **A.** Yes.

Counsel: *I offer (Plaintiff's 5) in evidence.*

Refer to all exhibits by their proper designation.

When you refer to the exhibit, always use the exhibit's number or letter.

Q. I show you *this*. Take a look at *this*. Do you recognize it?

Q. I show you *Defendant's C* for *identification*. Do you recognize it?

3. Use the exhibit.

After your exhibit has been admitted in evidence, ask the court for permission to *publish* (show) it to the jury. The clerk or court officer will hand the exhibit to the jury foreman, who will look at it, and then pass it to the other jurors. *Sit down while the jury looks at the exhibit.*

Once in evidence, all exhibits must remain in the courtroom. Make sure that your witness does not leave court with any exhibit.

Conduct a *double direct* with the exhibit.

Double direct repeats and expands the testimony within the same examination. The witness testifies about the exhibit, then after you introduce the exhibit, the witness talks about it again. For example, when your exhibit is a map, diagram or photograph, have the witness describe the location, and then introduce the exhibit and have the witness describe the location further while using the exhibit. Ask the witness to identify and mark significant locations on the exhibit. *Make sure the witness can mark the exhibit accurately.* The combination of the exhibit and the testimony, heard twice, is powerful and memorable.

Buy good exhibits.

Buy the best diagrams, charts and models you can afford. Whenever possible though, use exhibits that are small enough for the jurors to handle.

Create your own exhibits.

When you cannot afford expensive exhibits, create your own.

Take photographs. Visit the scene of the incident and bring a camera with you. Provide copies of the photographs to your adversary. When the incident scene is in a rough neighborhood, go there with an investigator.

Use a pre-cut piece of cord to establish a short distance, such as the distance between two people, and introduce the cord as an exhibit.

Q. *Showing you People’s 4 for Identification, does this piece of cord accurately show the distance between the defendant and you when you looked at his face?* **A.** *Yes. It does.*

Counsel: *I offer People’s 4 in evidence.*

When your witness writes or draws on the court’s blackboard, preserve the exhibit. Photograph the blackboard with a Polaroid® camera.

When you need a last minute exhibit, remove the cardboard back of a legal pad and mount a photograph or diagram on it with transparent tape.

Confront adverse exhibits.

Move *in limine*, that is, before the testimony, to exclude prejudicial, inflammatory or otherwise inadmissible exhibits or testimony.

When your adversary attempts to introduce an exhibit that you believe should not be admitted, ask to *voir dire*, or question the witness, about the exhibit. You may be able to exclude it.

When you object to entries in an exhibit that is otherwise admissible, reserve your right to *redact*, or delete, the objectionable entries. You must reserve that right before the exhibit is admitted in evidence.

The court: Any objection to the exhibit, counsel?

Counsel: Your Honor, no objection, but *subject to redaction*.

The court: Very well, we'll do that later. Defendant's B admitted in evidence, subject to redaction.

Do not stipulate to the admission of any exhibit until you have reviewed the exhibit and had time to think about it.

Read all documents carefully before they are admitted in evidence.

4. Refresh recollection and admit recorded recollection.

Refresh the witness's recollection.

When a witness does not remember a fact, but something exists that would help to stimulate his memory, you should *refresh his recollection*.

Although you may use anything to refresh a witness's memory, you will most often use a document prepared by the witness. The document used to refresh need not be marked as an exhibit.

Do not refresh until the witness tells you that he does not remember the fact. After he so indicates, hand him the document. The witness should not read the entry into the record. He should look at the document, then put it aside and testify.

Q. Sergeant Friday, what was the make and model of the defendant's car?

A. I don't remember, but it's probably in my report.

Q. *Would looking at your report refresh your recollection?* **A.** Yes, it would.

Q. *With the court's permission, Sergeant, please look at your report—does that refresh your recollection?*

A. (Looking at the report) Yes, it does.

Q. What kind of car was it? **A.** (Looking at the jury) A 1928 Model A Ford.

Introduce a past recollection recorded.

When the writing does not refresh the witness's recollection but an entry is otherwise admissible, introduce the entry as a *past recollection recorded*, by having the witness read it into the record.

Q. Sergeant, what was the car's license plate? **A.** I can't remember.

Q. *Would your report refresh your recollection as to the plate number?* **A.** It might, but I'm not sure.

Q. Please look at your report again. **A.** Okay.

Q. Have you looked at your report? A. Yes.

Q. Do you remember the plate number? A. Honestly, no.

Q. Did you *see the license plate* that day? A. Yes.

Q. Did you *write the number down* in your report? A. I did.

Q. *Was it accurate* when you wrote it down? A. Yes.

Q. And after reviewing what you wrote down, *is your memory nevertheless exhausted* as to what the plate was? A. Yes, I'm afraid so.

Counsel: Your honor, I ask that Sergeant Friday *read the license plate number from his report as a past recollection recorded.*

The court: Go ahead.

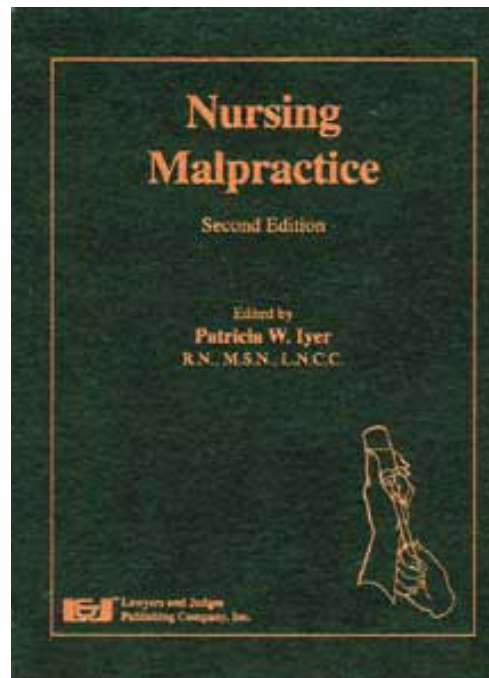
The witness: 1928-Ford.

Nursing Malpractice

Edited by Patricia W. Iyer, R.N., M.S.N., L.N.C.C.

An outstanding reference for the attorney or claims adjuster investigating a nursing malpractice claim, the second edition of *Nursing Malpractice* brings you a wealth of information and resources to use in bringing a case to trial. Comprehensive and full of inside information, Ms. Iyer's book covers the spectrum of the nursing process—from patient admittance to lawsuit. Packed with tips and techniques for finding the missing loophole, this volume reveals typical ways in which nurses try to cover up their mistakes, and shows how nurses are caught in a difficult position between the insurance company lawyers and hospital procedures. It details the defendant nurse's daily routine, whether as a surgical nurse or nurse-supervisor in a nursing home setting, giving a comprehensive feel for all the actions which fall under a nurse's responsibility.

Among the topics covered: Foundations of nursing practice • Roots of nursing malpractice • An inside look at today's health care environment • Nursing documentation • Obstetrical malpractice issues



ABOUT THE EDITOR

Patricia W. Iyer, R.N., M.S.N., L.L.N.C., has extensive experience as a legal nurse consultant, giving testimony, and helping lawyers for both sides. She edited the first edition of *Nursing Malpractice* as well as *Nursing Home Litigation: Investigation and Case Preparation*, both published by Lawyers & Judges Publishing Company. Ms. Iyer is a medical surgical nurse expert witness and president of a legal nursing consulting firm, Med League Support Services, Inc., located in New Jersey. She received her diploma in nursing from Muhlenberg Hospital School of Pennsylvania in Philadelphia.

About this excerpt:

You can download a PDF® of the complete chapter (1.4Mb), with all color illustrations, by clicking [here](#). (You must have an Internet connection and a browser for this work.)

ABOUT THE AUTHORS OF THIS CHAPTER:

Stephen Appelbaum, C.E.P., E.P.I.C., is a graduate of Rochester Institute of Technology with a degree in photographic illustration. He began his legal career doing fire photography for insurance companies and expanded to all forms of forensic work, including liability claims assignments and work for plaintiffs' attorneys as well. In 1988 he started The Evidence Store, which is a walk-in retail store in Union, New Jersey, for trial attorneys. When he moved into his new facility in 1998, he added a full-size courtroom for the purpose of conducting mock trials and for teaching demonstrative evidence techniques. The Evidence Store provides all forms of legal photography, video and litigation graphics. Mr. Appelbaum has lectured nationally to photography organizations, local and state bar associations, and numerous Inns of Court, as well as having been featured on national and local radio and television programs. He is a former editor of the *Journal of Evidence Photography* and is a member of the Board of Directors of the Evidence Photographers International Council. He is also a member of the American Society of Trial Consultants and the Professional Photographers of America.

John M. Parisi, Esq., is a partner in the law firm of Shamberg, Johnson & Bergman in Overland Park, Kansas where he handles medical malpractice, product liability, environmental law, nursing home and False Claims Act cases. John received his law degree, with distinction, from the University of Missouri at Kansas City in 1989. He is admitted to practice before the United States Court of Appeals for the Tenth Circuit, and in the United States District Courts for the Western District of Missouri, District of Kansas, District of Colorado, Western District of Kentucky, Northern District of Georgia, and Northern District of Mississippi. John also practices before the Kansas and Missouri appellate courts. John is a member of the Johnson County, Wyandotte County, Kansas City Metropolitan, Kansas, Missouri and American Bar Associations. He is also a member of the Missouri Trial Lawyers Association and Kansas Trial Lawyers Association. As a member of the Kansas Trial Lawyers Association Board of Governors, he has served as treasurer, secretary, vice president of public affairs, vice president continuing of legal education, and vice president of legislation for the organization. John was the 1998 recipient of KTLA's Tom Sullivan Award and is president elect of the organization. He has published articles in local and national legal publications and has provided lectures and presentations at local and national seminars on trial and evidentiary issues.

MORE ABOUT THE AUTHORS OF THIS CHAPTER:

Samuel L. Davis, Esq., is the founding partner of Davis, Saperstein & Salomon, P.C., an eighteen-lawyer firm with offices in Teaneck and Edison, New Jersey and Manhattan. He graduated from Tufts University in 1973 and Rutgers School of Law in 1977. Mr. Davis is a sustaining member of ATLA and concentrates his practice in the areas of personal injury, medical and nursing malpractice, medical and pharmaceutical product liability and class actions. In the New Jersey Fen/Phen litigation, Mr. Davis was a member of the class action trial team, which represented all consumers who took this dangerous drug. This trial, which lasted five weeks, was the catalyst for the MDL settlement approved by the Honorable Louis Bechtle. The firm also represented over 150 individual plaintiffs. Mr. Davis has written and lectured extensively about trial techniques and the evolving use of videoconferencing in the trial of significant cases. His article “A Practical Guide to Videoconferencing” appeared in the March 2000 issue of *TRIAL* magazine. In 1998, he was the first attorney in the United States to utilize videoconferencing and the Internet to present evidence in a civil action. In that medical negligence case, the plaintiff, a respirator-dependant quadriplegic, testified in a New Jersey courtroom from his bed in Chicago.

Helen Griff Weisgal, Esq., is a member of both the New Jersey and New York bars where she practices tort litigation. At the time of the writing of this book, Ms. Weisgal was an associate with the law firm of Davis, Saperstein & Salomon, P.C., in Teaneck, New Jersey, where she was second chair at trials for senior partner Samuel L. Davis. Ms. Weisgal is currently an associate with the law firm of Sokol, Behot & Fiorenzo in Hackensack, New Jersey. She earned a B.S. degree and physical therapy certificate from New York University. After several years practicing as a physical therapist, she became Editor-in-Chief of Surgical Communications, Inc., which produced medical educational materials in video and print media. Ms. Weisgal earned her J.D. degree, with a health law concentration, from Seton Hall University School of Law in 1998. She became a member of the New Jersey bar in December 1998 and of the New York Bar in January 1999. During her association with Davis, Saperstein & Salomon, P.C., she prepared many cases for trial, with particular attention to the selection of demonstrative evidence.

Wendy Neggers, Esq., graduated from Rutgers School of Law. At the time the chapter was written for the first edition she was an associate of Davis, Saperstein and Salomon in Teaneck, New Jersey. Ms. Neggers concentrated in personal injury, medical malpractice and environmental law. She was a member of the American Bar Association, the American Trial Lawyers Association, the New Jersey State Bar Association, and the New Jersey District Court.

Nursing Malpractice: Chapter 27

Demonstrative Evidence (excerpt)

27.9 Commonly Used Types of Demonstrative Evidence in Nursing Malpractice Cases

This section describes various types of demonstrative aids that can be used in the courtroom. This is not meant to be an exhaustive list. The aids to be discussed include:

1. Photographs
2. Scene diagrams
3. Radiology and diagnostics
4. Anatomical models
5. Medical illustrations
6. Nursing notes and treatment records
7. Liability exhibits
8. Timelines or chronologies
9. The organization chart

10. The damages and medical expense chart
11. Lost earnings chart
12. Videotape
13. Computer animations
14. Medical equipment
15. Standup cardboard figures
16. The plaintiff in the courtroom

A. Photographs

Photography has been used in the courts of this country for as long as the technology has existed. Two recent landmarks for the use of photographs as evi-

dence have been the routine acceptance of color images and the increasing acceptance of digital images. Many photographs should be taken in nursing malpractice cases for several reasons. First, they can document the presence and location of important features of the facility or hospital that will be referred to during the course of the lawsuit. Beds, bed tables, furniture in the patient's room, or the location of medication carts, appliances, signs or larger equipment should be recorded. Photographs are also used to document lines of sight available to nursing staff as part of their responsibility to observe the movements of visitors near the newborn nursery, for example. A question may arise about the ability of a staff member to observe a visitor in an infant abduction case. See Figure 27.6.

Of course, photos should be taken as soon as possible to document any injuries. Photographs should be taken of the equipment or appliances used in the care of the injured patient. Overall photos should be made of the patient's room. If the patient has been moved to another facility following an incident, be aware that hospitals may have specific procedures for permitting photography of patients for legal purposes. This contracts with treatment purposes, an area which is probably covered in the admission forms signed by the resident or family member. In some facilities the permission for photography is handled by the nursing, administration, public relations or security departments. The attorney should request and review the procedure before sending a photographer to the hospital. When a treating doctor's permission is needed, get the written authority before dispatching the photographer. Usually, the preferred time for this type of photography is in the afternoon, because the patient usually receives some type of treatment or tests in the morning. Advising the nursing floor supervisor of your intention can also avoid scheduling problems. It may be helpful to keep a file or database on all hospitals within the immediate area. This file should include the correct address and phone number of the hospital (many hospitals have similar sounding names), and the name of the contact person from whom permission is needed before sending a photographer. The file should indicate the kinds of permission needed, as well as copies of forms, if any. Facility-specific files will save time and possibly the need for repeat trips by the photographer.

1. Lighting and film choice

It is important to consider the techniques of photographing the interiors of a patient's rooms, hallways, and nursing stations. One key issue is lighting. In these types of cases it is preferable to take the photographs by natural, or ambient lighting. (See Figure 27.7.) The exposure should use the smallest lens aperture possible. This will assure that the entire image is focused from the nearest to the farthest point in the scene. Getting the greatest depth of field usually requires long exposure time. As a result, a tripod or other equipment must steady the camera during the exposure. Generally, traditional "flash" photography will light the foreground but dim the background, creating an unfair and unrealistic representation of the scene. Multiple flash units or the technique of "painting with light" may also misrepresent an interior scene. Hence, advance professional consultation should be considered.

The decision to use color or black-and-white film depends on the subject matter. Sometimes the environment being photographed is illuminated by a mix of light sources— incandescent, fluorescent, and natural. Color films react differently to each type of light source, which will affect the quality of the final image. Color accents detail, while black-and-white photography emphasizes shape and spatial relationships. Color photographs are better for depicting conspicuous signs warning of dangerous conditions, improper exits, or some other hazard. Black-and-white photographs are better for depicting the distance between a bed and wheelchair involved in a patient's fall.

Tip

When the accuracy of color reproduction is important, a color chart should be made a part of the exhibit. Color print laboratories can then match the known colors in the chart, which will assure the proper representation of all the other colors in the scene. A photo should be taken with and without the chart in the exhibit. The image with the chart is there only for evidentiary reasons in case opposing counsel challenges the photo.

All photographs involving injuries and bruises should contain at least one frame with a color reference chart. This is especially important because of the relationship between skin tones and scars or bruises. Supplemental flash units should be considered to overcome any ambient light that might affect color reproduction. For example, fluorescent room lighting might look too green if the flash unit is not powerful enough to overcome the intensity of the room lights. Again, professional consultation can mean the difference between an admissible and inadmissible exhibit.

Close-up photographs should provide clear images of any printing on an object. Figures 27.8 and 27.9 are photographs of a vial of insulin that was stolen from an unlocked medication cart. The patient used the needle shown in Figure 27.10 to inject the contents of the vial. Figure 27.11 shows a ruler next to the syringe to show the size of the needle. (At trial in this case, the jury found no liability on the part of the nurses responsible for this medication.)

The location of the artificial or natural light source must also be considered. Flash units built into the camera tend to flatten the appearance of the subject, hiding the appearance of raised marks or swelling. Photos should be made with equipment that allows movement of the light source, the subject or both. The flash can be placed overhead and to either side of the subject to record the depth and texture of injuries more accurately. Unfortunately, human vision is three-dimensional, because we see through two eyes. The camera sees only through one lens, creating two-dimensional images. It is therefore extremely important to remember this when attempting to capture injuries with a camera with the expectation that the photos will look the same as the way the subject appeared to you in person. Take advantage of one-hour “mini-labs” to process important photographs as soon as possible if there is any doubt about the success of your photo mission.

2. Lenses and print size

Proper lens selection is critical in this type of medical-legal photography. There is a popular conception that

the use of wide-angle or telephoto lenses “distorts” the reality of a scene. Actually, the distortion results from the improper relationship of lens choice, viewing distance and print size. To determine the proper print size and viewing distance for photographs, forensic photographers use a formula based on the focal length of the lens. For practical purposes, this formula allows the photographer to create fair and accurate representations of scenes using wide-angle (short focal length) lenses. These permit the recording of larger areas of space when making interior photos in patients’ rooms or crowded hospital corridors.

If a wide-angle lens is used to capture a scene, the print may be enlarged so that the intended viewing distance retains its true appearance. Assume, for example, that a housekeeper leaves a bucket outside a bathroom stall, and a patient trips over it after opening the door. A wide-angle lens will capture the essence of what the patient could see while sitting on the toilet—the door to the stall, the width of the stall, the space under the door, and so on. A print size of approximately 11 × 14 inches will create a more accurate representation of the scene than would a smaller image. Think of it this way: objects seem farther away (smaller) when viewed through a wide-angle lens so the print should be larger to compensate.

Nevertheless, these techniques and theories may be lost in a courtroom. Distance from the exhibit stand to the jury box may interfere. So also may the visual abilities of individual jurors diminish a photo’s effect. It is nonetheless important for the attorney to at least be aware of these issues in advance of trial to allow for the effective presentation of such photos. Counsel should prepare and anticipate objections to photos that do not meet the proper criteria. The formula also comes into play when enlarging photographs for use on an easel in front of the entire jury.

Tip

An 8 × 10-inch print to be circulated among jurors should be about 30 × 40 inches when placed in a fixed mount six feet away from jurors. Doubling the viewing distance of a photo or document requires doubling of exhibit size to maintain legibility and proper perspective.

B. Scene diagrams

Exhibits that show a jury the nature and geometry of the incident's location may help to explain the occurrence. While photographs show the appearance of a person or object, diagrams, plan views, or aerial photos show the relative positions of important features. Diagrams can show the layout of patients' rooms, the relationship of the patient's bed to the bathroom or exit, or the relationship of the patient's room to nursing stations or closets where drugs or chemicals are kept.

Preparing site diagrams need not be a major task, as most facilities usually have plans on file that are used for fire or general safety purposes. This information may be right next to the elevator, with the "YOU ARE HERE" arrow affixed. Ask for a photocopy from the files, or photograph the diagram, and have it enlarged and traced at a later date. (See Figures 27.12 and 27.13.)

An experienced forensic photographer will be able to assist with the preparation of such a diagram at the time the photos of the area are being made. Measurements of hallways and rooms, the location of stairways and exits, and linear distances from point to point can all be recorded and drawn to scale to meet the needs of the case. Site inspections are typically done with a group of attorneys, hospital personnel and claims people. Generally the photography should be done in a separate session. The photographer can then work his or her way up and down the halls taking time to measure accurately to avoid the need for a return trip. Some agreement should be made, however, to allow for a return visit to verify any measurements before preparing the final exhibit. All parties may agree, for instance, that the photographer can schedule a return visit only to check measurements in a previously inspected and photographed location. The return can be done in the presence of one hospital employee, avoiding the need to coordinate the schedules of multiple law firms and hospital departments.

Diagrams can be prepared for trial that are equipped with overlays or magnets so that key pieces of the testimony can be noted in different ways. It may make sense to create two diagrams for the trial. One diagram

would show the overall general layout of a specific area, such as an entire floor or wing of the facility, with a second, scaled diagram concentrating on the immediate location of the key events. This would result in an exhibit large enough for all jurors to view easily. Properly scaled exhibits are readable but too cumbersome for transportation and handling.

C. Radiology and diagnostics

Paper prints from x-ray or other diagnostic films can be made and distributed easily to insurance adjusters or attorneys. Not only do they reinforce the facts of the condition or injury, they also enhance the perception of a well-prepared, creative advocate. Prints and exhibits based on the films themselves can be included in settlement brochures, arbitrations, or settlement conferences as precursors to more elaborate trial presentations.

The nomenclature of “positive” and “negative” images is an important consideration when working with x-ray films or MRI and CT scan films. It is important to understand that the films themselves are not really “negatives” in the traditional photographic sense. X-ray films are what the doctor uses to assess injury. They are not intermediate images that are later transformed. This is critical, especially in cases in which a dark spot that was missed on an x-ray must be a dark spot on the exhibit, not reversed into a “positive.”

Some attorneys believe that fractures look more impressive when the image is reversed on paper, but the human eye is drawn to the lightest part of any visual image. Therefore the most important part of the x-ray image, the bone, should remain light, not dark. A “positive” x-ray image forces the fracture line to compete with what now is a

Tip

One of the most critical forms of visual evidence preservation are radiology films and other diagnostic imaging studies. Diagnostic tests such as x-rays, MRI or CT scans and EKGs yield visual proof of injury or deviation that can support the otherwise written or verbal descriptions of a patient’s care and treatment.

massive white background image. This is even more crucial when the films show some form of internal fixation or other hardware of treatment. On the original x-ray film, metal or plastic objects show up white on the print and are generally more identifiable for the same reason.

Most forms of diagnostic films can be used as the foundation for enhanced exhibits such as colorizations or illustrative interpretations. These are addressed in subsection E, “Medical illustrations.” No matter what format you use to present the films, it is important to have the doctor who will describe the exhibits at trial choose which images should be presented. Very often there are many more films than need be marked as exhibits. Counsel must have the treating doctor or expert take an active role in exhibit selection. Because of busy schedules, this selection process should occur in one or more pretrial meetings, or perhaps for a few minutes in the doctor’s office following the taking of his or her deposition. If the deposition is being videotaped, have the prints made ahead of time, so that any marking made at the deposition can be preserved for the trial. As with all exhibits, advance selection and preparation will avoid delays and confusion during trial.

Diagnostic test results such as EKG strips also make effective trial exhibits. Copies of the strips can be enlarged and mounted on rigid backing, with overlays or laminate material added to give the witness a way to mark the exhibit during trial. Color markers can highlight areas of irregularity and contrast them with normal readings. Lines can be added across the strips to mark the “high-low” range of normal results.

Laboratory test results are also included in the diagnostic category. Enlargements of these printed sheets from a hospital chart can show deviations in blood work or other chemistries that point to the issue of improper care and treatment. Rather than simply enlarging several sheets for use at trial, the critical entries can be summarized and combined onto one exhibit for ease of comparison and tracking. This material can also be included in timeline exhibits, which are discussed in subsection H.

continued...

D. Anatomical models

Each juror's rudimentary knowledge of human anatomy can be quickly and effectively enhanced by models and charts. Just as with the preparation of x-ray exhibits, any meeting with medical witnesses should include a review of a model or chart that can be used at trial. Medical witnesses, particularly specialists, can be a valuable source for such material. Practitioners sometimes have functional anatomical models in the office that can be brought to court. It is important, however, for the attorney to see these models ahead of time. Often the models in the doctor's possession are small "freebies" that the drug companies give out, and may not be suitable for courtroom use because of their lack of detail or size. The most accurate anatomical models are cast from natural specimens and are better for trial use. They are also unlikely to draw objections. Some models, such as those of the eye, ear, and heart, come in larger sizes for use as teaching tools in classrooms.

Anatomical models are available from Lawyers & Judges Publishing Company. They can also be found on the Internet. Catalogues of anatomical models geared to first aid squads, medical or nursing schools are also rich resources. Order them early and ask about the return policy in case the model does not completely suit your case. Ask about rental for more expensive models you may only use once. Some businesses, and some of the manufacturers may rent models that they have on display or normally use for trade show or promotional purposes. They may also have some models in stock that are slightly "shop-worn" but would be completely suitable for trial needs at reduced cost.

Manufacturers who cater to orthopaedic surgeons provide models useful in teaching surgery. Special models can also be created on demand using the patient's x-rays. For example, an osteoporotic (soft) bone or a fracture can be replicated in material that has the look and feel of bone. The substance can be drilled in the

Tip

For trial, try to get the largest accurate model available for each part of the anatomy you need. Accuracy counts. An improperly designed or constructed model is inadmissible evidence.

courtroom with standard orthopaedic instruments. Hardware can be attached to illustrate fixation of fractures or correction of vertebral fractures. Other body parts may be made into models using a process called stereolithography. A plastic-based model is created using two-dimensional data. For example, a skull containing a hemorrhage can be created from the patient's diagnostic studies.

One advantage of models is that they give the jury a three-dimensional sense of the body or organ. Models can also be compared with radiology films of the injury to better show the nature and extent of an injury. Models, however, require a witness to identify and describe them effectively. On the other hand, a model admitted into evidence and left on counsel table can be a powerful reminder of important testimony as trial progresses.

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Ligaments of the Shoulder

Consists of shoulder blade, collar bone, portion of humerus and joint ligaments. On stand. 10" × 8" × 9". #0049



Ligaments of the Knee

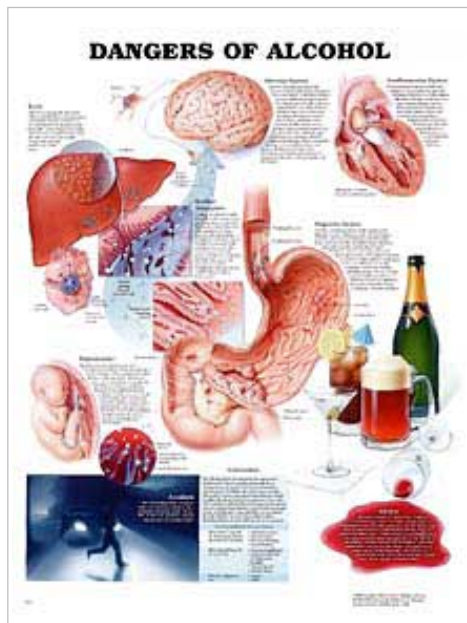
Consists of portion of femur, shin and portion of fibula, also includes meniscus, patella with quadriceps tendon and joint ligaments. On stand. 5" × 5" × 13". #0250



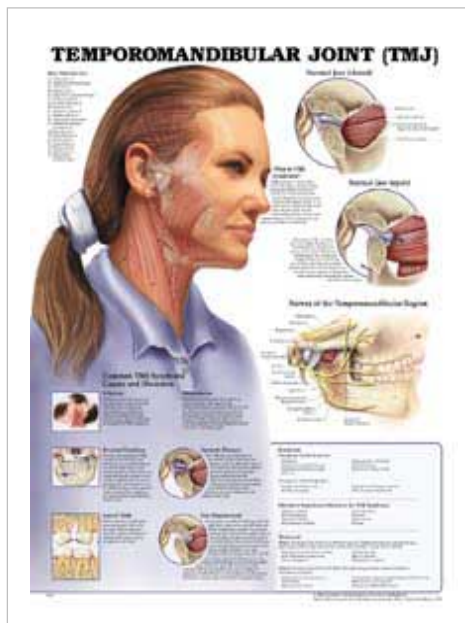
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