



**LAW OFFICE OF GERALD
OGINSKI, LLC**

67 Cutter Mill Road
Great Neck, NY 11021

T 516-487-8207

Gerry@Oginski-Law.com

I FELL INTO THIS TRAP AT TRIAL

I fell into this trap when I was questioning a medical expert, years ago, when I was a young attorney, that totally blew me away. You want to know what it was and why I never ever made that mistake again? Come join me for a moment as I share with you some great information.

Hi, I am Gerry Oginski, I am a New York Medical Malpractice and Personal Injury Attorney practicing law here in the state of New York. This was a medical malpractice case and now the defendant, the defense, put their medical expert up on the witness stand and now I had an opportunity to cross examine this doctor, to get to the truth of the matter. I asked this doctor whether he had ever testified on behalf of an injured patient before. You know what he said? "Nobody has ever asked me before." Now, why is that a bad question for me to ask? Number one, I didn't know the answer to the question. That was my bad. Number two, had I known what he was going to say I never would have asked that question. Why? Because it made me look bad. You see, I was trying to show to the jury that this doctor was bias. I had know from doing my research that this doctor never ever testified on behalf of an injured patient. He would always testify on behalf of the doctor or the hospital that was being sued. He turned the tables on me very quickly without me even realizing what had happened.

"Doctor, isn't it true that you have never testified on behalf of the plaintiff, an injured patient, before?" He says to the jury, "Nobody has ever asked me." Guess what? I looked like I had egg on my face because my entire attempt to show that he was bias now blew right back in my face and I couldn't go anywhere with that and the doctor had the upper hand.

Now, here's something very interesting. Many years later, in a different case, I had the opportunity to examine this exact doctor in an-

other medical malpractice. Now, what happened then? I knew that this doctor was coming to testify in behalf of the defense, so what did I do? I picked up the phone, called and asked his secretary whether the doctor would be interested in reviewing a case on behalf of an injured patient and I took down her name. I took down her information, when I made the call, what we talked about. She came back to me and said, "I'm sorry, but the doctor does not under any circumstance review cases for an injured patient." "Terrific. Thank you so much."

Now, two weeks later we're at trial. This doctor is up on the witness stand and now I'm prepared for this question and for his answer. I asked him at the very beginning, I said, "Doctor, in all the years you've been testifying, it's been more than twenty years where you've testified four or five times a year, you've only done it, according to what I can tell, for the defense. Isn't that true?" "Well, I've never been asked to testify on behalf of an injured patient." "Really, Doctor? Well, isn't that interesting, only two weeks ago I called your office and I spoke to this woman. She is your secretary is she not? I asked her specifically whether you would agree to review an injured patient's records and then if you found that there was a viable case to then come in and testify on behalf of an injured patient. You know what she said?" He said, "No, I don't." Then, I told him exactly what she said, that he refused to review any records on behalf of an injured patient and refused to ever come and testify on behalf of an injured patient. Ha!

What did he say to that? "Well, I don't understand why she would say that because I am happy to review cases whoever sends it to me." "Really?" Now, I am getting into a whole argument, a whole discussion with him about what his secretary said and who do you think the jury believed this time? The jury believed my argument this time and they did find that the doctor was bias and in favor of only the defense in this particular case.

I want to share this quick story with you. I share with you just to get an insight and understanding into what happens in medical malpractice cases here in the state of New York. You know, I realize you're watching this video because you likely 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 and you've got legal questions, what I encourage you to do is, you know what I'm going to say, right? 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 That's if for today's video. I'm Gerry Oginski. Have a fantastic day.