

Back to the Basics: A Primer for Preparing Pharmaceutical and Medical Device Sales Representatives for a Deposition

BY JAMES F. ROGERS¹

DELL CHAPPELL

LUCIE COHEN

A sales representative in a pharmaceutical or medical device case can play a critical role in the defense of the product manufacturer. The pharmaceutical and medical device manufacturers' sales force occupies a unique position on the front lines - interacting with physicians, supplying them with important information about the manufacturer's products, and providing a means through which the physicians can ask questions and seek additional information about the manufacturer's products. They do more than just "sell" products and can be critical to successfully defending claims against the manufacturer. Plaintiffs' theories of liability against pharmaceutical and medical device manufacturers typically include a claim for failure to warn. In response to these claims, manufacturers generally rely on the learned intermediary doctrine as a key defense. Under the learned intermediary doctrine, a pharmaceutical or medical device manufacturer discharges its responsibility to warn a patient about its prescription drug or product if the manufacturer provides an adequate warning to the patient's treating physician. Plaintiffs' counsel often seek to use the manufacturer's sales force to avoid the learned intermediary doctrine in a number of ways. For example, plaintiffs' counsel may try to show that a sales representative over promoted a drug or

device by overstating the product's benefits, downplaying or minimizing the risks, or by not bringing the product's risks to the doctor's attention; that the representative promoted the product for an off-label use; or that the representative did not keep the doctor informed of label changes or other changes in scientific knowledge. Accordingly, sales representatives, through their deposition and trial testimony, may have the ability to "make or break" a company's use of the learned intermediary defense.

Sales representatives are enticing prey for plaintiffs' attorneys for several reasons. First, their job is out in the field, directly interacting with doctors and promoting the manufacturer's products, ostensibly away from the watchful eyes of management. Second, the sales force is likely to have information important to plaintiffs' attorneys such as how the manufacturer wants to promote its products, the manufacturer's marketing plans, product launches, and sales literature. Third, even though much of a sales representative's job is focused on educating doctors on potentially life saving or changing drugs and medical devices, their performance and compensation usually turns on the number of products that are used by the doctors they visit. The theme of "profits over safety" is a favorite of plaintiffs' attorneys, and they will try to portray the sales representative as integral to that theme - an aggressive marketer willing to make a sale at any cost. Fourth, many of the same qualities that make a sales representative

good at his or her job can be challenges for the representative as a witness in a deposition. Sales representatives are often natural "pleasers" who want to establish a connection with whom they are speaking, and they sometimes are reluctant to disagree with plaintiffs' counsel or not to appear knowledgeable about a subject. Accordingly, they often find themselves agreeing with the questioner even though they are being led down a dangerous path of admissions inconsistent with defense themes. Finally, sales representatives, particularly those in pharmaceutical cases, often keep notes of their activities or sales calls, which can provide fodder for plaintiffs' attorneys who will attempt to take them out of context and subscribe to them a sinister interpretation. For these reasons, it is imperative to invest the time to prepare a sales representative adequately for a deposition. The best approach is to get back to the basics: thorough preparation by the attorney defending the deposition and of the sales representative giving the deposition. This article will briefly outline some considerations for preparing pharmaceutical and medical device sales representatives for a deposition.

Before the Deposition Is Scheduled

A strategic advantage may be achieved before you even begin to prepare a sales representative for a deposition by depositing the plaintiff's prescribing physicians before the deposition of the representative. A prescribing physician often will

testify that the sales representative provided helpful information that assisted the doctor in making prescription decisions or using the product. The doctor's deposition is also an opportunity to develop testimony that the representative is but one source among many sources of information for doctors. In addition to the training and knowledge gained in medical school, doctors receive information from a wide variety of other sources, including colleagues, medical literature, continuing medical education seminars, and professional organizations. Often physicians will not see sales representatives at all or will pay little attention to the promotional information they leave behind. Testimony from a prescribing physician indicating that the sales representative and/or the materials presented or left behind by the representative did not impact the physician's prescription decisions can certainly help break the causal connection plaintiffs' counsel try to establish in support of allegations suggesting over promotion, off-label promotion, or failure to warn. At the very least, favorable testimony from a prescribing physician will help put into perspective the amount of influence a sales representative really is likely to have.

It sounds elementary, but also before you do anything else, ensure that the sales representative slated for a deposition actually called on the plaintiff's prescribing physician during the relevant time period and detailed the product at issue. Plaintiffs' counsel often will request the depositions of all representatives who called on a particular medical practice. The deposition request may not be appropriately limited to the representative(s) who had contact with the prescribing physician during the relevant time period. If the sales repre-

sentative has had no contact with the prescribing physician about the product at issue, consider formally objecting to the sales representative's deposition and potentially moving for a protective order.

Before the First Meeting

1. Learn the Product

Assuming the representative called on the plaintiff's prescribing physician during the relevant time period, you need to prepare thoroughly prior to meeting with the representative. Obtain a deep understanding of the issues concerning the sales representative in order to lay the appropriate groundwork for a good working relationship with the witness. This initial preparation includes learning all you can about the product at issue, particularly its marketing and regulatory histories, the product's indicated uses, the manufacturer's policies and practices for promoting its products, and any rules, regulations or standards governing the use and promotion of the product. As part of your initial preparation, it is important to familiarize yourself with the vocabulary and any lingo particular to the product or the representative's promotion of the product. You should understand the key terms and corresponding abbreviations peculiar to the product as you review relevant marketing and promotion materials and discuss them with the representative. The representative will be most comfortable with guidance from someone who understands the specifics of the product, its history, and the practice of promoting it.

Prior to meeting with the representative, you should also consider constructing a timeline of all significant events,

such as product launch, significant sales meetings, the publication of important literature, Dear Doctor letters, label and warning changes, and product withdrawals or recalls. One of the biggest challenges for any witness is reconstructing events that occurred years before. If you are involved in a case in which the chronology of events is particularly complicated and important, it may be helpful to orient yourself and the representative with an objective chronology of key events.

2. Know the Litigation Themes

Prior to the first meeting with the sales representative, you should have a deep understanding of the themes advanced by both the plaintiffs and the defense. Are the plaintiffs likely to try to get the marketing story about the product into evidence and will plaintiffs use the sales representative to help that process? Is there a problematic marketing story that the plaintiffs can tell? You need to know the answers to these questions and understand how the representative's potential testimony could paint or dull the thematic picture developing in the litigation. This understanding will guide your preparation of the representative throughout the process. Important in your early analysis of the litigation themes is your understanding of any historical marketing or promotion materials that play a central role in the plaintiff's themes. Determine if plaintiffs' counsel is focused on particular promotion materials or practices by review of transcripts from depositions of the plaintiff, plaintiff's prescribing physicians, and other sales representatives in the litigation.

3. Learn About the Representative

You need to learn as much as you can

about the sales representative you have been asked to prepare. This means gathering as much information as you can from both inside and outside of the company before you meet with the representative. If you can, try to obtain and review the representative's custodial file and sales call notes before the first meeting. Are there particularly problematic notes that will need extra attention during deposition preparation sessions? Use the notes to get a sense of the representative's promotion practices. Determine if there are notes that plaintiff's counsel will attempt to use to show the representative engaged in improper promotion practices, such as promotion of the product for non-approved indications or references to what might be perceived as the suppression of risk and side effect information.

Also, determine if the representative has been the subject of any disciplinary actions or has been recognized by receiving sales awards. Review and analyze the representative's performance appraisals and self assessments to the extent the representative has completed any. You should also become familiar with the manufacturer's policies regarding its sales force, including their responsibilities, training, evaluation, supervision, and discipline. Determine if the representative has acknowledged receipt and review of any company codes of conduct and/or policies on proper promotion practices. These items may provide evidence of the representative's understanding of proper promotion practices and bolster the representative's statements related to his or her own practices.

In addition to obtaining and reviewing materials from the manufacturer and the representative's own file, you should access information in the public domain about the representative. You should as-

sume that the plaintiff's counsel is going to try to learn all there is about the representatives prior to the deposition. You should do the same so that you and the representative will not to be surprised or blindsided by troubling, publicly available information about the representative. Search the internet. You may find that the representative has participated in chat rooms or on message boards and made troublesome statements that a plaintiff's attorney may use against the representative at deposition. Be particularly aware of chat rooms or message boards dedicated to their occupation such as, www.cafepharma.com, a website for pharmaceutical sales professionals. In short, your detailed preparation before ever meeting with representative will result in more productive preparation sessions and the representative is more likely to appreciate the time out of his or her otherwise busy schedule spent meeting with you.

Initial Meeting

1. Cover the Basics

The sales representative, like most other people, probably has never given a deposition before. Spend time during the initial meeting discussing with the representative the basic information about the deposition process. You want the representative to be calm and collected at the deposition, and in order to help the representative convey this demeanor you need to ensure the representative is comfortable with how the deposition process works. To the extent you know, tell the representative who will likely be taking the deposition and who will be present. The more familiar the representative is with the process and anticipated surroundings, the less likely it is that the

representative will be anxious and prone to surprise and the more likely he or she will be able to focus on formulating good responses to the questions posed. Like any other corporate witnesses, sales representatives will likely be concerned about how their performance in the deposition will affect their job, and they need to be put at ease. If in-house counsel is participating in the preparation, it may be necessary to find time for the witness and outside counsel to meet alone, so the witness can express any concerns he or she does not want "the company" to be aware of.

You should take the time during the initial meeting to educate the representative about the basic facts of the case and the plaintiff's theories of the liability. An understanding of how the themes and issues have developed in the litigation can create an educated and powerful witness who will be able to appreciate how his or her words can be used to help or defeat a particular sides' theme. You want the representative to understand how his or her testimony will fit into the overall "big picture" of the litigation.

You should also take the time to cover with the representative the basics of how the representative should conduct himself or herself during the deposition. These basic rules or guidelines should be reinforced with and practiced by the representative in subsequent preparation sessions, including practice cross examination sessions. Because a discussion of rules for preparing a witness for a deposition would require its own article, we do not intend to cover all the tenets here. Below is a brief discussion of only a few basic rules as applied to a sales representative. Circumstances of the deposition will likely require you to consider discussing a more robust list of

guidelines with the representative. For example, if the deposition is to be videotaped, you should cover with the representative the presentation considerations such as sitting up straight, focusing on the questioner and not the camera, being conscious of facial expressions and wearing video-friendly attire.

Tell the Truth About What You Know. Encourage the representative to be truthful in testifying about what he or she actually knows. Although a representative may be tempted to guess or speculate what the answer should be because he or she feels a need to help the questioner, this would be a mistake. A guess may be the wrong answer and one from which the opponent can show that the representative did not know what he or she was talking about or did something improper, or plaintiffs' counsel could imply that the representative deliberately misstated the truth. "I don't know" or "I don't remember" are often perfectly acceptable and truthful answers. For example, the sales representative should not purport to be an expert on medical or regulatory issues. There will likely be other witnesses from the company or experts who will be prepared to answer on those issues. Remind the representative not to be trapped by the feeling that they should know the answer and testify about something they simply do not know.

Listen Carefully to the Question. To be effective, the representative should listen carefully to the questions. By listening carefully to the question, the representative can make sure he or she truly understands what the questioner is asking before offering a response. The more intuitive and intelligent a representative might be, the less likely the representative will be to listen carefully to the question. Often, before a sentence

is completed, a witness has grasped the idea and may be tempted to launch into an answer. For sales representatives who most often only get a short period time to talk with physicians, this intuitiveness saves them time. In a deposition it can be disastrous, especially after a couple hours into a long deposition. Encourage the representative to listen carefully to every word of the question and pause to repeat the question internally before offering a response. This ensures complete listening and will help the representative control the pace of the deposition.

Be Objective and Personal. Encourage the representative to avoid using imprecise words and absolutes. For example, avoid words like "always" and "never" and to not hesitate to qualify the answer should the questioner load the question with such absolutes. The representative should be conscious of the written transcript and avoid jargon of the trade, such as referring to doctors or hospitals as "accounts." The representative should testify about their own experience and should not feel a need to speak on behalf of the company or all other sales representative working for the company. A representative can use a phrase like "In my experience ..." in answering a question and avoid the appearance of bias and overstating a point or speaking on behalf of someone else.

Fight the "Let's Get It Over" Syndrome. Sales representatives are accustomed to short, often rapid-fire exchanges with physicians who are too busy to talk with them. Many visits are complete in mere minutes. In contrast, depositions can take hours of lengthy question and answer sessions. Remind the representative that he or she must fight the "let's get it over" syndrome. The representative must make an accurate record no matter how long it

takes. Make the questioner ask the questions and do not try to help with broad sweeping answers beyond the question in hopes the deposition will be completed sooner.

2. Background Interview

During the initial meeting, you should conduct a comprehensive interview with the sales representative to gather important facts about the representative and his or her relationship with the company and activities related to the product. By the initial meeting, you should have already reviewed the representative's personnel and other company files so at the initial meeting, you can conduct a thorough and detailed interview of the representative. It is important during the initial meeting to go through the representative's background carefully to uncover any issues that opposing counsel may try to leverage at the deposition. For example, you should determine whether the representative's educational or work background is sales-based or science-based and whether he or she has any pharmacology or medical training. Plaintiffs' counsel in drug and medical device cases often attach a negative connotation where a representative providing information to physicians about the safety, efficacy, testing, and potential risks of a drug or medical device lacks scientific and medical knowledge.

Ask the representative about the organizational structure of the company and the sales and marketing departments. The sales representative should be able to explain the supervisory structure for the sales force, as well as how the sales force fits into the larger marketing structure of the company. Understand the level of daily supervision the representative receives. Discuss in detail the sales representative's initial training, in-

cluding what the training entailed, how long it lasted, and whether the training included testing or other certification procedures. You also should inquire about any continuing education and training for the sales force and what that involves, including any launch meetings or promotional meetings that included an educational component. Find out what kind of mentoring in the field or field training the representative has experienced.

It is important to review the representative's employment history with the company to determine tenure with the company, products detailed, what types of healthcare professionals the representative calls on, and his or her sales "territory." You should discuss how the sales representative's responsibilities for the company may have changed, particularly whether they increased or decreased during the representative's tenure. Get the representative to tell you what the doctors think about the representative and vice versa. Also understand what kind of promotion materials the representative most commonly uses and/or that are most effective with the doctors he or she visits.

You should have reviewed the sales representative's personnel file in advance of the initial meeting. Depending on what information you learn, discuss with the representative any questions related to performance or discipline issues. Even if the information in the personnel file is generally positive, you should encourage the representative to disclose any lurking issues in order to prepare the representative for the possibility of being confronted with that information during the deposition. You should discuss in detail the representative's supervisors and if there have ever been any problems or other issues between the representa-

tive and a supervisor. Find out what constitutes the bases for the representative's performance reviews, including any quotas.

Discuss with the representative the nature of his or her compensation. Important to this discussion is the extent to which there is an incentive portion of his or her overall compensation and how the incentive portion is determined. Plaintiffs will likely want to advance a "profits over safety" theme and will often use an incentive-driven sales force to help that story. Plaintiffs' counsel may try to show that bonuses were an incentive for the representative to promote the product improperly. You should spend time going over how compensation is calculated for the sales representative and prepare him or her for questions regarding compensation. Also determine how the incentive component is calculated. Find out if the incentive portion is based solely on the number of prescriptions or devices, or if there are additional factors the representative can articulate to put the incentive compensation questions in context. Does the company consider other evaluation or performance measures such as the representative's adherence to company policies, product knowledge, or work as a trainer of other representatives? You also should discuss any additional benefits, such as a company car, cellular phone, or stock options that a sales representative may receive, and how receipt of these benefits is determined.

3. Promotion and Detailing Practices

The sales representative's product promotion and detailing methods should be discussed in detail. Find out if the company has a certain protocol for sales calls and determine what the company has instructed its sales representatives to do

during such calls. Sales representatives should only use approved promotional materials and must not promote drug or medical device products for non-approved indications nor encourage off-label uses. In addition to knowledge about what oral communications are appropriate with a healthcare professional, you should ask the sales representative about the types of written materials that can be shared with or distributed to physicians. Importantly, sales representatives are not permitted to alter written materials approved for detailing by the company, even with a simple underline or highlight. Carefully determine how and what promotional materials the representative has used in detailing physicians.

Sales representatives are permitted to use only company approved materials, such as detail aids and patient education and counseling materials, during visits with a physician. Representatives are also permitted to leave with physicians some approved reprints of medical literature, such as reprints from the Washington Legal Foundation. You should ask the sales representative about any training regarding promotional materials and detail pieces, including if and how they could be used with physicians. Determine whether the representative had a clear understanding as to what materials he or she could or could not use in detailing physicians through company policies, training, and/or clear markings on the materials themselves.

In addition to discussing appropriate promotion of a drug or medical device when calling on a physician or other healthcare provider, other marketing topics should be addressed, including the company's policy on handling and responding to physician's questions about adverse events, as well as how and if promotional items and gifts are used

by the sales representatives. Discuss with the sales representative any educational events or meetings organized by the representative, including whether the events were sponsored by the company, and whether they included physician attendance, and the extent to which doctors may have been reimbursed for attending these events. Determine if the company regularly trains and sponsors physicians who speak at the events.

Issues regarding off-label or other improper promotion also should be addressed. For example, you should determine if the representative is aware of company policies or rules governing off-label promotion and how the representative handles questions from physicians relating to off-label use. You should also ask about whether and to what extent the company permits use of medical literature related to off-label use by sales representatives and whether the representative uses such literature.

4. Sales Representative's Call Notes

Many sales representatives, particularly pharmaceutical representatives, often keep formal or informal call notes as a means of keeping track of their calls on physicians. Prior to the initial meeting with the representative, you should determine if the representative keeps such notes and if so, review them in detail. You also should discuss with the representative, the company's policy on call notes, whether the call notes are used by anyone other than the sales representative, and who had access to them.

Plaintiffs' counsel will often request call notes in discovery in the hope of finding evidence in the entries that indicates that a sales representative improperly promoted the product, such as references to off-label promotion, statements that could be perceived as

suppressing risk and side effect information, or references about competing products that include false information. Plaintiffs' counsel also will look for any record that indicates a physician reported adverse events to a sales representative. It is imperative that you discuss in detail the call notes the representative made about his visits with doctors or other healthcare providers. Ask the sales representative the purpose for the notes. Was it required by the company? Were they used as a means of keeping shorthand notes for reminders of discussions and follow up items? Determine if there was variation in the call notes in terms of completeness and if the representative had any discretion as to what information to include in the notes. Determine if the representative considered the notes comprehensive recounts of conversations, and if they were supposed to accurately capture who was speaking and what was said. This is important because if the notes are just that, shorthand, often cryptic, notes of a doctor visit that include only highlights and not a verbatim recitation of the call, it makes it more difficult for the plaintiff's counsel to attach great weight to their significance. Plaintiffs routinely want to make more of call notes than there may be to them and often imply that they provide evidence of improper practices by the representative, including improper promotion or improper gifts to doctors. It will be important for the representative to be able to put his or her call note entries in the context of his or her promotion practices for the time they were prepared, and the physician referenced. Also important for putting the notes in context is the reality that over promotion or misleading promotion by a representative decreases one of a representative's most powerful sales

tools – his or her credibility. Discuss with the representative how counterproductive to increased sales it would be for a representative to engage in improper or misleading promotions with the doctors he or she visits.

5. Documents

Sale representative's documents are often critical evidence in cases. Hopefully you were able to collect and review materials from the sales representative's custodial file in advance of the initial meeting. If not, you should encourage the representative to bring to the initial meeting all of the documents and materials (including the company laptop if there is one) in his or her possession pertaining to the product at issue. Take the time to review the materials with the representative, looking for key promotional or detail pieces. More than likely, there is already a document production process in place in the litigation that you will need to adhere to as well.

Because sales representatives work remotely, it can be difficult to keep track of their documents. Many product manufacturers have specific document retention policies that apply to all employees, including remotely located sales representatives. Determine whether there is such a policy and whether the representative adheres to it. In the absence of a policy, determine how and where the representative keeps product-related documents and materials.

6. Supervision

Plaintiffs' counsel during a deposition may ask certain questions in an effort to imply that a pharmaceutical or medical device company's sales force was not supervised and that sales representatives were not disciplined for off-label or other inappropriate promotion. A

sales representative being prepared for a deposition should be able to explain the company's policies for supervising and disciplining its sales force, including what types of conduct may make a sales representative subject to disciplinary action. In addition, you should determine whether the sales representative himself has ever been disciplined.

7. Regulations Regarding Samples

If the sales representative works for a pharmaceutical company, you should discuss with the representative his or her knowledge of and adherence to federal regulations regarding prescription drug samples, applicable state regulations, and the company's policies regarding drug samples.

The Pharmaceutical Drug Marketing Act of 1987 ("PDMA")² places burdens on a pharmaceutical manufacturer or authorized distributor that could in turn affect a sales representative. For example, each drug manufacturer or authorized distributor of record is required to "conduct, at least annually, a complete and accurate physical inventory of all drug samples."³ This requirement, as well as other rules that require pharmaceutical manufacturers to establish written policies and procedures for drug samples, require a sales representative to track the inventory of samples he is provided. These written policies must include procedures for (1) conducting an annual physical inventory and preparing a reconciliation report; (2) implementing a sample distribution security and audit system, including conducting random and for-cause audits of sales representatives by personnel independent of the sales force; and (4) storage of drug samples by representatives.⁴

Deposition Preparation

After the initial meeting, you should schedule additional deposition preparation sessions with the representative to ensure that the representative is ready for a deposition. Spend the time in these additional sessions practicing with the witness. Remind the representative about the basic deposition rules and rehearse adherence to those rules. Engage in repeated deposition-like question and answer sessions with the representative that, if time permits, build up to a comprehensive mock deposition session. Conduct the practice question and answer sessions, including any mock deposition session, in an environment similar to what the representative can expect during the actual deposition. Educate the representative about the plaintiff's lawyer expected to take the deposition, to the extent you know. For example, is opposing counsel aggressive and bullying or friendly but crafty? Also, show a picture of plaintiff's counsel to the representative so they can get used to the face that will be asking them questions. Practice will help representatives feel more comfortable answering the difficult questions they will get during a deposition. The less surprised and anxious the representative is at the deposition, the more likely the representative will perform well.

1. Deposition Strategy

Spend time during the first deposition preparation meeting reorienting the representative to the nature of the litigation and his or her place in it and discuss in detail the deposition strategy. Remind the representative of the litigation themes advanced by both sides and help the representative understand how the information he or she has (or has been

provided during the initial comprehensive interview) may be used at the deposition, either as leverage by opposing counsel or perhaps to bolster the representative's credibility. Reinforce with the representative the positives of the defense position in the case, but openly address weak areas. Some of the areas of weakness for a representative may be some problematic call notes or use of unapproved promotional materials, for example. Help the representative to be well-grounded in the facts and issues in the litigation so that you can analyze and discuss with the representative his or her potential areas of weakness in the context of the allegations in the case and the realities of their day-to-day practice of calling on physicians.

Ensure that you engage in an open discussion of the case-specific issues and potential problems before you begin giving suggestions on how to perform at the deposition because, after receiving instructions on deposition guidelines, the representative may tighten up in conversation and that will inhibit free and open discussion about the case.

2. Question and Answer Sessions

Either during the same day after the general discussion of deposition strategy or in a subsequent meeting, you should engage in short practice question and answer sessions with the representative. During these question and answer sessions, encourage the representative to focus on the basic deposition rules outlined above while you provide a flavor of the kinds of questions to expect during the deposition. Use the representative's troubling documents or other key documents in the litigation so the representative can practice handling questions about such documents. Break routinely during these sessions to review

performance and explain the opposing counsel's likely strategy in asking certain questions. Explain that opposing counsel is often seeking sound bites, so the representative can appropriately qualify his or her answers to avoid providing those sound bites. Each break between sessions also provides an opportunity to reemphasize the competing themes in the litigation. The goal is for the sales representative to become comfortable responding to deposition-like questions.

3. Mock Deposition

If time permits, conduct at least one full mock deposition session with the representative. Consider having an attorney who has not previously participated in the representative's preparation play the role of opposing counsel. Encourage all involved in this stage of the preparation to conduct themselves as if in a deposi-

tion, except at appropriate breaks to review performance and discuss strategy.

During the mock deposition, reinforce the deposition rules and overall deposition strategy. You should begin the mock deposition with relatively easy questions so the representative can practice the basic rules and guidelines of which you have instructed him or her. Then evolve the questioning to more complex areas and areas of weakness for the witness. Consider asking trick questions and questions that may draw an emotional reaction from the representative. Confront the representative with problematic call notes and troubling documents from the representative's files. Ask hypothetical questions built on the opposition's general themes. Ask a wide array of tough questions in varying styles so the witness can gain confidence in his or her ability to handle them. Ide-

ally, you want a witness that tells you that the actual deposition was easier than the practice sessions.

Conclusion

Sales representatives are critical players for a pharmaceutical or medical device manufacturer and are attractive discovery targets in product litigation. A manufacturer's sales representatives will invariably be asked to give depositions. The key to a successful sales representative deposition is a return to the basics – thorough preparation of both the attorney defending the deposition and the sales representative.