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Defense Does Physical Exam That's Favorable for Us. Can I Compel Defense Doctor to Testify for Us?

The defense has a physical exam on my client. The exam is actually favorable for us, and I know the defense attorney is not going to call this doctor in to testify on the defense's behalf. Can I compel this doctor to come in to court and testify for us on our case? You want to know the answer? Come join me for a moment as I share with you some great 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. The answer is, yes I can! I can compel this doctor to come in and testify by serving a subpoena on him at the time of trial. If I know that the doctor who examined him on behalf of the defense attorney is favorable for us, now I know the defense attorney is not going to call him. Now does he have an obligation to call him? He may have an obligation, and in that cases if he fails to call him on his own case I can ask the trial judge for a specific legal instruction to tell the jury that there is a missing witness. Now the jury can infer that because the defense has refused to bring in this particular witness, even though they had an obligation to do so, that they can infer that this witness would have been unfavorable to them and their case.

In addition to that argument, can I also bring in the witness on my own case? The answer is, I certainly can. I can subpoena that doctor to come in and testify and talk about his examination, talk about his findings, and talk about his conclusions. What good will that do, you might ask? Well it's simply going to bolster our claims and the damages that we are claiming. Why? Because during the course of an accident case or a medical malpractice case the defense has the opportunity to have the injured patient or injured victim examined by a doctor of their choosing. That's to assess their current medical condition. If it turns out that their medical condition really as significant as we are claiming it to be, we can use that doctor to bolster our

own claim by showing at trial, listen, even the defense's own doctor examined my client and believes that these injuries are significant and permanent.

So why do I share this quick information with you? I share it with you just to give you an insight and an understanding in to what goes on in these accident cases and these medical malpractice cases here in New York. I acknowledge and I recognize that you're watching this video because you likely 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 law suit but you have questions that need answers, 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 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 wonderful day!