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Objection Judge! He's asking his medical expert leading questions.

In a medical malpractice case in New York the defense attorney has his medical expert up on the witness stand. It's now the defense's opportunity to question and tell the jury and support their claim that they did nothing wrong. The defense attorney is using leading questions with his own expert. Do I have the opportunity to stand up and object and prevent him from doing that? Do I know the answer? Come join me for a moment as I share with you some great 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. Now, in a medical malpractice trial here in New York the defense will put on his medical expert to support the claim, to support the theory that their doctor, their hospital did nothing wrong but now it's his own expert. He's doing what's known as a direct examination.

He's supposed to be asking his expert open-ended questions -- who, what, where, when, how, why -- and give his expert the opportunity to explain his answers to the jury. This way the jury can get to know the doctor, get to like that doctor, the doctor has free reign to give lots of explanations. That's key to getting the jury to understand exactly what happened and why they should believe this particular expert.

There are instances though where an attorney will ask his own medical expert leading questions. Now, you should know that in New York an attorney can only ask leading questions in a couple of instances. For example, if I now get up to cross examine the defense's medical expert, I'm cross examining him. He's a hostile witness to my case. His position is adverse to our position. I am permitted to ask the doctor

leading questions. What that really means is I'm putting words in the doctor's mouth. I'm controlling what the doctor can and cannot say.

When I'm questioning the doctor on cross examination, I don't want the doctor to explain anything. He's had tremendous amounts of time to tell the jury everything he possibly can and explain to the jury everything under the sun. Yet when I get up to question the doctor, I am going to ask leading questions.

Doctor would you agree with the following things? Yes or no or I can't answer the question. I only want the doctor to either agree or disagree with me or say I don't know or can't answer the question. I don't want to give any explanation. It's totally the opposite for his own attorney. Why is it then that some attorneys will ask leading questions at the beginning of questioning their expert?

The answer is some of them will use leading questions to talk about the doctor's credentials instead of allowing the doctor to go ahead and explain where he went to school and his entire list of credentials on his own. It sounds almost like the doctor's bragging. 'Oh, I went to this school and then I went to that school and I went to Harvard Medical School and I did my residency at this place. Now it sounds like the doctor's bragging".

What if instead the defense attorney turns around and says, "Doctor, isn't it true you graduated from Harvard Medical School? Yes. You graduated in 1975, correct? Yes. Then after medical school you went on to do what's known as a residency, isn't that true? Yes."

In those limited instances, the judge will allow the attorney to go ahead and ask those limited leading questions. Why? Because when we're talking about credentials many times it's a lot easier and quicker for the attorney to ask these rapid fire direct questions. Can I object? Yes. Technically I can object. Should I object? In all likelihood, when it comes to is credentials, I'm not going to object. I know what the doctor's credentials are and I have an opportunity to cross examine him later.

When the defense attorney does it, talking about credentials, it's no big deal. What if he does it during the middle of questioning him about his opinions or conclusions? Then yes I'm going to object because that's an improper way to ask his witness questions. Instead he's got to do it in open-ended fashion.

Why do I share this tidbit of information with you? I share it with you just to give you an insight and an understanding into what goes on in

these cases involving medical malpractice or accident cases or even wrongful death cases here in the state of 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 thinking about bringing a lawsuit but you have legal questions that need to be answered, what I encourage 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 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.