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## **Doctor argues with me about the standard of medical care. Who do you think will win that argument?**

At trial, during cross examination, the doctor is arguing with me about the standard of care. Who do you think the jury is more likely to believe, me or the doctor? Do you want to know the answer? do you think you know the answer? Come join me for a moment as I show 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, so it's a medical malpractice trial. I have the doctor as my very first witness. The doctor that we have sued, and I'm cross examining him, and I'm permitted to cross examine him. Now I'm asking him about the standard of care in this particular case. "Doctor, would you agree that the standard of care requires that you do A, B, and C?" "No, I don't." "Doctor, would you agree that in this circumstance when the patient makes the following complaint, the standard of care requires that you do A, B, and C?" "No, I don't." Now, he's going ahead and disagreeing with every single thing that I'm saying. Who do you think the jury is going to believe? Me, as the attorney cross examining the doctor or the doctor?

You want to know the answer? The answer is the jury's going to believe the doctor. Why? Because they like the doctor. The doctor's nice. He's credible. He's believable, and he's doing his best to try and answer my questions. Guess what? These people all go to their own doctors, and they hope and they pray that their doctor does the right thing for them. So, doctors come into court, into the court room with an inherent bias by the jury although nobody on the jury's going to admit that they favor the doctor initially, but during the course of trial when we get testimony from the various witnesses including the doc-

tor, if I get him to make an admission or at least a hypothetical question that under the following circumstances if he did not do A, B, And C, that would be a violation from the basic standards of medical care, so you may be asking yourself, "How do we actually prove what the standard of care is?"

Now, I have to bring in my medical experts to go ahead and tell the jury what the standard of care required in this particular instance. I should also tell you that before we ever get to trial I will know from the doctor that we have sued in his own words, exactly what the standard of care required for this particular case. You might be thinking how can I do that. I do that during pretrial testimony in a question and answer session known as a deposition. One of my goals that I have to achieve during the course of the pretrial litigation process is to establish in the doctor's own words what were the standards of care for this particular circumstance, and now I get the doctor to tell me. Then later on, I can go ahead and go through every single thing that my client went through and then ask the doctor whether or not what he did conformed with the standard of care in this particular case.

Why do I share this terrific 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 New York. I realize 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 contemplating bringing a lawsuit, but you have questions that need answers. What I invite you to do is pick up the phone and call me. I can answer your legal questions. That'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](mailto:gerry@oginski-law.com). That's it for today's video. That's it for today's video. Have a wonderful day.