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At trial, should I object to an improper question?

It's a medical malpractice trial. The defense attorney has his own witness on the witness stand and he's asking him questions on direct examination. And now, I hear him ask a question that I think is totally improper. Why is it that most attorneys are going to jump up and object to the question whereas some other attorneys might turn around and decide, you know, "I'm not going to object." Do you want to know the answer? Come join me for a moment as I share with you some great information.

Hi. I'm Gerry Oginiski. I'm a New York medical malpractice and personal injury attorney practicing law here in the state of New York. For a bit of trial trivia, let me give you the answer to that question. At the time of trial, when the defense attorney is questioning his witness, if he asks him a question that's improper. Let's say that he didn't phrase the question properly and now maybe it was a leading question and now the doctor is giving an answer. Some attorneys, in fact many attorneys, are going to jump up and object. Why? Because they're going to say that he can't ask his own witness a leading question. Instead, he has to ask an open-ended question. Doctor, tell us why, what did you do, explain, tell us more. Those are open-ended questions.

A leading question is generally not permitted for your own witness. So now, most attorneys are going to object to that. What happens then? The judge has to stop everything, make a ruling on that, and now proceed forward. Now, on the other hand, there are some attorneys who say, "You know what? I'm not going to object to that. I don't care if he asked him that leading question." Do you want to know why? Because it's not an important topic they're talking about. It's not critical to our case. It's not critical to their defense. It's insignificant. So why should I bother making a whole big deal and let the jury focus now on the question that was just asked and whether or not it's important

because all I'm doing by objecting is now showing and highlighting the fact that it's important and I don't want the witness to give an answer in the way that question is phrased.

If the attorney loses the case and now they have to appeal it, the higher court is going to look and see if there were any legal rulings that were made that were improper. If the attorney did not raise an objection at that moment to that question, and that might have been a turning point, now he will have waived his right to raise this issue when the higher court, the appellate court, now reviews that issue. It's a very strategic decision. An attorney may decide, you know what? I'm not going to raise that objection. Why? Because I know when my expert gets on the witness stand, I'm going to be asking him leading questions as well and if he tries to raise an objection then, I'm going to turn around and say, "Hey, defense attorney, I let you go ahead and ask leading questions and I didn't object then. I want to be able to ask my expert a leading question or two." Now, the judge has to weigh whether or not to go ahead and allow that. Sometimes he might, sometimes he might not.

Why do I share this quick story with you? I share it with you just to give you an insight and an understanding into what can happen and in fact happens virtually in every single civil lawsuit here in New York. Whether it's an accident case or a medical malpractice case or even a wrongful death case, this is going to come up in every single trial. You know 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 needs answers, what I invite you to do is pick up the phone and call me. I answer questions like yours 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 fantastic day.