



**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)

## **New York Doctor tells her on audio that he screwed up. Can I use this at trial without revealing to defense attorney that I have the audio admission?**

I've got a great trivia question for you today. If a patient has audio of a conversation she had with her Doctor in the office, admitting that he screwed up. Can we use that hidden audio at the time of trial, without disclosing it to the Defense Lawyer? You want to know the answer? You think you know the answer? Come join me, and I'll share with you the answer to that question.

Hi. I'm Gerry Oginski. I'm a New York Medical Malpractice and a Personal Injury Attorney practicing law, here in that state of New York. A patient comes to me believing that the Doctor violated the basic standards of medical care. During our conversation she tell me, "Listen. During my conversation with the Doctor in his office, I taped it with my iPhone. I wanted to hear exactly what he had to say, to make sure that I didn't forget what he said." You know something, during the course of our discussion she tells me that he said, that he admitted that he screwed up. He apologized. He was sorry.

Can I use that information, that audio tape against the Doctor at the time of trial, without disclosing it to the Doctor or to his Attorney? The answer is, no I can't. If I intend on using that information at the time of trial, I have an obligation to tell the Defense Attorney about. I have an obligation to give the Defense Attorney a copy of that audio recording. I have to send it to him, so he knows exactly what was said. He then will be able to prepare a defense. Prepare a defense of the

Doctor to explain away, whatever he said during the course of that discussion.

Regardless of whether or not there's any legality, associated with creating that hidden audio tape. The mere fact that my client has done that, and now has that proof, if I intend on using that proof assuming legally I am able to use that. Then, I am also obligated to give a copy of that to the Defense Attorney before his question and answer session, known as a deposition during the course of the lawsuit. Pre-trial testimony. He can prepare his Doctor for these questions surrounding that conversation.

Here's what's going to happen, if I don't give the Defense Attorney that particular audio recording, and don't tell him that we have that recording. At the time of trial, now I get to question the Doctor, cross-examination. He'll likely be my first witness. If I try and spring this question on the Doctor, you know what will happen? The Defense Attorney is going to get so upset, he's going to start screaming and yelling. Screaming that this is trial by ambush.

Then, he's going to ask the Judge for sanctions for doing something that I'm not allowed to do. Will the Judge do it? The Judge will have to decide that on a case-by-case basis. You know what? It would never get to that point, because I do have an obligation to disclose that audio recording to the defense way before we every get to trial.

Why do I share this great information with you? I share it with just give you an inside look at what goes on, in these civil law suits involving medical malpractice, and accidents, and even wrongful death here in the state of New York. I recognize that you're watching this video, because you probably have questions or concerns 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. 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 [GerryOginski-law.com](mailto:GerryOginski-law.com). That's it for today's video. I'm Gerry Oginski. Have a fantastic day.