



**LAW OFFICE OF GERALD
OGINSKI, LLC**

67 Cutter Mill Road
Great Neck, NY 11021

T 516-487-8207

Gerry@Oginski-Law.com

Doctor doesn't agree hypothetical facts are true

It's a medical malpractice case. I am questioning the doctor that you have sued during his pretrial testimony. Now I ask him, "doctor, I want you to assume that the following facts are true." He interrupts me and he says, "I don't agree that those facts are true," does the doctor have to answer my hypothetical question if he disagrees with our set of facts? Do 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. The answer is yes, he does. By law, I am permitted to ask the doctor hypothetical questions during his pretrial question and answer session known as a deposition. This is done in his attorney's office. There is a court reporter there. Now, in the attorney's office I'm going to be asking the doctor questions such as, "doctor I want you to assume that the following facts are true," and then I'm going to go ahead and give him a list of the facts that we believe are true. Then, I'll ask him a hypothetical question. "Assuming that those facts are true doctor, would you agree that treating this patient by doing a, b and c would be a violation from the basic standards of medical care, yes or no?"

What if the doctor instead of answering yes or no turns around and says, "I disagree with your set of facts counselor." What do I do then? Do I try and change it? Do I argue with the doctor? The answer is no. The doctor is required and obligated to answer my question the way I phrased it. I might change it up if he still objects to it and his attorney has to tell him, "listen doctor, for the purposes of this question you need to assume that these facts are true." The whole purpose of that is that we are using those facts, the ones that we believe to be true that are supported by the evidence and the testimony that has come out, that those facts are in favor of us. If in fact they are true and a

jury ultimately at trial finds them to be true, now I want to hear in the doctor's own words whether or not treating the patient this way, the way that he did, would be considered a violation from the basic standards of medical care using the doctor's own words.

That is extremely powerful. Ultimately, at trial if the jury believes our set of facts now I can show to the jury the doctor's pretrial testimony where he acknowledges and admits that treating the patient this particular way was absolutely a departure from good and accepted medical care. That is a very powerful statement if we can prove it and if the jury believes our set of facts. When the doctor doesn't agree with our set of facts, that's fine but he still has to answer the question.

Then, after I'm done with that question and asking him other hypothetical questions, I may turn to him and say, "doctor, which set of facts do you disagree with, tell me why you disagree with those set of facts, tell me what your understanding is of the correct set of facts." Now, I will pick apart and drill down to see exactly which fact it is or facts that he disagrees with. Now we can isolate out exactly which part he's disagreeing with and then I can ask additional follow up questions to focus on those things he does agree with. 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 medical malpractice case here in the state of New York.

I understand and I recognize 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 law suit but you've got legal questions, 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 gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski, have a wonderful day.