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Judge knows doctor who is being sued...it's his personal physician!

It's a medical malpractice trial, and before I have an opportunity to ask the first question of the very first witness, the doctor you have sued, the judge after saying hello to the doctor and having a nice quick chat, turns to me and says, "Mr. Oginski, counselor, come up here." Now myself and my adversary go up. You want to know what he says to me that puts the entire case in jeopardy? 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 here in the State of New York. It turns out the doctor who we have sued happens to be the personal physician of the judge who is trying this case. We call the first witness. It is the doctor that you have sued. I put him up on the witness stand. "Your honor, at this time I call Dr. Jones to the stand." The doctor walks up from behind the courtroom. He walks up to the witness stand, sits down. He's sworn to tell the truth. The judge turns to the doctor and says, "Hey Dr. Jones, nice to see you. I have to come to you for my annual physical next week."

What? The trial judge goes to this doctor? Now the judge turns to me and says, "Mr. Oginski, come up here." You know what he says? He says, "I have a problem." Really? Yes, I know you have a problem. It turns out that the judge sees this doctor as a patient. Do you think that's going to be a problem for us as the attorney who represents the injured victim?

The answer most likely is yes. There is a possibility that the judge will say, "No, I can be totally fair and I won't be biased even though you are suing my personal physician, and even though I go to him for treatment, and I think his treatment has been great. Even though he is a defendant in this case, he's being sued, I can be totally fair.

What do you think? Do you think he can? Do you think, knowing that he's got to go for his physical examination next week, if he makes rulings against the doctor, how do you think that interaction is going to go? How do you think that doctor is going to treat him and interact with him when he sees him the following week?

What do you think is going to happen? In all likelihood, the trial judge is going to have to excuse himself from the trial. That means we would have to get assigned to a new trial judge, and depending upon whether or not we had started the trial, may have to start all over again. We may have to pick a new jury all over again. The bottom line is this judge may not be impartial simply because his treating doctor is the one who is being sued.

Does this happen often? No, it doesn't. If it does happen, it's a big deal, and now we have to deal with it before I ever have a chance to ask the doctor the very first question. Why do I share this great story with you? I share it with you to give you a sense of what can happen in a medical malpractice case, or an accident case, or a wrongful death case here in the State of New York.

I recognize you've got questions or concerns about your own particular matter. If your matter did happen here in New York and you're thinking about bringing a lawsuit, but you've got legal questions, what I encourage 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.