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NYS Dept. of Health Says Hospital Violated Protocol. Can We Use This Damaging Information at Trial?

The doctor was admonished by the New York State Department of Health and criticized the care that he rendered to you. Can we use that criticism, that admonishment, at trial to show to the jury that this doctor didn't know what he was doing? You want to know the answer? Come join me for a moment as I share with you some terrific information. Hi, I'm Gerry Oginski, I'm a New York Medical Malpractice and Personal Injury Attorney practicing law in the state of New York.

Now, when the New York State Department of Health evaluates the treatment that you received, and they come to the conclusion that the doctor violated some basic standards of medical care and violated protocol and rules for the hospital, can we use that information at the time of trial to show to the jury that we are more likely right than wrong, that what we are claiming is true? That the doctor did in fact violate the standard of care and as a result of those violations, you suffered significant and permanent injury? The answer is maybe, so let me explain why.

When the New York State Department of Health investigates a complaint, whether it's by a patient or initiated by the hospital, they will do a thorough investigation. They will review the medical records. They will speak to people involved in the care at the hospital. If they determine that protocol was violated, if they determine that guidelines were not followed, they will issue findings, what they call Findings of Fact. Then, they will reach conclusions based upon the breach of those findings.

Then, this is different, and this is important for you to understand, they will then require a corrective course of action to take place. What does that mean? It means they want to try and insure that this type of action does not take place again. They want to set up a system so that now, if this occurs again, the hospital knows exactly what to do in that instance, and the doctors and staff who are treating patients with this problem will understand exactly what to do. That's known as "formulating a corrective plan of action."

Now, can we use that information at trial? The answer is, likely not. You want to know why? Because the requirements for the New York State Department of Health are different than what the law requires us to be able to show in a medical malpractice case here in New York. What we have to show is that we are more likely right than wrong, that the doctor did in fact violate the basic standards of medical care, and that as a result of those violations you suffered significant injury. The rules of law and proof are different for each one.

One of the things that we might be able to use in the report prepared by the New York State Department of Health are Findings of Fact, because now they've had investigators go and speak to different witnesses, speak to nurses, speak to doctors, speak to residents. Now we might be able to use that information as long it's not hearsay, which is a statement that's taken outside of court, and the other side doesn't have an opportunity to cross-examine the person who's made those statements. If we bring those witnesses in to now testify about information that they gave to those investigators from the New York State Department of Health, now the defense has an opportunity to cross-examine those witnesses to test the credibility of each of those witnesses.

In that instance, we can use findings of fact, and that's likely what will happen. But as far the conclusions that the New York State Department of Health reaches in determining that the doctor violated the protocol and guidelines, we're probably not going to be able to use that as definitive proof to show to the jury that this doctor or the hospital staff did something wrong. Taken as a whole, with our medical experts and other testimony and evidence, our goal is to show that in fact we were more likely right than wrong, and we were able to support all of that information in order to justify a verdict in our favor.

Why do I share this terrific information with you? I share it with you to give you an understanding of how these medical malpractice cases work here in the state of New York. You should know that not every

case has a finding from the New York State Department of Health, but in those cases that do, this issue comes up more often than not.

I realize you're watching this video because you 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 have legal questions, and you need answers to those 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. That's it for today's video. I'm Gerry Oginski. Have a wonderful day.