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AT TRIAL, NEVER ASK A DEFENSE EXPERT 'WHY'

What happens if I mistakenly ask the defense's medical expert an open-ended question such as: "Doctor, tell us why." You want to know what happens and why that could be the kiss of death for our case? Come join me for a moment as I share with you some remarkable 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 a medical malpractice case the defense will call a medical expert to testify. Now their attorney, the defense attorney, will ask the doctor lots of open-ended questions. Doctor, tell us why do you believe that. Tell us what happened here. Tell us what happened here. What do you see in the records, doctor? Tell us what that means. Now these are all open-ended questions, giving the doctor the opportunity to explain.

Now after the defense attorney is done questioning his medical expert, I will then have an opportunity to cross-examine this expert to get to the truth of the matter, to probe this witness' credibility and to determine really if he's biased and whether or not he's unbiased. Now one of the things that I want to do during cross-examination is ask the doctor only short, leading questions. I want to be telling the story and I simply want the doctor to agree with me or disagree with me. I never ever want to give the opposing medical expert the opportunity to explain anything. If I turn around and mistakenly say, "Doctor, tell us why," now he's going to turn to the jury, tell them a long-winded story about why our position is wrong, why my question is wrong, why our claims have no merit whatsoever. Now I can't stop him since I'm the one that asked that open-ended question.

If I try and stop him, his attorney is going to jump up and say, "Judge, Mr. Oginski can't interrupt me. He's in the middle of answering a question." The judge is going to turn to me and say, "Mr. Oginski, you're the one who asked the question," what that knowing look saying I never should have asked that open-ended question.

Unless, and there's only one exception, and that exception is if I don't care what the doctor's answer is. Attorneys call that a throw-away question. You ask the question. You don't care what the answer is. It makes no difference. Now it doesn't matter what the witness says. In all likelihood I never ever want to ask that doctor an open-ended question such as: Doctor, tell us why. Why did that happen?

Why do I share this quick information with you? I share it with you just to give you an insight and an understanding into what goes on in these medical malpractice cases here in the State of New York. I understand and I recognize you're watching this video because you 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 need to be answered, 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 and I'd love to chat with 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 fantastic day.