

During pre-trial testimony, why is it so important to lock a witness into their testimony? You want to know the answer and why it's so important? Come join me as I share with you some great information. Hi, I'm Gerry Oginski of the New York medical malpractice and personal injury trial lawyer practicing law in the State of New York. The whole purpose of locking a witness into their testimony during the pre-trial phase of the lawsuit is so that now, two or three years later, when the case comes up for trial, they can't change their answers. And now, if they try and change their answers, we can show to the jury the inconsistencies between what they said two years earlier compared to what they're trying to get the jury to believe now. So now, how do we do that? Well, let me give you a great example. A number of years ago, I was asked to do a deposition which is a question and answer session of a witness. In this case, it was a doctor in a medical malpractice case. And now, it turns out the doctor falsified all of his records and altered them and re-wrote his entire office chart for this patient. Now how did I know that? I knew that because before I began questioning him, I asked the doctor for all the records that he had brought and I'm permitted to do that. So his attorney handed me all the medical records and as I'm going through it, I recognize that these records are totally different than the records that we had in our file. So what did I do? Now, based upon the records he gave me, I started asking a series of questions. To do what? To lock him into his testimony. And I'll show you why I did that in a moment. Doctor, you brought with you the patient records. These are the only records in your possession, correct? Yes. And these are the records you brought with you from your office, correct? Yes. These are the original patient's records, true? Yes. And now, they came in this folder, true? This is where you kept these records? Yes. And who wrote these records, Doctor? I did. Nobody else wrote your notes? Nobody. In fact, Doctor, after you would see and visit with this patient, you would make notes in her chart, correct? Yes. You didn't wait till the very end of the day, after you saw 25 patients to make notes, correct? Correct. In fact, you did it right then and there, while she's still there. Now you make those entries and notes in her chart, correct? Yes. And you're the only one who makes those notes, true? Yes. And there's no nurse and there's no assistant who makes notes onto the patient's chart, correct? Correct. So why am I harping on this so much? I'm doing it because I want to establish that he is the only one to make notes and entries in this patient's chart. That there's nobody else and these are the only records for this patient. So then, once he acknowledges that, I then go through, page by page, what it was that the patient complained of, what his notes say, what he did, and what his treatment records and what his treatment plan showed. After we went through all of those things, I then pulled out my records. Doctor, let me show you this document. Can you tell me what it is? Yes, it's a fax from my office to the patient's new doctor. Great. When did you send this? Oh, two days after she last saw me. And, Doctor, this note is in your handwriting, is it not? Yes. And who sent this fax? I did. At whose request? The patient's request. And you fill out the fax form and you then send it off to the next doctor? Yes, I did. And, Doctor, take a look at this note. Do you see this? Yes. And what is that? That's a progress note that I wrote when the patient was in the office. And what date was that, Doctor? And then he reads me that date. So now I ask him to take out the date from the records that he brought. Doctor, you told me and you read to me exactly what was in your note for that particular date. I'm now looking at a different note that you also wrote for the same exact date for the same exact patient. Tell me, Doctor, how do you have two different notes for the same day for the same patient? And he just had that "deer in the headlights" look. He didn't know how to answer the question. I said, Doctor, did you not understand what I asked? He said, no, I did. I said, so what's your answer? He said, I don't have an answer. Now, this was going to get great because his attorney also had that "deer in the headlights" look. So what did I do? I locked him into his original testimony, claiming and asserting and swearing that these were his only records in his possession when, in fact, I now confronted him with another series of records that he had written and he had forgotten about it, totally forgotten about it. He couldn't explain it. I said, Doctor, where are the original records, the faxed records, that I have here in my possession? I don't know. Doctor, didn't you say that you brought with you your only records available? Yes. Can you explain how these records are different? No. And it was so clear that the doctor had totally altered and revised his entire chart for this patient. Now what would have happened if I did not lock the doctor into his testimony and simply confronted him initially with the records that I had in our possession? Well, I would have lost the opportunity to show the clear contradiction. So why do I share this great information with you? I share it with you just to give you an insight and an understanding into what goes on in the litigation process in a case involving car accidents, involving medical malpractice, and even wrongful death matters here in the State of New York. You know, in all likelihood, you're watching this because you have questions or concerns about your own particular matter. Well, if your matter did happen here in New York and you do have legal questions, 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 quick video. I'm Gerry Oginski. Have a fantastic day.