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Why will defense attorney tell medical expert to do this on cross examination?

Here's a behind the scenes trial strategy that you don't hear from anybody else. Why will a defense attorney tell his medical expert that when I get up to cross-examine him, he should do everything he possibly can to explain away his answers? You want to know the answer? You think you know the answer? Come join me for a moment as I share with you some terrific behind the scenes 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, in preparation for trial, the defense attorney will likely tell his medical expert that when he is cross-examined, by me, he said, "Do everything you possibly can to try and explain away your answers. Don't allow Oginski to go ahead and restrict you to either yes or no answers. Okay? Because if you do that, the jury won't be able to understand all of your answers." Is that a good strategy? Well, it's a good attempt to try and have the doctor explain, but here's a couple of drawbacks to that.

What will happen is, when I get up to cross-examine this particular expert, I'm going to tell the doctor that I want him to answer my questions either yes, or no, or I don't know. Those are the ground rules. Okay? My goal is to keep that medical expert on a very short leash, a very tight leash. I'm going to be asking very short, leading questions that literally put words into the witnesses mouth, and all those questions will require is either yes or no, or I can't answer the question the way you phrased it. There are very few options. Now, if the doctor starts trying to explain, I will bring the doctor back. I said, "Doctor, did you not understand my initial ground rule question? Either it's yes, no, or I don't know, or I can't answer the question. Is

there any part of that question you didn't understand?" Now I'll go through it again. If he tries to explain away an answer, I said, "Doctor, you were given every opportunity to explain all of your answers when your attorney questioned you, and I'm sure he'll be happy to get up and question you again, after I'm done, but, now it's my opportunity to ask you some questions. Is that okay?"

Now, of course, he's going to agree. By the second or third or fourth time, when I bring him back to the original ground rule, the jury knows, clearly, that the doctor's trying to play games. That's a key drawback to using that particular strategy, especially someone who's been at this for a long time and has testified many times as an expert at trial. Even though he really wants the doctor to go ahead and explain, a really good, experienced trial attorney is not going to give that expert an opportunity to explain, at all.

Now, it's a different thing if I open the door and ask a question that says, "Doctor, tell us why. Doctor go ahead and explain." Now what I have done? I've lost that opportunity to control the witness and control what he's saying. I simply want the doctor to agree or disagree with me, and the defense attorney is likely going to jump up and say, "Your Honor, the doctor's in the middle of his answer, can he finish the answer? Objection, Judge." He's not in the middle of an answer. That's not what I asked him for. It's either yes, or no, or I don't know. Now the judge will have to make a decision about whether or not I really opened the door and asked him an open-ended question. If I did, my bad, big bad. I never, ever want to do that as I'm cross-examining a doctor.

Why do I share this great information with you? I share it with you just to give you an insight and an understanding into what goes on during the trial process in a medical malpractice case, or an accident case, or even a wrongful death case here in the state of New York.

I realize you're watching this video because you likely have 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 that you need answers to, what I invite 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 e-mail at Gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski, have a wonderful day.