



**LAW OFFICE OF GERALD
OGINSKI, LLC**

67 Cutter Mill Road
Great Neck, NY 11021

T 516-487-8207

Gerry@Oginski-Law.com

Defense calls surprise witness at last minute. Can he testify at trial?

We're at trial. It's the middle of a medical malpractice trial. The defense attorney is putting on his witnesses, and now, he finishes with his last witness and he turns to the judge and says, "Your Honor, at this time I call a surprise witness." I turn around and say, "Objection. Judge, he didn't let us know he was bringing in a surprise witness." Number one, am I entitled to know who this witness is? Number two, will I be able to prevent this surprise witness from testifying. Do you want to know the answer? Come join me as I share with you some great information

Hi. I'm Gerry Oginski. I'm a New York medical malpractice and personal injury attorney, practicing law here in the state of New York. The answer is, maybe and maybe. Now, why do I say that? Now, in medical malpractice cases, the defense is likely going to put on whatever doctors and nurses and other witnesses he needs in order to defend the case. And when he's done, he's going to tell the judge, "Your Honor, at this time the defense rests." What happens, though, if the defense pulls a rabbit out of a hat and says, "Your Honor, at this time we have a surprise witness. He's waiting out in the hallway." First of all, the judge wants to know, who is this surprise witness? Is it a medical expert? Is it someone who participated in my client's medical care? Who is this person?

If it's a medical expert and the defense attorney failed to notify me about the fact that they were bringing in this particular expert, then you know what's going to happen? The judge is going to say, "Your request is denied. You are prevented, you are precluded, from putting on that witness." You want to know why? It's because he didn't give me notice. He didn't tell me about the fact that this witness was com-

ing in, and he deprived me of the opportunity to prepare a cross-examination for this witness. That's trial by ambush. That went out years and years ago. That doesn't happen today. The defense is required to tell us that they've got a medical expert, even if they turn around and say, "Judge, we didn't know he was going to be coming in until 10 minutes ago."

What happens if, instead, this is a treating doctor, and both sides have copies of the medical records, and we know exactly what he did and what he said? In that instance there is the possibility that the judge is going to allow this doctor to go ahead and testify. Why? Because he's talking about his observations. No one is prejudiced here because we all have had copies of those medical records and we know what the doctor did, what he said, and what he recorded. So, depending upon which surprise witness and what type of witness this attorney wants to put on will make a huge difference in how the judge rules on whether or not to allow this particular person, this surprise witness, to testify.

Why do I share this great information with you? I share it with you just to give you an inside look at what goes on in a trial involving an accident case or a medical malpractice case, or even a wrongful death case here in New York. I realize you're watching this because you've got questions or concerns about your own particular matter. If your matter did happen here in New York, and you're thinking about bringing a lawsuit, but you have questions, what I invite you to do is, pick up the phone and call me. I can answer your legal questions. This is something I do every single day besides standing outside and having the planes pass overhead on a gorgeous evening here in Great Neck.

No, really, if you've got questions, pick up the phone and call me. I can answer your legal questions. I do this every single day and I'd love to chat with you. You can reach me at 516-487-8207 or by e-mail at gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski. Have a wonderful day.