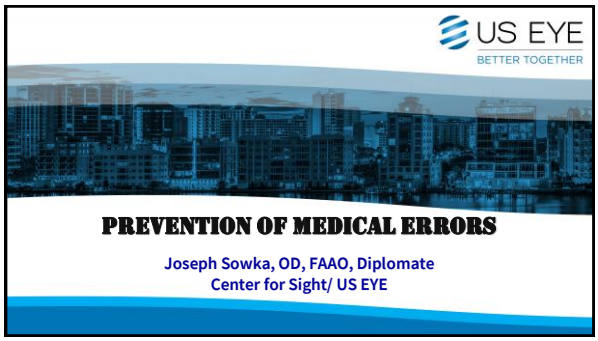


PREVENTION OF MEDICAL ERRORS

Joseph Sowka, OD, FAAO, Diplomate
Center for Sight/ US EYE

DISCLOSURE:

US EYE

- *Joseph Sowka, OD, in the past 24-months,* has been a Consultant/ Speaker Bureau/ Advisory Board member for B&L. Dr. Sowka has no direct financial interest in any of the diseases, products or instrumentation mentioned in this presentation. All relevant relationships have been mitigated. He is a co-owner of Optometric Education Consultants (www.optometricedu.com)

Optometric Education Consultants

The ideas, concepts, conclusions and perspectives presented herein reflect the opinions of the speaker; he has not been paid, coerced, extorted or otherwise influenced by any third party individual or entity to present information that conflicts with his professional viewpoints.

US EYE

Purpose of Course

- To reduce risk of medical errors occurring in optometrists' offices
- To improve patient safety
- As of May 8, 2002 a new rule has been added to 64B13-5.001 (8). Licensees are required to complete a 2-hour course relating to prevention of medical errors as part of the licensure and renewal process

US EYE

Purpose of Course

- The Florida State legislature mandated that all licensees must complete a two-hour course on prevention of medical errors
- The 2-hour course shall count towards the total number of continuing education hours required for the profession.
- Shall include a study of root cause analysis, error reduction and prevention, and patient safety

US EYE

Epidemiology

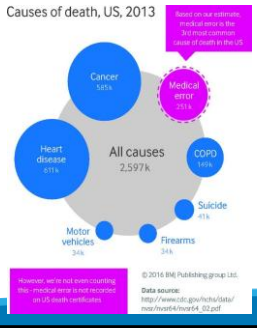
- November 1999, the IOM revealed a hidden epidemic in the United States:
- Medical errors result in injury to 1 in every 25 hospital patients and an estimated 44,000 to 98,000 deaths each year. Even the lower estimate makes medical errors more deadly than breast cancer (42,297), motor vehicle accidents (43,458) or AIDS (16,516).
- ("To Err Is Human: Building A Safer Health System." Institute of Medicine. December 1999.)

US EYE

- **1999 IOM report underestimated the magnitude of the problem**
- **A 2004 report of inpatient deaths associated with the Agency for Healthcare Quality and Research Patient Safety Indicators in the Medicare population estimated that 575 000 deaths were caused by medical error between 2000 and 2002, which is about 195 000 deaths a year**

US EYE

US EYE



EYE

Are medical errors really the third biggest cause of death?

mcdreeamiemusings.com @mcdreeamie

It's often claimed that medical errors are the third biggest cause of death, after heart disease & cancer, with a figure of 250,000 - 400,000 deaths/year being quoted

This is based on Makary and Daniel (2016) who claimed that a third of deaths in the US were due to medical error

BUT Makary and Daniel (2016) used a very broad definition for medical error and did not distinguish whether death was unavoidable or if actually cause by error.

They only looked at hospital deaths. If true 400,000 deaths/year would actually represent 58% of all US hospital deaths

Sunshine et al. (2018) looked at all adverse events (whether medical or not) and their association with mortality in the US between 1990 and 2016

They found that adverse events caused a total of 123,603 deaths in the US in this 26 year period

Makary and Daniel (2016) produced a headline grabbing but implausible figure based on a flawed methodology

A much more rigorous paper (Sunshine et al. 2018) found adverse events caused an average of 0.18% of deaths in US a year

US EYE

Among a total of 3.46 million deaths in the year 2021 (the most recent year for which data is available), 74.5% of these deaths were attributed to 10 causes, according to a Thursday press release from USAFacts.

1. Heart disease: 695,547
2. Cancer: 605,213
3. COVID-19: 416,893
4. Accidents: 224,935
5. Stroke: 162,890
6. Chronic lower respiratory diseases: 142,342
7. Alzheimer's disease: 119,399
8. Diabetes: 103,294
9. Chronic liver disease and cirrhosis: 56,585
10. Kidney disease: 54,358

US EYE

WHY WE ARE REALLY DOING THIS?

String of Errors Put Florida Hospital on the Critical List

April 14, 1995 | MIKE CLARY | SPECIAL TO THE TIMES

TAMPA -- Diabetic and disabled, 52-year-old Willie King seems an unlikely figurehead for a national uprising over patients' rights. Two months ago, the retired heavy-equipment operator checked into University Community Hospital here to have his diseased right leg amputated. A doctor cut off his left leg instead.

"When I came to and discovered I lost my good one, it was a shock, a real shock," King said in a press conference three weeks after the Feb. 20 operation. "I told him: 'Doctor, that's the wrong leg.' "

Dr. Sanchez testified that he learned of his error from a nurse as he was still cutting through the leg of the patient, Willie King, 52. After reviewing the patient's file, she had started to shake and cry. But by that point, he said, there was no turning back. "I tried to recover from the sinking feeling I had," he testified, as his eyes grew moist and his voice trailed off.

US EYE

Types of Medical Errors

- The IOM report defines an error as:
  - The failure of a planned action to be completed as intended (i.e., error of execution)
    - Tobrex instead of Tobradex
  - The use of a wrong plan to achieve an aim (i.e., error of planning).
    - Viroptic on bacterial conjunctivitis
    - Tobradex on dendrite

US EYE

Types of Medical Errors

- An adverse event is an injury caused by medical management rather than the underlying condition of the patient (e.g. allergic response to a drug). An adverse event attributable to error is a preventable adverse event, also called a sentinel event, because it signals the need to ask why the error occurred and make changes in the system (prescribing drug to which patient is allergic because you didn't ask).

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Why Errors Happen

- Active Errors: Active errors occur at the level of the frontline operator, and their effects are felt almost immediately.

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Why Errors Happen

- Latent errors: Latent errors tend to be removed from the direct control of the operator and include things such as poor design, incorrect installation, faulty maintenance, bad management decisions, and poorly structured organizations.

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Latent Error – Sentinel Event

- Pt develops CN III palsy from aneurysm
  - Treatment choices: aneurysm clip or endovascular coil packing
- Successfully treated with aneurysm clip
  - All coils are inert and MRI safe; not all clips are MRI safe
- Radiology tech doesn't verify type of clip
- Pt undergoes F/U MRI with non-MRI safe clip in major medical center
- Clip displaces during MRI
- Patient has fatal hemorrhage during procedure
- Patient survived disease…but not the treatment

US EYE

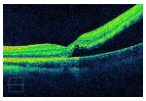
Diagnostic Inaccuracies

- Types of Diagnostic Error
  - Misdiagnosis leading to an incorrect choice of therapy (Steroid Combo med on a Dendrite)
  - Failure to use or order an indicated diagnostic test (VF, CV, eye not correctable to 20/20)
  - Misinterpretation of test results
  - Failure to act on abnormal results

Snatching defeat out of the jaws of victory

- Pt presents with reduced acuity (20/50)
- OD diagnoses CSC based upon OCT
  - Doesn't dilate to confirm
- Case goes to trial- OD prevails
  - Poor expert witness for plaintiff
- Verdict gets overturned on appeal
  - Technicality
- Goes back into litigation

Representative image



If you are going to use technology, please interpret results correctly

Failure to order the proper test or referral

- Thursday: 58 YOM with vision loss OD: Dx AION OD > OS; mild headache and pharyngitis
  - Recommended: OCT (ordered), ESR, CRP, platelets (not ordered)
- Friday: OCT performed
- Saturday: OCT interpreted- disc swelling OD > OS
  - CTJ moment; fax to PCP for serology "ASAP". Office not open
- Sunday: Nothing
- Monday: message read
  - Serology and carotid testing set for Wednesday evening
- Tuesday: pt wakes up with profound vision loss OS
  - Walks into ER and gets tests done- everything elevated
  - Dx: temporal arteritis- legally blind

Conditions that Create Errors

- Precursors or Preconditions
  - A need to have the right equipment, well-maintained and reliable
  - A skilled and knowledgeable workforce
  - Reasonable work schedules
  - Well-designed jobs
  - Clear guidance on desired and undesired performance
- Preconditions are latent failures embedded in the system

Factors and Situations That Increase the Risk of Errors

- Fatigue
- Alcohol and/or other Drugs
- Illness
- Inattention/Distraction
- Emotional States
- Unfamiliar Situations
- Communication Problems
- Illegible Handwriting

Top 10 Medication Errors

1. Sound-a-like Drugs
2. Lack of Drug Knowledge
3. Dose Calculation Errors
4. Decimal Point Misplacement
5. Wrong Dosage Form
6. Wrong Dosage Frequency
7. Use of Abbreviations
8. Drug Interactions
9. Renal Insufficiency
10. Incomplete Patient History

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Sound-a-Like Meds

Vexol (rimexolone) Ophthalmic drops

Vs.

Vosol (acetic acid) Otic drops

US EYE

Sound-a-Like Meds

- Tobrex (tobramycin) Ophthalmic drops

Vs.

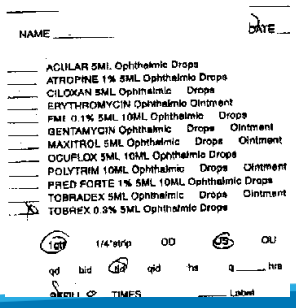
- Tobradex (tobramycin and dexamethasone) Ophthalmic drops

US EYE

Case

- A pediatric ophthalmologist prescribed TOBREX (tobramycin) 0.3% ophthalmic drops for a one-month-old infant with a dacryocystitis (one drop TID to the left eye). The physician indicated this drug by checking off a space on a preprinted prescription order form which listed 12 different ophthalmic drops including TOBRADEX (tobramycin and dexamethasone) which appeared on the line above Tobrex.

US EYE


NAME _____ DATE _____

ACULAR 5ML Ophthalmic Drops
ATROPINE 1% 5ML Ophthalmic Drops
CILOXAN 5ML Ophthalmic Drops
ERYTHROMYCIN Ophthalmic Ointment
FML 0.1% 5ML 10ML Ophthalmic Drops
GENTAMYCIN Ophthalmic Drops Ointment
MAXITROL 5ML Ophthalmic Drops Ointment
OCUFLOX 5ML 10ML Ophthalmic Drops
POLYTRIM 10ML Ophthalmic Drops Ointment
PRED FORTE 1% 5ML 10ML Ophthalmic Drops
TOBRADEX 5ML Ophthalmic Drops Ointment
TOBREX 0.3% 5ML Ophthalmic Drops

1 gtt 1/4"strip OD OS OU
qd bid tid qid hs q ____ hrs
TIMES Label

US EYE

Same Drug – Different Direction

- Prescribed Tobradex
- Patient fails to improve
- Produces bottle of Tobrex
- Whose mistake? Doctor? Pharmacy? Company?
- Ask to see medications at follow-up

US EYE

Tobradex again?!

- Pt diagnosed with infectious keratitis
- Doctor prescribes tobrex and gatifloxacin
- Techs E-prescribe in office
  - Tobrex not in system, but Tobradex is…
  - Tech assumes they are the same- never asks doctor
- Pt has fungal keratitis…

US EYE

Computerized Drug Ordering

- A physician selected OCCLUSAL-HP (17% salicylic acid for wart removal) instead of OCUFLOX (ophthalmic ofloxacin) from a alphabetical product list in a computerized prescriber order entry system and sent the prescription to a hospital outpatient pharmacy with directions to "use daily as directed."

US EYE

Sound-a-Like Meds

Zymar (gatifloxacin) Ophthalmic drops

Vs.

Zymase (amylase, lipase, protease) capsules for digestion

US EYE

Sound-a-Like Meds

- Ocuflox (ofloxacin 0.3%) Ophthalmic drops (Allergan)

Vs.

- Ocufen (flurbiprofen 0.03%) Ophthalmic drops (Allergan)

US EYE

SOUND-A-LIKE MEDS

AcetaZOLAMIDE (Diamox) vs.

AcetoHEXAMIDE (Dymelor)

Type 2 diabetes treatment

US EYE

SOUND-A-LIKE MEDS

VitA-POS (ocular lubricant)

Vs.

Vitaros (erectile dysfunction cream)

US EYE

- Due to a doctor's illegible handwriting, a woman was prescribed the ocular lubricant VitA-POS, was given the erectile dysfunction cream Vitaros instead. The patient suffered eye pain, blurry vision, redness, and yes—swelling. The dispensing pharmacist didn't stop to question why an erectile dysfunction drug was prescribed to a woman, which should have at least given him a reason to double check.

US EYE

Sound-a-Like Meds

US EYE

Sound-a-Like Meds

- Refresh Liquigel

Vs.

- RePhresh Vaginal Gel

US EYE

LOOK-A-LIKE PACKAGING

- The problem of packaging similarities with ophthalmic medications is related in part to FDA approval of a color-coding system by pharmacologic class, making all products within a class the same color.

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LOOK-A-LIKE PACKAGING

- Sulfacetamide, Tobramycin, Neomycin

US EYE

LOOK-A-LIKE PACKAGING

- Sulfacetamide, Tobramycin, Neomycin, Ocufloxacin

US EYE

LOOK-A-LIKE PACKAGING

- Generics are no different

US EYE

LOOK-A-LIKE PACKAGING

- Ophthalmic

Vs.

- Otic

US EYE

LOOK-A-LIKE PACKAGING

- Ophthalmic

Vs.

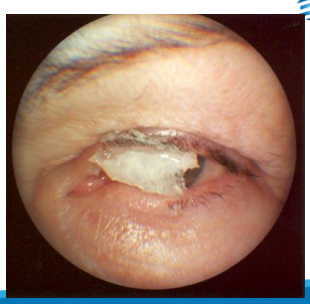
- Otic

US EYE

LOOK-A-LIKE PACKAGING

- ALREX vs. NAIL GLUE

US EYE



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Most often involved in look-alike, sound-alike errors?

- Pharmacy technicians: 38%
- Pharmacists: 24%
- Registered nurses: 20% percent
- Physicians: 7%

US EYE

PRACTICE RECOMMENDATIONS

- Special care to Sound-a-like and Look-a-Like Medications
- Avoid pre-printed prescription pads if possible
- Review your Erx thoroughly
- Have patient bring all medications that you've prescribed with them
- Patient Education

US EYE

Root-Cause Analysis

- Understanding Why Errors happen
- JCAHO requires that a thorough, credible RCA be performed for each reported sentinel event.
  - What Happened?
  - Why did it happen?
  - What do you do to prevent it from happening again?

US EYE

Patient Safety

- Stress dose adjustment in children and elderly patients
- Limit Access to high hazard drugs
- Use protocols for high hazard drugs
- Computerized drug order entry
- Use pharmacy-based IV and drug mixing programs
- Standardize drug packaging, labeling, storage
- Use "unit dose" drug systems (packaged and labeled in standard patient doses)

US EYE

Reducing Medical Errors within the Optometric Practice

Malpractice and How it Happens – a Look at Some Cases

US EYE

Malpractice

- A dereliction of professional duty or a failure to exercise an ordinary degree of professional skill or learning by one (such as a physician) rendering professional services which results in injury, loss, or damage.
- An injurious, negligent, or improper practice

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Role of the Expert Witness

- Handle an adversarial situation
- Be fair and objective
- Be balanced
- Educate
- Optometry vs ophthalmology

A Festival of Ignorance

US EYE

- 37 YOF- pterygium surgery. PF post-op
- Sees OD 3 weeks p/o. Some blur
  - No IOP
- Sees another OD next day
  - Dilates; swollen nerve, refers, no IOP
- Sees retinal specialist same day
  - IOP 49.5 mm Hg
  - Injects steroid
- All 3 sued for missing steroid induced glaucoma
- Does any glaucoma cause a swollen nerve?

A Festival of Ignorance

US EYE

- Plaintiff's expert witness:
- *"Pallor is common in glaucoma"*
- *"This case had extremely fast progression of the field loss"*
- *"Glaucoma commonly occurs with minimal cupping"*
- *"Extremely high intraocular pressure commonly causes a swollen nerve"*
- *"You never consider ischemic neuropathy in a patient under 70 years"*

A Festival of Ignorance: Part II

US EYE

- 55 YOF; cerebral palsy; poorly communicative; some discomfort OS
  - *NLP OD; 20/200 OS; -13.00 DS OU*
  - *Treated at ER for abrasion; OD sees no abrasion in consult*
    - *Refers to ophthalmologist- never goes*
- *Caregiver perceives worsening visual function- goes back to ER: IOP 38 mm OS- Dx: angle closure*
  - *Airlifted to another hospital ($38,000)*
  - *On call ophthalmologist won't go in (January 1)*
  - *Phones in Diamox, timolol, pilocarpine*
- *Pt has uveitis*
- *Numerous condemnations again OD by expert witness*
  - *Needed to dilate; uveitis not blinding; IOP of 38 immediately blinding*

A Festival of Ignorance: Part III

US EYE

- Defense case- OD sued for alleged mismanagement of keratitis
- Affidavit from the best corneal specialist money can buy
  - Intimately familiar with training of *ophthalmologists* in cornea abrasion management
  - Commonly diagnoses and manages corneal abrasions as part of clinical practice
  - Reviewed all records
  - OD was negligent in prescribing Inveltys and Diclofenac- only relieved pain but suppressed the immune system and allowed infection to proliferate
- Sounds pretty bad…until the records are actually reviewed.
  - One of the most egregious cases I've dealt with in terms of unfairness
  - Clinical pearl about eye pain upon awakening

Three Main Offenders

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- Failure to detect retinal detachment
- Failure to detect glaucoma
- Failure to detect tumor

In Other Words…

US EYE

- Failure to listen to the patient
- Failure to observe the signs
- Failure to make the diagnosis fit the findings
  - Not vice-versa
- Failure to do the appropriate tests and follow-up
- Failure to make the proper referral
- Making a diagnosis of exclusion the first diagnosis instead of the last

Failure to Observe the Signs

US EYE

- A 16-year-old male presents for contact lens fitting.
- His refraction is: +1.00 - 1.00 x 180 - 20/40
  +0.75 - 0.50 x 005 - 20/20
- Fundus – "WNL"; no c/d ratio
- He is diagnosed with refractive amblyopia OD and fit with contact lenses.
- At 2-week f/u, his VA is 20/100 OD – "good fit" recorded.

Failure to Observe the Signs

US EYE

- One month f/u – 20/200 OD – "good fit"
- Discharged
- Annual exam:
  - Refraction unchanged – 20/400 OD, 20/20 OS
  - Fundus WNL
  - New lenses ordered
- Contact lens dispense – "Right lens not clear"
  - Retinal detachment OD
- Recommendation: Seek settlement

Failure to Diagnose Retinal Detachment

US EYE

- 50 YOWM
- Sees flashes and floaters
- Presents to optometrist
- Dilation and BIO performed
  - "Ø breaks, Ø detachment" recorded
- Patient warned signs and symptoms RD
- Dismissed

Failure to Diagnose Retinal Detachment

US EYE

- Patient has worsening of symptoms and vision loss one week later
- Telephones optometrist who immediately directs patient to retinal specialist
  - Does not record this in the chart
- Patient now has RD
- Poor surgical outcome
- Sues OD for malpractice
- Is it malpractice? Was standard of care breached?

Failure to Diagnose Retinal Detachment

US EYE

- Could OD have missed existing break?
- Could break have been undetectable to best retinal specialist?
- Could there have been no break initially and one formed after exam?
- Bad outcome yes – malpractice no

Failure to Diagnose Retinal Detachment

US EYE

- Plaintiff attorney: "I have another optometrist that will swear that this is malpractice."
- Me: "Well, you better give him a call because I' m not doing it!"
- Plaintiff attorney: Even for $$?"
- Me: "No!"

Failure to Diagnose Retinal Detachment

US EYE

- Treating retinal specialist deposed
- Plaintiff attorney: "Could Dr. XYZ have missed the retinal break?"
- Retinal specialist: "Well, yes. It is likely he did. He is not a physician, you know".

US EYE

LEGAL POT OF GOLD

US EYE

Legal Pot of Gold

- Treating ophthalmologist opining on OD who allegedly missed angle closure.
- OD sued for infectious keratitis- is friendly with corneal specialist and recommends him as expert witness.

US EYE

Another Retina Specialist Perspective

Q. *"Do you think that you as a medical doctor, as an ophthalmologist are better trained and equipped to rule out or rule in a retinal detachment than an optometrist? ' "*

A. *"I think optometrists are trained or supposedly are trained in their field to be able to do a dilated fundus exam to diagnose retinal tears or detachments as well as any other eye care professionals. "*

Q. *"You believe an optometrist has the same expertise and ability to diagnose a retinal detachment or retinal tear as you do? "*

A. *"Setting my ego aside, I would say that optometrists are trained to evaluate the peripheral retina as well as an ophthalmologist and that's my answer. "*

US EYE

Sometimes it is Black and White… or Worse

- 55 YOBM with 'weed whacker abrasion'
  - 2 ODs
  - Shallow chamber; IOP < 5 mm; hypopyon
  - End Result?

US EYE

"Standard of Care?"

- *"In all medical probability, the retinal break/corneal perforation/whatever-it-may be was present at the time of your examination and because you failed to see and diagnose it, you fell below the standard of care. Because the standard of care dictates that you would have seen and diagnosed it. And because you didn't, you were negligent".*

US EYE

Standard of Care and Negligence

- Negligence refers to a person's failure to follow a duty of conduct imposed by law.
- Every health care provider is under a duty to:
- use his/her best judgment in the treatment and care of his/her patient;
- to use reasonable care and diligence in the application of his/her knowledge and skill to his/her patient's care;
- to provide health care in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time the health care is rendered

US EYE

Highest Degree of Skill Not Required

- The law does not require of a health care provider absolute accuracy, either in his/her practice or in his judgment. It does not hold him/her to a standard of infallibility, nor does it require of him/her the utmost degree of skill and learning known only to a few in his profession. The law only requires a health care provider to have used those standards of practice exercised by members of the same health care profession with similar training and experience situated in the same or similar communities at the time the health care is rendered

US EYE

Not Guarantor of Diagnosis, Analysis, Judgment or Result

- A health care provider does not, ordinarily, guarantee the correctness of his/her diagnosis, analysis, judgment as to the nature of a patient's condition or the success of his/her health care service rendered.
- Absent such guarantee, a health care provider is not responsible for a mistake in his/her diagnosis, analysis, judgment unless he has violated the duty (one or more of the duties) previously described.

US EYE

Sometimes you JUST shake your head

- Retained for defense
- Diabetic pt sees OD who diagnosis PDR OU
- Educates and warns risk permanent blindness- must see retinal specialist w/i 7 days
- Pt sees another OD 6 weeks later
- Detailed exam completely normal
- Pt now completely visually impaired from PDR

US EYE

Sometimes you JUST shake your head- Part ii

- Defending OD alleged to have misdiagnosed PXG
- Affidavit- "*There was no evidence of glaucoma at this time*"

US EYE

Surviving the Legal Process

US EYE

THE MOST IMPORTANT THING TO REMEMBER

It isn't personal…it's just business

US EYE

Am I Being Sued?

- Subpoena for your records
  - Most likely not being sued
    - Accidents, disability, etc.
  - Send immediately
    - 10-day window
    - Make sure records complete…and unaltered
- Notice of Intent to Litigate
  - Now you are being sued

US EYE

Notice of Intent to Litigate

- Notice immediately tries to beat you into submission.
- Doesn't mention your care or your exam, but your *negligence*
  - "Prior to your *negligence…*", "As a result of your *negligence…*", "Was there anything subsequent to your *negligence…*"
- DO NOT respond to this yourself
  - Contact insurance company- get attorney

US EYE

It All Lies in the Depositions

- Attorneys representing all parties involved
- Court reporter/ videographer
- No judge or jury
- Fact finding mission
- Don't volunteer information
  - Won't convince them they were wrong to file suit – cases aren't won in deposition, but they are lost
- Insist on home field advantage

US EYE

It All Lies in the Depositions

- Trial is nothing more than a performance
  - Written
  - Rehearsed
  - Hair and makeup
  - Jury is the audience
  - No smoking guns
  - Everything comes from the depositions
    - The "Script"

US EYE

Just answer the question

- You have to answer unless instructed not
  - Your attorney will object throughout- still answer
- Don't try to educate plaintiff's attorney
  - Could give beneficial information not otherwise asked
- Avoid temptation to give "great" testimony
  - You'll have your chance in court
- Be prepared and be professional

US EYE

Beware wolves in sheep's clothing

- Deposition is adversarial
- Some attorneys will intimidate, others will kill with kindness
  - He/she is the enemy
  - Wants information to use against you
  - Always keep up your guard
- Get comfortable with attorney – agree to something medically ridiculous
- If tired – take a break

US EYE

Look in the mirror

- Appearance and demeanor as important as testimony*
  - Be neat
  - Avoid anger, hostility, condescension*
    - *"ODs are just failed physician wannabes"*
      - 172 medical schools; just 23 optometry colleges
- Questions phrased to make you appear dishonest*
  - Keep concentration and composure
  - Attorney may become intimidated by your resilience

*It's not personal…it's just business

US EYE

Know what you are answering

- Attorney is not medical professional
  - May ask confusing questions
  - Ask for question to be repeated or rephrased
- Don't be intimidated into answers the attorney wants
  - Very few absolutes in life
- You must answer 'yes' or 'no'
  - You can explain yourself after answering
    - Not before- becomes adversarial

US EYE

Red flags

- "Would you agree that…"; "Is it a fair statement…"
  - Typically precede proposition that is too broad to be answered by yes or no.
- These questions are fashioned to elicit material to use against you.
- Think before you speak

US EYE

One at a time

- Let attorney finish question before answering
  - Understand question before responding
  - Court reporter can only transcribe so fast
    - Complete question won't be in transcript
  - Your attorney has time to voice objections
- Be sure that entire question is accurate before saying yes
  - If any portion inaccurate or illogical – say no

US EYE

Sometimes you cannot remember

- Facts occurred several years ago
  - Refer to records during questioning
- What about questions with no recollection or records?
  - If you remember – say so
  - If you don't remember – say so
  - Don't guess or speculate

US EYE

Watch what you are answering

- Hypothetical questions are posed only to be used against you
- Sometimes a hypothetical question cannot be answered
- Make sure that you agree with entire hypothetical before answering
- No rule that you must have opinion on hypothetical

US EYE

- It is not a crime to meet with your attorney
  - May try to intimidate
- Nothing is off the record
  - Keep your mouth shut
- Tell the truth
  - There are very few cases that can't be defended on the facts
  - There are very few cases that can be defended if the defendant is caught lying.

US EYE

Hold to your opinion

- Attorney will try to imply that you are lying
  - Hold firm to your opinion
- If attorney doesn't like your answer, he/she will repeat with prefaces " Are you telling us under oath…" or "Is it really your sworn testimony that…"
  - Don't be intimidated
  - Your answer is your answer; if asked repeatedly, repeatedly give the same answer
    - Rope-a-dope

US EYE

Prepare

- Read! Read! Read!
- Skilled attorney can get competent physicians to agree to medical impossibilities
- Once something is said in deposition, it is written in stone.
- You will always have a chance to explain yourself in a court of law.
- You can defend virtually anything

US EYE

In Conclusion…

- Risk of malpractice is a fact of professional life
- You *will* get through it
- It will not end your life, practice, career
- It' s not personal…it' s just business.