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## **Defense attorney wants to question my medical expert during a deposition. Can he do that?**

It's a medical malpractice case here in New York and the defense wants to question my medical expert and videotape that pre-trial testimony, can he do that? You want to know the answer? Come join me for a moment as I share with you some terrific 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. The short answer is: No, he cannot do that. In New York state courts, we do not have video tape depositions of our experts. We do not typically have depositions, question and answer sessions, pre-trial testimony of our medical experts. Now, different states do allow this, and in fact in federal court there are instances where this is appropriate, but in state court in New York, in medical malpractice cases, the answer is unlikely that it's going to happen.

There are some instances where my expert will be unavailable when this case goes to trial. In that instance, I will want my expert to give pre-trial testimony and I will want it to be videotaped. This way, I will be able to show that information to the jury at the time of trial. But now when I do this question and answer session, do I have to invite the defense attorneys to join us? The answer is: yes, I do. They have to be present. They have to have the opportunity to question and cross-examine my medical expert at the time that I am now interviewing him in the pre-trial process. Yes, I have to notify the defense that my expert is going to be available on this date and that we are going to videotape his testimony for the purposes of using it at the time of trial. This way, now they can go ahead and get prepared to do a full cross-examination so that now when we go to trial, they can

now show their cross-examination to the jury as well as my questioning of my expert.

The answer is typically in medical malpractice cases here in the state of New York, if the defense wants to question my expert before trial, it's not going to happen, but if the doctor is unable to be at trial and now I absolutely need his testimony to prove our case, now I'm going to invite the defense to come in, I'm going to question the doctor as if we are at trial, I'm going to have a court reporter present, I'm going to have a videographer videotape the doctor's testimony and now when I am done questioning the doctor, the defense will have an opportunity to cross-examine him and this way the defense also has the opportunity to question during cross-examination.

Why do I share this great information with you? I share it with you just to give you an insight and an understanding in to what goes on behind-the-scenes in a medical malpractice case here in the state of New York. Nobody talks about what happens in this instance unless you're actually going through it.

I recognize you've got 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 legal questions, 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 talk to you. You can reach me at 516-487-8207 or by email at [gerry@oginski-law.com](mailto:gerry@oginski-law.com).

That's it for today's video. I'm Gerry Oginski, have a great day.