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Best way to challenge a medical expert at trial

You want to know one of the best ways to challenge a medical expert at trial, whether it's a medical malpractice trial or an accident trial? Come join me as I share with you this 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.

Let's say it's a medical malpractice trial, and the defense brings in a medical expert to testify against us. One of the best ways, one of the best challenges we can give this particular medical expert is if we ask him to change the facts, and based upon a new set of facts, to then give us conclusions. What do I mean? The defense attorney has gotten his expert to testify that his doctor did absolutely nothing wrong, that everything was done properly, and that even if something was done wrong it didn't result in the injuries that we are claiming.

Now I get up to cross-examine this particular medical expert. I want you to assume that the following facts are true. Now I'm going to recite a number of facts that we believe are more likely true than not true. I say doctor, "Assuming that those facts are true, would you agree that not doing A, B, and C would in fact be a violation from the basic standards of medical care?" That's one of the best ways to challenge a medical expert. Now he's using the facts that we believe are true, that ultimately the jury will have to decide who is more likely right than wrong. Is it our set of facts, or is it the defense's set of facts? Rarely are they ever the same. Instead, we have clear dispute.

If we ask the medical expert to go ahead and assume that our facts are true, the first thing he's going to do is, "I don't agree with those facts." Great, doctor, you don't have to agree with those facts, but for the purposes of my hypothetical question you do. If you assume that these following facts are true, would you agree that not doing this particular treatment would in fact be a departure or violation from the basic standards of medical care? In most instances, if the expert is credible, he's going to turn to the jury and

admit and acknowledge that if those things were not done with those set of facts that it would be a violation from the standard of care.

What do I do next? I now go through the next set of facts and the next one and the next, each time breaking apart and drilling down to getting the doctor to assume that these facts are true. Ultimately, it will be for the jury to decide whether or not the facts that we believe to be true are in fact more likely right than wrong. Now if the jury recognizes that we are correct, what have we done? On closing arguments I will now turn to the jury and say, "Listen, even the defense's own doctor, their medical expert, confirms that if they didn't do the following things it's a clear violation from the standard of care."

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 types of cases involving accident cases and involving medical malpractice cases and even wrongful death cases here in New York. I realize you're watching this video, and I acknowledge you're watching it because you have questions on concerns about your own particular problem. If you have questions and your matter happened here in New York and you need answers first, what I invite you to do is pick up the phone and call me. I can answer your legal questions. It's 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 great day. .