10 Misconceptions About NY Medical Malpractice Lawyers

1. They like to file frivolous lawsuits.

Wrong. Filing a medical malpractice lawsuit in New York is downright difficult. A lawyer must first conduct a thorough investigation of the facts and then have all the medical records reviewed by a medical expert. Only after the expert has confirmed evidence of wrongdoing; that the wrongdoing caused injury; and that the injury is significant, can the attorney go forward and file suit.

Remember, nobody likes a frivolous lawsuit. It's bad for the lawyer, the client, the doctors, and the Court system. While there may always be differences of opinion about what happened and who is responsible for the victim's injuries, a New York Medical Malpractice lawyer is ethically prohibited from filing a lawsuit that has no merit. Besides, who wants to waste thousands of hours of their time prosecuting a case that has no merit, and spent countless amounts of money to pursue a case that doesn't belong in the Court system?

2. They sue everyone who saw the patient, even if there's no reason.

Most of the time, this is incorrect. A lawyer is ethically bound to sue only those individuals who can be directly linked to the client's injuries. Sometimes, after reading a hospital record it appears as if nurses and health care providers participated in the events that led to the client's injuries. In those cases it may be necessary to name people in the lawsuit that might be peripherally involved.

Once it becomes clear during the course of the lawsuit that certain individuals had nothing to do with the malpractice or causing injury, the patient's lawyer is likely to dismiss that person from the lawsuit- either after they have given testimony or shortly before trial.

3. They get 1/3 to 1/2 of the settlement or verdict as their fee.

Wrong. In New York the fee is less than that. In a medical malpractice case, the lawyer's fee is based on a sliding scale which is set by law. *It is less than 1/3*. In fact, the lawyer's fee only starts at 30% and *decreases* as the amount we recover for our client *increases*. This sliding scale has been in effect in New York since 1985, and benefits the injured client, *not the lawyer*.

This is how a New York malpractice lawyer calculates his fee:

(1) The expenses that the lawyer has laid out to prosecute your case gets reimbursed to the lawyer from the total settlement amount.
(2) Of the remaining amount, the lawyer's fee is calculated. If your award is anywhere from $1 to $250,000, the lawyer's fee is only 30% of that amount. If you are awarded anywhere from $250,001-$500,000, the

lawyer's fee on that segment of the award *drops now* to 25%. If you are awarded anywhere from $500,001-$750,000, the lawyer's fee for that segment *drops again* to 20%. This drop in the attorney's fee continues until you achieve over $1.25 Million. Anything over $1.25 million, the attorney's fee remains at only 10%.

This fee is significantly different than in a case involving a car accident or a trip and fall. In those 'negligence' cases, the lawyer's fee in New York State is 1/3 of your award, after the expenses have been repaid to the law firm.

4. <u>They hate doctors and hospitals</u>.

Wrong. Most malpractice attorneys recognize that most physicians and hospital staff work hard at what they do and appreciate the patients they treat. The problems arise with those few physicians who don't practice medicine in accordance with the standards of their specialty. It's those few bad apples that are careless and cause harm to patients.

Remember, lawyers are people too. They need physicians and hospitals too, and rely on their expertise when they are ill.

5. <u>They are responsible for increases in health care costs and the premiums that doctors pay for their malpractice insurance</u>.

Wrong. There are many studies that have been published by well-educated and well-credentialed folks who have consistently stated that increased premiums for medical malpractice insurance have little to do with the lawyers who file malpractice lawsuits. In fact, I just read an article where Anthony Bonomo, the Chief Executive Officer of PRI - Physicians Reciprocal Insurance Company (one of two major malpractice insurance companies here in New York), confirmed that lawsuits have little to do with the rise in malpractice premiums that doctors must pay for their medical malpractice insurance policies.

Some physicians argue that they practice 'defensive medicine' in order to run tests the patient doesn't really need. They also argue that running all these tests will prevent some lawyer from later claiming that certain tests should have been done to check for medical conditions that were never considered by the doctor.

The problem with this argument is that lawyers don't dictate what treatment patients should get. The physician should be smart enough to know what possible conditions the patient may be suffering from, and order those tests that will either confirm, or rule out those possible medical problems. If the doctor doesn't know enough about the patient's condition, then he should be referring the patient to a specialist, or calling in other doctors to consult about this problem.

If you want to look at why health care costs have increased, one need only look at the compensation that health insurance executives receive and question why they are paid millions of dollars per year.

6. They're looking for a quick settlement to squeeze money from the insurance company.

False. There is no malpractice insurance company in New York that would permit themselves to be taken advantage of. The insurance companies in New York that represent doctors and hospitals hire some of the best and brightest trial lawyers in the state to represent them from the initial stages of a lawsuit all the way through trial and appeals.

Importantly, the insurance company would never allow an attorney to squeeze them for a 'quick settlement'. It simply doesn't happen. In fact, most malpractice cases here in New York are resolved only shortly before or during trial. A lawyer that thinks a malpractice claim will be resolved immediately after filing the lawsuit is naïve, and not experienced with New York malpractice claims.

7. They can settle a case without the client's consent.

Wrong. In New York, the client must consent and agree to any settlement. If the client does not agree to the settlement, then the case continues forward. A lawyer is prohibited ethically and morally from settling a medical malpractice or injury lawsuit without their client's consent.

In fact, when a lawsuit is settled, it is best done in open court, 'on the record', where a record is made of the terms of the settlement. If the settlement is done privately, there are specific legal requirements that must be set forth in the papers confirming the settlement. Otherwise, one party may have difficulty enforcing the settlement.

8. They can settle a case involving an infant if the parent consents to the settlement.

Wrong again. In New York State, any case involving an infant (a child under the age of 18 years) must be supervised and overseen by the trial court. If a settlement is agreed upon by the parties in the lawsuit, the lawyer representing the injured infant must now apply to the trial court for *permission* to settle that case.

The lawyer is required to explain to the judge why he believes the settlement amount is appropriate and show to the judge medical evidence of the child's injuries and evidence that the injuries are resolved or will get better over time. If the lawyer cannot support the claim that the settlement is appropriate, the trial judge will not approve the settlement, and the case will continue, *regardless of the parent's belief that the settlement is a good one.*

9. They take any case that walks in the door.

Wrong. It does not benefit a lawyer to accept a medical malpractice case that has little monetary value or little merit. The malpractice lawyer works just as hard on a large case as he does on a small one. The amount of money and time spent to prosecute medical malpractice cases are enormous.

These types of cases are unlike car accident cases or slip and fall cases which are must simpler to prosecute. Lawyers who regularly handle medical malpractice cases here in New York typically reject 98 out of 100 cases that walk in the door. Out of those one or two cases that are accepted for investigation, most are rejected after being reviewed by a physician. This is the screening process that good malpractice lawyers use to evaluate a case.

10. <u>They like to go to trial</u>.

This is often true! A New York medical malpractice lawyer must have sufficient knowledge and experience to go to trial and take a verdict if the insurance company refuses to settle the case. In that instance the lawyer has no alternative but to present his case to a jury so that a panel of impartial folks can determine whether their claims are true. If true, the jury will decide how much to award to the injured victim.

A lawyer who takes a case solely to try and obtain a settlement does the client no justice. The lawyer must be prepared from the outset to go to trial. This is the only way to achieve the best possible result for the injured client. If the insurance company knows that the lawyer is afraid to go to trial, they stand a much better chance of taking advantage of this fact and low-balling the settlement negotiations and staying low.

When a case goes to trial, it means that both sides run the risk of losing. The question always is which side is going to blink first and recognize that settling the case is a better business decision than a jury verdict that could far outstrip what they felt the case was worth.