

## EXERCISE

# DEFENDING A DEPOSITION

### *Background*

You are defending a deposition. During the deposition, the witness denies that a board of directors meeting occurred on April 19, 2019. You know that one occurred on that date, but nothing relevant to the litigation occurred at the meeting.

A few minutes later, while discussing a different board meeting, the witness admits that the board did not review a proposal to buy out the company's stock. You're concerned that this admission will be used to argue that the board breached its fiduciary duties to the shareholders. You also know that while the board did not vote on any such proposal, it went through the board's standard process for review and the CEO determined it was not a good offer compared to the other proposals.

You're in a jurisdiction that does not allow conferencing with the witness once the deposition starts.

You need to think quickly on your feet about how to handle (1) the witness's mistake about the April 19<sup>th</sup> board meeting, and (2) the admission about the proposal.

### *Instructions*

Come prepared to discuss:

- How you should handle the witness's mistake; and
- How you should handle the witness's harmful admission.