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During pretrial testimony, Doctor wants to talk to his attorney before answering my question

It's a medical malpractice case and I'm now in the middle of questioning the doctor during his pretrial testimony. I now ask the doctor a hypothetical question and I need an answer to it. Before the doctor answers the question, he turns to his attorney and says, "I'd like to talk to you outside, please." Can he do that? Can he talk to his attorney before answering my question? You want to know the answer? Come join me for a moment as I share with you some remarkable 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 answer is, no. He cannot do that. What must he do? He must answer my question first before he goes out and talks to his attorney. Now, let me give you the scenario.

In the medical malpractice case, we have an opportunity to question the doctors that you have sued during the pretrial litigation process. That's known as a deposition. It's really a question and answer session where the doctor gives testimony, pretrial testimony, in his lawyer's office. There's a court reporter there to take down all of my questions and all of the doctor's answers. That carries the same exact weight as if the doctor is testifying at trial.

During the course of this question and answer session, I will always want to be asking the doctor a series of hypothetical questions. Now, what is that? It's where I want the doctor to assume that certain facts are true and that if he did not do a, b and c, or he did not do certain things, doctor would you agree that it would be a violation from the basic standard of medical care not to do it in that circumstance?

The doctor has to answer yes, or no, or I can't answer that question. There are many times where the doctor is hesitant to answer that question because he knows the moment he says yes, it would be a violation, he's admitted something if we can prove, if we show that we're more likely right than wrong, that the facts that I just described are true. That's a critical component of pretrial testimony. It allows me the opportunity to really prove my case before we ever get to trial.

That's one of the key goals of pretrial testimony. Many times the doctor is very hesitant to answer this question, or the hypothetical questions. Instead he wants advice. He wants to talk to his attorney. No doctor, you must answer my question now and then after you've answered it, you can go ahead and speak to your attorney outside. I have no problem with that. You cannot do that in the middle of a pending question.

Do you think his attorney is going to agree? His attorney must agree because that's the law. Those are the rules for conducting pretrial testimony in a medical malpractice case, here in the State of New York. Why do I share this great information with you? I share it with you just to give you an insight and an understanding to what goes on in a medical malpractice case here in New York.

I realize you're watching this video because you have questions or concerns about your own particular matter. If your matter did happen here in New York and you're thinking about bringing a law suit but you have questions that need to be answered. What I invite you to do is pick up the phone and call me. I can answer you legal questions. 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.