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## Why is Doctor required to answer my leading questions?

When I'm questioning a doctor during his pre-trial testimony in a medical malpractice case, why is he required to answer my leading questions? You want to know the answer? Come join me for a moment as I share with you some terrific 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.

During the course of a lawsuit, I will have an opportunity to question the doctor that you are suing in a process known as a deposition, which is really nothing more than a question and answer session given under oath that carries the same exact weight as if he is testifying at trial, but this is being done in his attorney's office. Why does the doctor have to answer my leading questions? Now, you might have heard me talk in the past about leading questions and why it is so important that when I'm cross-examining a witness at trial, especially a doctor or medical expert, why I will always ask leading questions, and why I never want the opposing witness to answer and explain anything, other than "yes," "no," or "I don't know the answer to your question." Why is that?

During the litigation process, I have a number of goals. One of the goals is to learn from the doctor, in his own words, exactly what happened. I will give the doctor plenty of opportunity to explain, "Doctor, tell me why you did this?" Specifically, I'm going to be asking him hypothetical questions. Now, you might ask why I would ask a hypothetical question. It's because I need the doctor to answer, in his own words, whether or not there were departures or violations from the basic standards of medical care.

Let me put it another way. If I were to come right out and ask the doctor, "Hey, doctor, by the way, when you were treating my client,

Mrs. Jones, did you violate from the basic standard of medical care?" What do you think he's going to say? "Absolutely not. I did everything appropriately." I will ask him that question. "Doctor, during the course of this treatment, did you violate the basic standards of medical care?" "No, I did not." All right, so now I'll put that question away. Then, I'm going to ask him a hypothetical question. "Doctor, I want you to assume that the following facts are true." Now, I'm going to lay out a certain series of facts that we believe to be true. Then I'm going to ask him, "Doctor, assuming that those facts are true, would you agree that a doctor in your position who failed to do A, B, or C, would be a violation from the basic standards of medical care?" Now, this is a leading question, where I'm putting information into the doctor's mind, and now I'm requiring to answer a question which he must, by law, answer because he is a medical expert and I, as the attorney representing the injured patient, am permitted to cross-examine this doctor in the sense of asking leading questions during the course of this pre-trial testimony.

The doctor must answer my question, even though he doesn't like it, and even though he doesn't agree with those facts, and even if his attorney objects to the question, he still must answer it. You know why? Because when I ask this same question at the time of trial, if the jury believes our set of facts. If they believe we are more likely right than wrong. That our set of facts are true. Now, the doctor has testified in his own words that it was a violation from good and accepted medical practice not to do A, B, or C. Now, the jury can use that testimony to confirm that the doctor is legally responsible for my client's injuries.

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 a case involving medical malpractice here in the state of New York. I recognize and I understand you're watching this video because you likely have questions or concerns about your own particular matter. If you're thinking about bringing a lawsuit and 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 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 e-mail at [gerry@oginski-law.com](mailto:gerry@oginski-law.com). That's it for today's video. I'm Gerry Oginski. Have a fantastic day.