



**LAW OFFICE OF GERALD  
OGINSKI, LLC**

67 Cutter Mill Road  
Great Neck, NY 11021

T 516-487-8207

[Gerry@Oginski-Law.com](mailto:Gerry@Oginski-Law.com)

## **Doctor wants to stop and ask his attorney questions in the middle of trial; can he do that?**

It's a medical malpractice trial. The doctor that you have sued is up on the witness stand. I am questioning this doctor in the form of cross-examination and now I'm asking him a hypothetical question, "Doctor, assuming that the following facts are true, would you agree that not doing this would be a violation from the basic standards of medical care?" And before the doctor has a chance to answer, he turns to the judge and says, "Judge, I'd like to talk to my attorney before answering this question." Is he allowed to do that. You want to 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 in the state of New York. We're in the middle of trial. The doctor is up on the witness stand. There are jurors sitting in the jury box listening to the testimony.

And now I have the opportunity to ask the doctor certain hypothetical questions. "Doctor, I want you to assume that these facts are true. Assuming those to be true, would you agree that not doing A, B, and C would be a violation from the basic standards of medical care?" And, by the way, the doctor has to answer this question assuming that the way I phrased the question is appropriate, but before the doctor answers the question, he wants to go outside and speak to his attorney because he wants to get advice about how to answer the question. So, he turns to the judge and says, "Judge, before I answer the question, I'd like to speak to my attorney" or he's going to look to his attorney for some type of motion about whether or not he should answer the question.

And if that happens, I will gently move over to block his path of looking at his lawyer, so he can't see him directly and then I'll ask him again, "Doctor, can you answer the question?" And if he now turns to the Judge and says, "Hey, Judge, can I talk to my attorney first before answering the question?" The answer is, "No, Doctor, you cannot. You must answer the question." And now, he's got to go ahead and answer that question. And by the way, why would I ask such a hypothetical question? Because we have certain facts that we believe are more likely true than not true and now we have testimony in evidence to support those facts, and I want to get from the doctor in his own words that if those facts are true and if the jury ultimately believes those facts to be true, then now the doctor will have admitted in his own words that not doing certain things would, in fact, be a violation from the basic standards of medical care and that will help us to show to the jury that we are justified to get a verdict in our favor.

So that's one of the key things that we try and do during the course of trial, especially when cross-examining a doctor that you have sued. So, 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 in in these medical malpractice cases here in New York. You know, I understand and recognize that you're watching this video because you likely have questions about your own particular matter. Well, if your matter did happen here in New York and you're thinking about bringing a lawsuit, but you have legal questions that need to be answered, what I invite 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 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 Terry Oginski. Have a wonderful day.