

Office Visit: Taming the Reptile lawyer

By Director [G. Calvin Sharpe](#). This guest column was [originally published in The Journal Record](#) on November 29, 2016.



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The Reptile Theory is a legal trend that has recently gained popularity with the plaintiff's bar. It is a strategy used to shift jury attention from considering complex trial details typical of a medical malpractice case, to reaction-driven responses that arise from the reptilian portion of the brain. The most primitive cognitive functions, such as breathing, hunger and survival, are generated from this inner portion of the brain, called the basal ganglia or the reptilian complex.

With the common assumption that jurors want to expose and punish the existence of danger, Reptile attorneys seek to establish the defendant doctor or health care provider as careless, indifferent or even malicious in their disregard for safety. The jury's perception that the defendant endangered the plaintiff will stimulate the survival mechanism deep in their reptile complex. Thus, the jury will act to protect themselves and the community by awarding a substantial verdict in favor of the plaintiff.

As a health care defense litigator in Oklahoma, I have experienced this method firsthand. The Reptile Theory is successfully utilized to secure favorable verdicts and high damage awards. However, just as trends ascend, so do counterstrategies. The Reptile strategy is not the Jedi Mind Trick, and with proper preparation, defense lawyers can derail Reptile attorneys' efforts before they can derail the jury.

A critical part of defending the Reptile method is to spend adequate time preparing witnesses for deposition, and subsequently, trial cross-examination. During deposition, the Reptile attorney will likely begin the process of establishing a collection of artificial safety rules that exceed the degree of prudence and caution required by law, known as Standard of

Care.

For example, a deposed physician may be asked, "Is the ultimate safety of a patient the most important consideration in medical care?" An unprepared defendant would naturally want to say, "yes, of course." However, this can be used during trial to characterize the physician as careless and unsafe when artificial safety rules established in deposition are contradicted, even if they exceed the legal standard of care required for a physician or health care provider.

Understanding of Reptile Theory within the legal community is still evolving. Defense lawyers are well-advised to educate themselves, their clients and the judge prior to squaring off against a Reptile lawyer.

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