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## **Doctor won't consent to settle. What will judge do?**

During a pre-trial settlement conference on your medical malpractice case, the judge turns to the defense attorney and says, "Counselor, how much are you offering on this case?" The defense attorney chimes in and says, "Judge, the doctor has refused to consent to settle." Find out what the judge says to the defense lawyer and why he makes us come back in a few weeks. Come join me for a moment 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. Now it's a medical malpractice case and during the course of the litigation, we now have a pre-trial conference. The judge wants to know what the settlement position is. Is the defense willing to try and negotiate? Before the defense can negotiate, the judge has to know whether or not there is a consent policy.

Does the doctor control whether or not the defense can now begin to negotiate? There's some insurance policies that allow the doctor that control. Lately a lot of insurance companies are refusing to give doctors that control, but many of these older medical malpractice insurance policies still allow the doctor to control whether or not negotiations would even begin. If the answer is no, I'm not settling, now the defense even if they want to settle cannot go forward because the doctor controls whether or not negotiations will take place. The judge will likely turn to the defense and say, "Hey, listen, go talk to your doctor. This is a losing case for you. You're going to get hit hard when a jury sees exactly what happened."

Now he's going to give us an opportunity to go back and talk to our respective clients. He's going to give the defense attorney an opportunity to meet with his doctor to see whether or not he'll consent to settle. Now the mere fact that a doctor consents to begin negotiating

doesn't mean the case will be settled. It merely means that it'll get the negotiation process going. Now a few weeks later, we the attorneys will then return back to the judge, and he'll come back and say, "Okay, counselor, what has happened since we last met? Has the doctor consented to settle, yes or no?" If the doctor has now consented to settle, what's the position of the insurance company? What offer are they willing to make? Now the judge can begin getting settlement discussions going.

If the answer is no, the doctor still refuses to consent, now the judge knows exactly where they stand, and he will set this down for trial and give a definite trial date. Why do I share this quick information with you? I share with you just to give you an insight and an understanding into what goes on in these types of civil lawsuits here in the state of New York. I realize you're watching this because you likely have questions or concerns about your own particular matter. Well, if your matter did happen here in New York, and you're thinking about bringing a lawsuit, but you've got legal questions, what I encourage you to do is pick up the phone and call me. I can answer your legal questions.

You know this is something I do every single day, and I'd love to talk to you. You can reach me at 516-487-8207 or by email at [gerry@oginski-law.com](mailto:gerry@oginski-law.com). That's it for today's video. I'm Gerry Oginski, have a great day.