MEDICAL MALPRACTICE & INJURY LAW in New York

Everything you need to know about Medical Malpractice and Injury Law in New York- before you walk into a lawyer's office

By
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ABOUT GERRY OGINSKI

Gerry Oginski has been in practice for 19 years as a medical malpractice & personal injury trial lawyer.

While in law school he worked for a defense medical malpractice insurance company, and began working full time at an aggressive Wall Street law firm handling defense injury and medical malpractice cases.

Four years of experience later, he began representing injured victims in injury cases and medical malpractice.

Four years after that, he joined forces with a large law firm in Queens where he was the senior trial attorney handling all of the firms' medical malpractice cases.

Six years later, Gerry decided he could best serve his clients by opening his own office for the practice of law in cases dealing with injured victims of medical malpractice and accident cases. As of September 1, 2002, Gerry has been a solo practitioner, and the name of his firm is: The Law Office of Gerald M. Oginski, LLC. Having his own law firm, he is able to provide the utmost in personalized, individualized attention to each and every client. In our office, a client is not a file number. Client's are always treated with the respect they deserve and expect from a professional. Mr. Oginski is always aware of every aspect of a client's case from start to finish.

Education:

Touro Law School, Jacob D. Fuchsberg Law Center, Huntington, N.Y. 1988
SUNY Stony Brook, B.S., 1985

Attorney Oginski participates in continuing legal education every year on wide ranges of topics including trial practice, jury selection, cross-examination, evidence, wrongful death, negligence and medical malpractice.

Professional Honors & Activities:

Attorney Oginski is a member of the following legal organizations:

1. New York State Trial Lawyers Association
2. Brooklyn Bar Association
3. Queens County Bar Association
4. Nassau County Bar Association
5. Association of Trial Lawyers of America know know as the American Association for Justice

He has lectured to physicians at North Shore University Hospital in Manhasset, NY, Nassau University Medical Center in East Meadow, NY and Beth Israel Medical Center, in New York City.

Accidents: 5 Deadly Sins That Could Wreck Your Injury Claim

By: Gerry Oginski

Issues that Can Sink Your Case

Here are what I consider to be the Five Deadly Sins that can wreck your personal injury claim. These sins are based upon my experience and discussions with many judges and jurors.

1. The Client is Referred by the Lawyer to a Doctor

Local judges call this "service" the kiss of death to a claim. The problem is that jurors are highly suspicious of lawyers and doctors who have a referral relationship. While the client may not know how many of that lawyer's clients have been referred in the last 12 months to a particular doctor, you can bet that the insurance company knows it or will find out about it. How credible do you think that doctor's testimony will be when the jury finds out that he treated 50 patients from the same lawyer last year? Are there exceptions to this rule? Yes, there are. You may have a very special need for a doctor with a special expertise. It is perfectly legitimate for the attorney to make a suggestion or recommendation. If every client though, is getting referred to the same chiropractor or the same orthopedist, then that is a huge problem. (So beware of the attorney who has a stack of doctor/chiropractor cards in his office. You need to ask the right questions and fully understand the business relationship, if any, between that attorney and the doctor.)

2. Hiding Past Accidents From Your Lawyer

Once you begin a case, the other side will be interested in knowing how many past accidents you have been in. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance databases and often the only reason they ask you this question is to test your credibility. If you have been in other accidents, your lawyer can investigate this and make a determination as to whether this is a valid problem in your case or not. If you do not tell your lawyer, however and you misrepresent your accident history to this insurance company, then it is almost guaranteed that you will lose your case.

3. Hiding Other Injuries

It goes without saying that you should be upfront and honest with your attorney about any injuries that occurred before or after this accident. Again, if you saw a doctor or other healthcare provider, then there is a record in existence that the insurance company will find. Your lawyer can deal with this if he knows about it. If you lie about it, and the insurance company finds out, then your case is over.

4. Not Having Accurate Tax Returns

In most cases, a claimant will have lost income. You will only be able to claim that lost income if your past tax returns are pristine. Again, being honest with your attorney is the only way to be, because he or she can deal with the problem if they know about it.

5. Misrepresenting Your Activity Level

Insurance companies routinely hire private investigators to conduct videotape surveillance. If you claim that you cannot run, climb or stoop, and you get caught on videotape, you can forget about your claim. There is no explanation (other than "You got my brother, not me!") that can overcome the eye of the camera.

My Bicycle Accident - A Detailed Account Of a Woman Who Didn't Care

By: Gerry Oginski

It was Monday at 6:05 p.m. when I was finishing up the last leg of my bicycle ride. It was 54 degrees outside and was raining intermittently. Nevertheless, I needed to go for a ride, knowing that I would be safe and careful during the entire trip.

All went well for the majority of the ride. I traveled through Kings Point where the trees were in bloom. The rain drops were hitting my day-glo bright orange bicycle pants. The wind was rejuvenating through my bicycle helmet ventilation system. The excitement of pushing two pedals up and down repeatedly was invigorating. The scenery was magnificent despite the cloudy, overcast and slightly cool day. Being an experienced bike rider I can tell when it's a good day for biking and when it's not. Today, despite the minimal weather, it was still a good day for a short ride. Little did I know what awaited me as I headed back through the center of town into Great Neck.

As I pedaled South on Middle Neck Road, the main strip of road through the center of Great Neck, I marveled at the number of stores that opened like the blooming tulips this Spring, and shortly thereafter wither away and close for lack of steady business. Middle Neck Road is a street usually teeming with car traffic, especially during rush hour at 6:00 p.m. In most parts of Great Neck it's a two lane road with two lanes of traffic in each direction. At some points the street narrows and only can accommodate one lane of traffic in each direction. The entire length of Middle Neck Road is extremely commercialized and parked cars can always be found on both sides of the street at parking meters.

I had just passed Cedar Drive near the police station. I was heading straight intending to go to the Chinese restaurant to pick up dinner for my family, only two blocks away. When I ride in the street, I always ride with traffic, as I'm supposed to do, and as close to the parked cars as possible, to avoid the traffic in the street. I was pedaling at 12 miles per hour with excellent visibility on a slight upgrade. There were no cars behind me as I entered the main section of town. Nor were there any cars pulling out of their parking spot.

In a split second, right in front of me, I saw an arm fling open the driver's side door of a parked Toyota. The woman who threw open the door never looked behind her to see if anyone was there. Had I been driving a car, I would have effortlessly torn off her driver's door and seriously injured the woman whose arm had just carelessly flung open fully the driver's door. Unfortunately for me, I wasn't in my car. I was on my bike. The momentum of the moving door together with the impact of the edge of the car door with my right leg and was devastating. The door opened directly in my path. I had nowhere to go. The car door flung out so quickly that it threw me and my bike directly into the center of the road. My forward momentum was no longer straight. Instead, I was now diverted with extreme force right into the middle of traffic of an extremely busy road. My bike, which until that moment had been able to propel me down many a street at comfortable speeds ranging between 15 to 30 miles per hour, now became suddenly immobile.

As with any accident, when you stop a moving vehicle suddenly, the people inside the car or train or bike still continue to move forward at the speed at which they were traveling at the moment of impact. When that person comes into contact with a fixed immovable object, that's when injury occurs.

My bike stopped still. I didn't. I went flying over the handlebars with no place to go but forward and down. My arms flew out in front of me to brace the impact with the ground. Only days later did I remember that you are never supposed to put your hands or arms out in front of you to break your fall, because that results in fractured wrists, and arms. Instead, bike riders going over the handlebars are reminded to try and roll with their momentum and roll over, like a tumble-salt you did when you were a kid (without hitting or bending your head or

neck). The problem is that when you're in the middle of a shattering impact between steel, metal and glass, you have no time to think about what you're supposed to be doing, only why you're now lying on the ground in the middle of the street that cars are currently using.

Luckily for me there were no cars directly behind me. If there were, I probably wouldn't be writing this account of what happened to me, rather one of the obituary reporters probably would. I didn't hit my head, nor did I lose consciousness. I do remember very clearly letting out loud screams of curses directed mostly toward the middle aged woman who had opened her car door without the slightest of cares. I didn't notice it immediately, but there were two women who witnessed the collision of the car door with my moving form. The look of shock on their faces told volumes about what they just saw, without either of them saying a word. One woman proclaimed "Oh my God! I've never seen anything like that! You just flew over your bike when she hit you with her car door." The woman who opened her car door, to her minimal credit, immediately came over and apologized profusely, not once but multiple times. I got up from the street within moments and began limping horribly to the sidewalk where I tried to gather my wits and see if all of my bodily parts were still attached. They were. But I noticed immediately burning and stinging in various parts of my body including my right leg, both my arms, and my left shoulder. What made matters even worse was that I was trying to convince myself that despite this impact I was totally fine even though it was obvious to everyone at the scene that I couldn't walk very well. I happened to glance toward the street while taking stock of body, that I noticed my bike was smack in the center of the road, blocking all traffic in the southbound lane. I hobbled over to my bike and gingerly carried it to the sidewalk.

To a biker, a trusty bike is worthy of trust and respect. It gets you from point A to point B with little or no problem. If properly maintained it will take you places you've only dreamed of. A broken bike can probably be as upsetting to a biker as their own physical injuries. In any event, it's just a bike, and like every material item we own, can eventually be replaced. We, as people, cannot.

Both witnesses volunteered to call an ambulance or the police (the station was literally 30 yards away). I declined, still opting to convince myself that I was alright. My hands moved, I was conscious, I could feel and I could talk. I knew I was bruised and banged up, but didn't feel I broke anything major. My right thigh, also known as the femur- the longest and strongest bone in our bodies, didn't act or feel as if it was broken. I assumed that if it was broken, I wouldn't be able to walk at all and would be in excruciating pain. One of the witnesses suggested I see a doctor right away- good advice, but I still had to get dinner home to my family and still convince myself I was ok. This same witness also suggested I obtain the woman's insurance information in case I decided to file a claim. I now looked at the car for the first time. It was a red Toyota convertible, two-door. The woman with dirty blond hair hesitated and instead offered to pay me for my troubles right then and there. Still not being able to fully comprehend what was happening, I was about to open my mouth to let her know what I do for a living when the witness blurted out, "Oh no! Don't you let her get away with that! You might have some significant injury that you don't know about yet and by taking her money now you'd be doing a terrible thing." I looked from one woman to the next to the next. Three women in all. Two were witnesses, the other, the careless woman who caused me to be in a slightly perplexed state. I finally figured it out. She wanted to buy me off right there. She even asked to see my leg and asked me to roll up my pants. The other witness said "You're not a doctor, what good would that do?"

When I came to my senses, I finally told my audience what I do for a living. "I'm a personal injury and medical malpractice attorney," I said. The red Toyota woman dropped her mouth in shock. The eyewitness expressed shock as well. "Well how about that? You hit the worst person you could ever expect- a personal injury attorney." I collected the Toyota woman's information, then looked her straight in the eye and said "I could understand if this was my fault. But it wasn't. You never looked to see if anyone was behind you when you opened your g*damned door. If you had, you'd have seen me and waited for a moment until I passed you." With that, she again apologized, got into her car and drove away, forgetting about whatever it

was that she had gotten out of the car to do in the first place.

There is a book called The Kindness of Strangers that my wife has on her shelf that I never bothered to read. I mention it only to contrast my years as a trial attorney representing tragically injured people where I never truly appreciated what happens to a person at an accident scene. The eyewitness, who turned out to advocate for my well- being offered to take me and my broken bike home, without knowing anything about me, or even where I lived. Even more impressive was that she insisted that we stop at the Chinese restaurant to pick up the dinner my family so eagerly awaited. Finished with that task, this stranger deposited my bruised and injured body to my front door, Chinese food in hand and my bike huddled in the corner without a second thought. All I could say was "Thank you so much for your kindness." Without another word she drove out of my driveway, back to her daily activities while I walked in the front door with a sense of foreboding knowing that my large family would start assaulting me with questions the moment I told them what had happened.

After recounting in detail the events that had just transpired, I showered and hobbled my way downstairs to partake in the Chinese food I had just picked up. I knew that later and even the next few days, I'd feel every bump and bruise where previously I was healthy. Looking back on this moment in time, I can only be thankful that I wasn't seriously hurt. I will live for another day and long to see the sunrise and the sunset. I was fortunate today and recognize that when we're injured, it's not what we have left that matters, but really what has been taken away from us that is most important. That's the true element of damages.

Thanks for being a captive audience.

Medical Malpractice - 10 Reasons Why Most Victims Won't Recover a Dime

By: Gerry Oginski

Despite popular opinion about the "skyrocketing" increase in malpractice suits and awards, the number of suits has not increased since 1996, and in most cases, plaintiffs receive nothing. There are a variety of reasons why patients do not recover any compensation for injuries suffered while receiving medical care. Most of these issues stem from general misconceptions about medical malpractice. It is important for potential malpractice victims to understand these issues while seeking counsel to represent their case.

1. Patients don't know they are victims of medical malpractice.

Studies show that roughly 2.9 to 3.7 percent of admitted hospital patients suffer some sort of preventable injury as a result of medical management (i.e., not from the original medical condition). Even more management-related injuries occur outside of the hospital. These injuries are a result of a physician /administrator's affirmative mistake, or that person's failure to act in a particular situation. Types of mistakes include errors in diagnosis, use of automated materials, and inappropriate delay of treatment.

However, one of the most common errors occurs with administering medication. The Massachusetts State Board of Registration in Pharmacy estimates that in Massachusetts alone 2.4 million prescriptions are filled improperly each year, the majority of which involve providing the wrong strength drug, or the wrong drug altogether. Each layer of communication introduces another opportunity for error. Improper diagnoses and negligent supervision of trainees are other common errors, and both have led to disastrous results in many cases. Up to 98,000 patients are killed each year as a result of preventable medical errors, the eighth leading cause of death in the U.S., yet only 10,000 cases of malpractice are filed each year. In the vast majority of cases, however, the fact that a poor medical outcome was caused by

malpractice is hidden from the patient.

2. No autopsy was ever performed.

Remember that we must prove both carelessness on the part of the doctor or hospital and that the carelessness resulted in death or injury. In a medical malpractice case that results in death, it is extremely difficult to prove that the death occurred because of the malpractice without an autopsy. This is because there are so many reasons why a person might have died, but we must prove that at least one of the reasons for the death was the negligence of the doctor or hospital.

3. A physician's poor bedside manner does not constitute negligence.

In the vast majority of cases, even egregiously poor bedside manner cannot be considered in determining whether a physician was legally negligent in providing treatment. We have reviewed many cases where arrogant doctors provided care and the patient was injured. It just doesn't matter legally that the doctor was a jerk. We must prove, with expert medical opinion that the treatment departed from good and accepted medical care, and not bad bedside manners, that caused injury.

4. The patient suffered no significant damages.

As we noted above, the legal system is not set up to handle small medical malpractice cases. We decline hundreds of cases a year where it appears that the doctor was careless but the resulting injury is not significant. A pharmacist may incorrectly fill your prescription, and you might get sick for a few days. If you have a good recovery, however, you probably don't have the basis for a case. That's because the costs of pursuing the case will be greater than the expected recovery. Our Court system may not be perfect, but it does act as a filter to keep out all but the most serious cases of medical malpractice.

5. The physician or hospital's mismanagement did not necessarily cause the injury suffered.

As discussed earlier, it is very difficult to prove that medical wrongdoing was the reason why the patient suffered the injury that he or she received. The insurance companies have many standard defenses including, for example, that (1)The injury was an unforeseeable consequence of the initial condition/injury, (2)The injury was due to the patient's non-compliance with prior medical advice, (3)The risk of the patient's particular injury was a known, recognized, acceptable risk (acceptable to whom?), (4)Some other party was responsible for causing the injury, or (5)The injury was caused by a previous illness or disease.

Medical malpractice claims must show that the doctor's substandard care, more likely than not, was a substantial factor in causing injury.

6. The injured patient has not retained an experienced attorney.

The world of medical malpractice claims is a world unto its' own. It has its' own special rules and laws. We believe that it is imperative that an experienced medical malpractice attorney or an attorney that is 'teaming up with' an experienced malpractice attorney represent you.

7. The statute of limitations has expired.

This is the time a person has to start a lawsuit. The time limit is very different for a city, state or municipal hospital than it is for a private hospital or doctor. One reason that you should consult an experienced medical malpractice attorney early is to determine when the statute of limitations expires in your case! DON'T LET YOUR TIME RUN OUT without knowing your legal options!

8. Jurors have been biased by the insurance industry.

The insurance industry has spent millions of dollars funding research to suggest that there is a widespread problem with respect to medical malpractice suits. These studies claim that excessive verdicts are causing malpractice insurers to raise their premiums, forcing physicians out of the medical profession. It has been proven that increased medical malpractice premiums have nothing to do with lawsuit verdicts! Even the American Insurance Association has said that lawmakers who enact "tort reform" should not expect insurance rates to drop! Jurors who hear the insurance company propaganda then award less of a verdict than they would normally have deemed appropriate. Unfortunately, after the verdict is reduced on appeal, malpractice victims often receive less than is necessary to pay their medical bills for treating the subsequent injury that was caused by the malpractice. Even your doctor probably believes that by capping, or reducing damage awards, this will cure all that is ill with the legal system.

Nothing is further from the truth. The medical malpractice insurance companies are in business to make money. Not to pay out money. The more they pay out in claims, the less profit they and their shareholders take home. I have always asserted that if the doctors wanted satisfaction in reducing their inflated premiums, they should look no further than their own malpractice insurance companies. By demanding rate reductions and by threatening to obtain coverage elsewhere, the insurance companies have to realize that their rates must be re-evaluated. Also troubling is why physicians have not banded together to open competing insurance companies in order to obtain reduced rates.

9. The injured patient is unable to hire good qualified medical experts.

You cannot win a malpractice case without a medical expert. A good expert who is willing to testify can be hard to find. It is becoming increasingly difficult to find doctors who are willing to stand up for what is right and to right a wrong. It takes time and money to find the best experts for your case. This is one area where insurance companies have an advantage. If they have a case that is particularly bad for their doctor, they may show the case to many experts before they find one to support the defense (or concoct a defense). They can afford to hire many experts. Most plaintiffs cannot afford to have ten experts look at their case in order to determine which expert will work 'best' for them.

Increasingly, doctor's professional groups are now attempting to bring claims against doctors who testify against other doctors. These claims seek to revoke the doctor's board certification or punish the expert doctor for testifying for a patient. This has happened recently in the field of neurosurgery and obstetrics and gynecology. The potential threat of professional repercussions for testifying on behalf of a patient will significantly inhibit many doctors from helping injured victims in seeking justice and proper compensation.

10. Juries like doctors.

Folks sitting on juries rely on doctors when they're sick. They trust their doctor. Their family uses the doctor. The doctor has trained for many years to learn their specialty. How can the doctor be faulted for something that would have happened even if good care were rendered? Fighting a malpractice case is an uphill battle. But, with proper information, the right facts, the right experts and an experienced attorney, you stand a much better chance of knowing the risks of taking your case to trial.

10 Things You Absolutely Need To Know To Start An Injury Lawsuit

By: Gerry Oginski

1. Lawsuits seek to compensate you for your injuries.

a. They compensate you for:
i. Your lost wages, and your future lost wages,
ii. Your medical expenses, both past and future, and
iii. Your pain and the suffering it caused in the past, and for the future

2. Lawsuits do not directly seek to harm anyone's reputation.

3. A doctor who is sued will not lose their medical license if the lawsuit is successful.

4. A lawsuit attempts to compensate the injured victim, and at the same time, try to ensure that the same type of bad treatment is not repeated in another patient.

5. "A lawsuit is not a lottery."

a. This phrase is often used by defense attorneys during jury selection to remind jurors that their job is not simply to allow the injured victim to 'hit it big' and award huge amounts of unjustified money.

b. A more realistic approach to a lawsuit is for reasonable, full and fair compensation to allow you to recover all of your past and future expenses, and all of your past and future pain and suffering compensation.

6. You don't have to pay any money upfront to an attorney to handle your case. There is no 'hourly fee'.

a. Medical Malpractice and injury cases are generally handled on contingency.

b. That means that the attorney fee depends upon you winning your case. If you lose, the attorney loses as well, and receives no fee.

c. The expenses that the attorney pays to prosecute your case are technically supposed to be repaid by the client in the event the case is lost. However, as a personal matter, I have never asked a client to reimburse me for my expenses if I lose a case. It just doesn't make sense to do so, and in my personal opinion, it's bad business. However, some attorneys do require this, so make sure you ask first before you make your decision.

7. Not every attorney has the same experience.

a. Ask your attorney how many years they've been in practice,

b. Ask the attorney what percentage of medical malpractice or accident cases he handles compared to other types of cases,

c. Ask whether he/she tries cases in the Supreme Court (it's the trial level court for New York,

d. Ask whether he's ever lost a case;

i. If he tries cases, and claims he's never lost a case…I'd suggest either that the attorney is not being accurate, or simply only accepts clear-cut cases that he cannot lose- that's extremely rare.

ii. The majority of trial attorneys will have lost a case from time to time. Unfortunately, it's the nature of the beast.

e. Ask whether the attorney you meet with will be the one handling your case on a day to day basis. If not, who will be your attorney? Whom will you call with questions? How quickly will the attorney call me back? How often can you expect to receive correspondence from the

attorney about the status of your case?

8. A lawsuit takes time to come to a conclusion.

a. The average time is 2-3 years from start to finish.

9. How often do I have to come into the attorney's office during this time?

a. Once to meet the attorney in an initial meeting,

b. Once to sign documents that start your lawsuit (often this can be done by mail),

c. Once to have your deposition (where you are asked questions by the other side's attorney),

d. At least once to prepare you for trial, and sometimes two or three additional times to prepare you.

10. As in life, there are no guarantees to winning. However, with good experienced counsel and thorough preparation, you stand a much better chance of being fully informed about your prospects and achieving a good result.

Attorney Advertising: How To Choose an Injury and Medical Malpractice Lawyer

By: Gerry Oginski

Attorney advertising and how to choose an attorney from an ad. "Ooh, ooh, pick me," "No, pick me," yelled the ad in the phone book. "I needed an accident lawyer to find out what I need to do since I was hit from behind last week. I looked in the yellow pages in Brooklyn, and found over 40 pages of lawyer ads. Who do I pick?"

The truth is, not all lawyers advertise. Those who do are required to list specific areas of law in which they practice. In New York, injury and malpractice lawyers are not allowed to call themselves 'experts' in their field of law. Nor can they misrepresent themselves in an advertisement. For example, they cannot stand next to a person with a cast on their leg, in a wheelchair and a pile of cash on the table claiming that since this person recovered all that money, he or she could do the same for you. That's nothing more than a shameless sales pitch. The reality is that no lawyer can claim to get you "cold hard cash" because every case is different. Some lawyers claim that they can "Settle your case fast!" Sure they can, for a lower amount than your case might be worth.

Don't you think the insurance companies that deal with law firms like those know they're looking for a fast settlement? There's no incentive for the insurance company to offer top dollar because they know that this law firm isn't going to take the case to trial. They're settlers!

There are some yellow pages ads that proclaim the lawyers handle everything from criminal to real estate to injury cases to malpractice matters. Be weary of a firm that claims they can do everything. In today's legal climate it's rare that a general practice firm can do all that extremely well. That's why there are firms that focus exclusively on one or two areas of law, such as medical malpractice and personal injury.

If you call a law firm you've found in the yellow pages, ask these important questions: Who will be handling my case day to day? When will I meet with the partner? Who will be negotiating my case? Who will be trying my case? How quickly are my phone calls returned? What is your experience with my type of case? How many cases do each of your attorneys

handle at one time?

Does the size of the lawyer's ad mean they're a better firm than the one with a ½ page ad or smaller ad? No. It only means that the larger ad costs a lot more (The Verizon yellow pages charges lawyers about $6,500-$7,000 per month for a full page ad. In some counties, lawyers take out a double page ad which can cost between $12,000-$15,000 PER MONTH!). That's not a typo. That's per month. We've all been trained to think that just because an ad is larger, that it must somehow correlate to how well that firm does for its' clients. Not necessarily true. You must ask lots of questions and you must become an informed consumer before you choose to hire an attorney based upon an ad in the yellow pages.

Ask the attorney you call whether they can recommend another colleague to get another opinion about your case. If they're reluctant to do this, I suggest you look elsewhere. Why should the lawyer be afraid to recommend another good lawyer? In all likelihood the injured client will stay with them, especially when they've been so honest and willingly advised the client to get another opinion.

Ask the attorney for references from clients he's helped. Ask about cases he's lost, and ask whether he's ever had a client go to another attorney after he started their case. The lawyer you choose must be able to communicate with you and spend time explaining the legal process and what to expect down the road. I've never liked it when I'm handed off to a junior associate to handle my questions and the rookie has to go back to the senior partner with all of my questions. Like many of you, I appreciate personal attention- especially in a case where the injuries are severe and life altering. Having an attorney know your file as well as you do, if not better, is extremely important.

When you call the lawyer's office for an update on your case, do you really want to be asked "How do you spell your last name?" Or how about, "Uh, let me pull your file and see what the other five lawyers did on your case recently." Or how about, "I'm with another client now, and I'll call you back," and you don't get a return call for days. To me, that's not professional service. It's bad enough that you were injured through someone else's wrongdoing, but you shouldn't have to suffer the indignity of having your law firm figure out who you are when you call.☺

15 Key Deposition Techniques in a Medical Malpractice Case

By: Gerry Oginski

QUESTIONS TO ASK THE DEFENDANT DOCTOR

WARNING:
Preparation is the entire key to a doctor's deposition. You must spend countless hours reviewing the entire file, reviewing all the medical records, notes and entries in the chart. You must know and review your theory of liability, causation and damages before you begin to review the file. You must keep track of anything in the chart that will help you in your quest to prove each element of liability, causation and damages.

1. Most lawyers ask the same boring questions at the beginning of every deposition:

a. State your name and address
b. State your qualifications, pedigree, schooling, etc.

Comment: OK, this is fine, but very boring and very expected by defense counsel and the doctor. Mix it up a bit. I advocate never starting a doctor's deposition this way. Why not go right to the heart of the case with the very first question? You can always get the doctor's credentials later or at the end. Besides, the credentials are usually found online or in a

curriculum vitae, and don't help except to establish where he went to school and whether he's board certified in any specialty. On more than one occasion the doctor has been disoriented by this approach. They are usually prepared for questions in a lock-step manner and do not expect something so unusual, but legally permissible set of questions right off the bat.

2. Go ahead- ask why they operated on the wrong side of the brain as your first question. "Objection, no foundation," says the defense attorney. "So where does it say in the CPLR I need to lay a foundation question?" Despite this exchange of 'ideas', if you get such an objection, then simply ask:

a. "Didn't you operate on my client on this date?"
b. "Isn't it true you operated on the wrong leg?"
c. "Why?"

3. I always advocate asking the 'why' question at deposition. It is much better to know the reasons why a doctor did or didn't so something now, rather than save the question for trial. At trial, the reason may be devastating to our case, and if so, I want to know about it now. Besides, when you question a doctor at trial, as an adverse witness, you never want to ask a question in which you don't know the answer. If you do, you subject yourself, your client and your case to inherent risks that could jeopardize the case.

4. Make the doctor read his notes into the record. This is important for anyone who is trying to decipher the doctor's handwriting later on. Your expert will definitely need to know whether the scribble is important, and the only way to do that is if the doctor explains, on the record, what his scribble means.

5. Be polite. At all times. You can't imagine how many lawyers don't listen to this recommendation. They think they know it all, are sarcastic, belligerent, annoying, and really annoy everybody in the room. The doctor's attitude in responding changes as well. No longer is the doctor as verbose. No longer does the doctor look like the perpetrator. Rather, he might begin to look like a victim if attacks against him and his credibility are kept up.

6. You can still make all your points without being hostile, angry, yelling or screaming. The old saying 'you get more with honey than with vinegar' speaks volumes. Naturally, you're not going to bend over and sweet talk your way to getting the doctor's admissions about how he screwed up. But, the key is being professional and knowledgeable. You gain more respect from your adversary- (don't worry about respect or lack of it from the doctor) by being respectful than you do if you are antagonistic.

7. There are times when you want to rile the physician. You want to know if you can push his buttons. You want to know how easily it is to rankle his composure. If it's easy to do at deposition, your trial strategy toward this witness just got that much easier.

8. Find out about conversations the doctor had with the patient, family members and other doctors. Remember, conversations are rarely recorded in a hospital record. Make sure you ask the doctor to confirm or deny comments that your client has testified about. Most often, the doctor will claim they no longer recall the conversation. But, if your client does, it's much more possible that the conversation occurred. If the doctor denies making certain comments, then you know you have different facts about the same conversation, and a jury will have to ultimately decide who is telling the truth.

9. Ask whether the doctor has ever had his license to practice medicine suspended and/or revoked.

a. Ask whether their hospital privileges have ever been suspended or provoked.

b. Always ask whether the doctor has given testimony before.

i. Ask whether it was an an expert for plaintiff or defendant
ii. Ask whether they were a treating physician

iii. Ask what type of case it was, and the name of the case
iv. Ask whether they were paid for their time in Court to testify in that matter

10. In New York, in a medical malpractice deposition, you must ask opinion questions. The doctor- as a defendant is required to answer 'expert' questions and give answers about his medical opinions.

a. Do you have an opinion, with a reasonable degree of medical probability whether the treatment rendered to Mrs. X was appropriate and within the standard of care?

b. If you have an opinion, what is that opinion?

c. Confront the doctor with other opinions in the medical community that disagree with his school of thought and ask what he thinks of those opinions.

d. Ask the doctor to admit to certain facts- Here's an example:

i. Isn't it true the patient got Ex-lax at 10 p.m.?

ii. Isn't it true that patients with colon tumors shouldn't get ex-lax?

iii. Are there any circumstances when you would prescribe this medication for a patient who had this tumor?

iv. Would you agree that if the patient got ex-lax at 10 pm that would be a departure from good care?

v. Would you agree that the only reason the patient suffered injury was because she got ex-lax at 10 pm?

vi. Would you agree that had she not gotten the ex-lax at 10 pm, she wouldn't have suffered the bowel perforation?

11. Make sure you rule out other potential causes of injury besides the malpractice that you are claiming occurred here. The reason you do this is to learn the potential defense to your case. The defense will always come up with some explanation as to why your argument is not valid. Better you should learn it during the deposition than to head to trial without knowing what their defense will be.

12. Ask many open ended questions. Ask who/ what/ where/ when/ why/ how. By doing this, you will get the doctor to talk and explain. If the doctor's is going on and on without directly answering the question- and his attorney is letting him- that's ok. Let him keep talking; you might actually get some useful information. When he stops talking simply say "Maybe my question wasn't clear doctor. What I was looking for was….can you answer that question?" Always take the blame if the doctor says the question is not clear. Don't respond to him by asking "What didn't you understand about my English language question?"

13. Ask about medical definitions.

a. What is an endocervical curettage?
b. What is a myocardial infarction?
c. What is hypoxia?
d. Ask whether these definitions are commonly accepted within the medical community, or whether there are other schools of accepted definitions.

14. Ask whether they've reviewed any medical literature or textbooks prior to coming to the deposition.

a. Did you bring any with you?
b. Which ones did you review?

c. What did you learn from the article? Did it support your position here, or was it contrary to your position?

15. Finally, but not last, ask about credentials, schooling, licensing, board certification- but you should already have this information before your deposition when you research the defendant doctor. I always advocate doing a Google search on the physician to see if they've authored anything or if there's anything out there online that's worthwhile knowing. I recently learned from an online search where the defendant doctor was fired from his residency and sued the chairman of his department. Needless to say, this information proved very useful at deposition.

There have been many books written about how to conduct depositions. The most important factor about taking a doctor's deposition has, in my opinion, been the experience of the attorney doing the questioning. Anyone can read from a list of prepared questions. It takes an experienced attorney to listen to the answers and know where you want to go and then develop a strategy on how to get there while protecting your client's rights to the best of your ability.

10 Facts Your New York Personal Injury and Medical Malpractice Attorney May Not Tell You

By: Gerry Oginski

10 Facts Your New York Personal Injury and Medical Malpractice Attorney May Not Tell You By: Gerry Oginski, Esq.

1. Your lawsuit is not guaranteed to win or get you money. Even with a good experienced attorney, you may still lose.

a. This is true whether you have a great case, or even a bad case.

b. No one can predict the outcome of your case, even if you have all of your 'ducks lined up'.

c. An experienced attorney is a guide and your advocate. He will do the best he can to achieve victory for you. However, not every case is worthy of winning, and not every case is successful. Even an attorney with an impressive list of wins to his credit can tell you of cases that he has lost. Unfortunately, that's the risk that all parties take when a case goes to trial.

2. The true value of your case is unknown until every detail of your case has been evaluated by experts.

a. At the beginning of the case, your attorney must obtain all of your medical records.

b. He must evaluate liability in your case.

c. He must review all medicals and liability.

d. He then must have his expert(s) evaluate your case, from top to bottom.

e. He must do legal research to see what similar cases have settled for and what verdicts have been rendered in similar cases.

f. He needs to do a search of appellate cases to see how the appeals courts have addressed

these types of injuries.

g. He needs to know what economic losses you have suffered and what your doctors believe you will need for your future years.

3. You (the client) are obligated to pay me back for my litigation expenses, even if you lose your case.

a. This is true. However, most lawyers in New York who handle medical malpractice and personal injury do not ask the client to be repaid for all of their litigation expenses if the case is lost.

b. Can you imagine the indignity to a client after losing a trial, to be told, "By the way, you now owe me $25,000 for my expenses?"

4. If you have health insurance, and health insurance paid for your medical bills, in all likelihood, you will be required to reimburse your health insurance company most of those bills…from YOUR share of the settlement, not the attorney's share.

a. The reason is simple- Since you were the one who benefited from your health insurance company paying your bills (of course you paid those hefty premiums for this benefit) any money you recover, is repaid directly from your share.

b. Your share- that means that you don't get your money until your insurance company gets their share first. Then and only then will you receive your settlement check.

5. If you bring a lawsuit on behalf of your child, any money that is awarded to your child CANNOT BE TOUCHED until he or she turns 18 years of age.

a. This is to protect your child's money, plain and simple.

b. All too often, parents, most of whom are good intentioned and some who are not, have tried to take hold of their children's money to use for their own purposes and debts. The Courts of New York refuse to make any exception to this rule.

c. Years ago, lawyers were only permitted to place this money into Savings Banks, where the money laid dormant earning minimal interest until the child turned 18 and it was withdrawn.

d. Nowadays there are usually better investment vehicles that will preserve the child's capital, and at the same time generate better investment returns than typically found in a savings account.

6. If your lawyer screws up your case or makes a mistake, he is obligated to disclose the mistake to you and advise you to either file a claim against his insurance company, or advise you to seek counsel with another attorney.

a. The reason this disclosure is advocated is that if a lawyer screws up, the client will usually not know of the problem until much later. By that time, it may be too late to file a claim against the attorney.

b. The attorney is not supposed to gain or shield himself from such legal wrongdoing.

c. If you make a mistake, own up to it. Tell the client about it. Advise them of their rights at that point.

7. All lawyers in New York are required to take continuing legal education classes to keep up to date on legal changes.

a. It makes sense. You don't want to have a lawyer who's 'out of touch' with what the law is,

you want someone who is current on the law, and how it applies to your case.

b. Generally, a lawyer is required to take 24 credits of classes over a two year period.

8. "Let's sue everyone we can think of, then we'll figure out who's really responsible later."

a. If this is your attorney telling you this, I'd think twice about his or her ability and ethical obligations.

b. If a lawsuit is started against someone without having a valid basis to do so, this could be considered frivolous litigation, and might subject the attorney and client to sanctions and fines. Make sure you know who you're suing and why.

9. If you lie about the facts of your case, or about the extent of your injuries, I am out of here.

a. If I find out that you have lied about material items concerning liability or damages, I will be first on line in Court asking to be removed from your case.

b. You must tell the truth about what happened to you, and how your injuries have disabled you.

10. Even though I tell you I pay all of the litigation expenses, there may come a time when I might ask you to pay for them, otherwise I will not continue on your case.

a. The lawyer says he pays all expenses on his dime.

b. At the end of the case, when and if money is obtained for you, the lawyer is reimbursed for his expenses.

c. In a few rare instances I have seen an attorney ask the client to directly pay for their experts to come into trial, since new information indicates that the chances of winning the case are slim to none. In those cases, the attorney wanted to cut his losses and told the client, if you don't pay for the experts yourselves, "I'm asking the Court to release me as your attorney."

d. The bottom line- ask your lawyer whether this might ever happen.

When is a Settlement Not a Settlement?

By: Gerry Oginski

When it's not recorded in 'open court', or when the injured victim dies before he receives the settlement check, and the terms of the settlement were never clearly laid out by either side.

Usually a settlement is reached among the attorneys or in Court with the assistance of the Judge. Where there is a verbal agreement between the attorneys as to the terms of the settlement, the victim's lawyer will usually confirm those details in a written letter to the defense attorney. If a settlement is reached during trial, or at a pre-trial conference, the preferred method of settling the case is to 'put the settlement on the record'. This means that a court reporter is called to the courtroom or Judge's chambers, and the terms of the settlement are recorded and agreed to by all parties and later transcribed by the court reporter.

Why is this important you ask?

Because a settlement is not a settlement until and unless these rules are followed. Many

attorneys are guided by principles of fairness and doing what's right for their clients. However, let's look at the following case where all sense of fairness was discarded.

A lawsuit was brought for a child who was injured at birth. At some point during the lawsuit an offer was made by the defense, and the offer was accepted by the child's parents. In a child's case, a Judge must always approve any settlement involving a child. Let's also assume that the attorneys confirmed their intention to settle in writing subject to the approval of the Court.

This would be just fine if the Court had processed the paperwork quickly and a settlement check had been forwarded without delay. Unfortunately in this case, the Court delayed (unintentionally) processing the paperwork. Also, because the child was so severely injured his life expectancy was very limited. Between the time that the attorneys reached an agreement to settle the case and the time that the Court actually approved the settlement, the child died.

You would think that this story has a happy ending, but it doesn't. The child's lawyer notified the defense that the child died, and also sent the Courts' approval of the settlement. Now here's the worst part: the insurance company recognized a way out of having to pay this large settlement by claiming that there was never any proper settlement in the first place!

The insurance company refused to pay, claiming that since the child had died, the agreement that was reached at the time was no longer valid, and absent a Court order, they were not paying a dime!

If that type of tactic doesn't outrage you, it should. Remember, an insurance company isn't in business to pay claims. Rather, they're in business to make profit. Here's a case where the insurance company had an agreement to settle a case and pay the child and his family money to compensate him for his injuries; the attorneys acknowledged in writing to each other the offer and acceptance; and the Court was in the process of approving the settlement. Isn't that enough to confirm there was a settlement?

Not according to the Court. The decision made it clear that although there was an intent to settle the case, the fact that the parties did not follow the 'rules' to settle a case and make the settlement legally binding meant that the insurance company was now totally off the hook.

This is an unbelievable and unjust result for an injured victim and his helpless family. This decision means that the family must now pursue a legal malpractice claim against their own attorney for not settling their case in open court, or setting out the specific details and terms of the agreement in proper form signed by all parties.

What's the moral of the story? If you settle a case make sure your attorney does it in Court, and makes a record of it. If it's not done in Court, make sure all the specific terms of the settlement are clearly spelled out in a written document signed by all the lawyers. Finally, make sure there is a clause in this agreement that says that the terms of the settlement are binding regardless of whether the injured victim is alive, or has died in the interim. If the plaintiff's lawyer had confirmed all the settlement details in his letter, and included this clause, he likely wouldn't have had a problem.

I'll bet the insurance company lawyer got a bonus for finding that loophole and outsmarting everyone on that case. How's that for a sense of fairness?

CAMP INJURIES- 7 Things You Must Know

By: Gerry Oginski

WHEN AN INJURY HAPPENS AT CAMP, HERE'S WHAT YOU NEED TO KNOW:

The call you never want to hear is made to your home…

"Your son was injured in the dining room…he fell through a window…"
"Your daughter was burned with hot coffee in the dining area…"
"Your child was hit in the head with a baseball…"
"Some kids were horsing around and your son broke his leg…"

Where do you turn? What do you do? Here's a checklist of what you need to do immediately:

1. Find out exactly where your child is now. Make sure he or she is receiving the appropriate emergency medical care. This is no time for accusations or recriminations…that's for later. DO NOT YELL, KICK OR SCREAM AT THE JUNIOR COUNSELLORS who may have been involved in your child's injury. This will get you nowhere. They will become defensive as they are young and inexperienced, and most often do not yet know how to accept responsibility for bad outcomes while on their watch.

2. Find out what happened from the Head Counsellor, not the junior counselor who should have been watching the kids. Make notes of your conversation with whomever you speak to.

3. Demand that this incident be investigated immediately, and that an incident report and witness statements be obtained right away.

4. Demand that you receive a call back later that day from the head of the camp or the Head Counsellor with all the details of the incident.

5. If your child is at sleep-away camp, find out if your child is being admitted to a hospital; if so, make arrangements to get there as soon as possible. Ask for the name of the specialist who will treat him.

6. Make sure you keep all medical and hospital bills. In many cases, depending on the facts, you will be submitting them to the camp later for reimbursement.

7. Once your child's health is stabilized, then start to focus on why this accident happened; why the counselors were not paying attention; why the kids were permitted to horse around; why there was loose glass in the dining area; and importantly, could this have been prevented?

As parents we know that accidents do happen. However, there are many times where the accident was foreseeable and steps should have been taken to prevent these accidents from happening. We send our children to camp to have an enjoyable, safe, friendly environment where their memories will last a lifetime. We don't want them to have nightmares about something that should never have happened.

When an accident happens, you need to ask lots of questions. Then you need to speak to an attorney with experience handling accident cases in order to protect your child's rights.

Slip & Fall On Snow Or Ice - Can You Get Money For Your Injuries?

By: Gerry Oginski

SNOW & ICE INJURIES

Winter time inevitably causes people to slip on snow and ice. They don't wear the right shoes or boots, the driveway wasn't plowed and the street wasn't sanded. If you fall and injure yourself while slipping on snow or ice, can you be compensated (get money) for your injuries?

The short answer is maybe. In any snow and ice case we look to see what the condition was like at the time you fell. If it was the middle of a blizzard and nobody had time to clear the parking lot in the middle of the night, it's not looking good to be able to prove that the owner of the property should have taken steps to clear the lot of snow and ice. The key to proving liability in a snow and ice case is whether the owner of the property knew of a dangerous condition and failed to timely act to correct it. This is called 'notice'. If the owner didn't know about a dangerous condition, how can he be held responsible for your injuries? He won't be. But, what if the icy condition existed for a few days or weeks? Everybody who lived nearby always saw the ice and nobody ever salted or sanded the ice. In that situation we would argue that the owner of the property knew, or should have known, that there was a dangerous and icy condition on his property.

What if someone actually tells the owner of the property about an icy area of his lot and he doesn't do anything to fix the problem? Well, as long as nobody gets hurt, he's avoided a lawsuit. However, if someone does get injured at that location, after someone has specifically notified him of a dangerous condition, and he fails to correct the danger, then in all probability he will be held responsible for failing to prevent injuries at that location.

Sometimes, the owner hires a snow removal company (a snow plow) to plow the driveway, street, sidewalk or parking lot. In some cases, these snow plow companies don't do a good job and leave piles of snow in areas where they will melt, re-freeze, and then create sheets of ice throughout the property. If the snow plow or property owner knew that putting all that snow at the top of the hill wasn't a good location, there are some cases where the owner or snow plow operator will be held responsible for your injuries.

If you fall and are injured during the winter months it is very important that you do three things:

(1) Look around to see what you slipped on. Take a mental note about the conditions where you fell and the surrounding conditions.

(2) When possible, get photographs of the condition as soon as possible after you fell. This will preserve evidence of what the area looked like when you fell. Make sure you take at least an entire roll of film, from all different angles. Don't just take a picture of the ice. Look for a street sign, a building, and an address that can also get in the picture. This way you can positively identify the location where you fell, at a later date. If you use a digital camera do not ever make any changes or alterations to your photos when you provide them to your attorney.

(3) If you don't go to the hospital or a doctor immediately, you should report your accident to the owner of the property to put them on notice of your accident.

Injuries from slipping on ice or snow can be very serious and can include broken bones and the need for surgery. Take time to think whether this could have been prevented. Or was your fall simple carelessness that could have been prevented if you were paying attention to where you were walking? The answer is sometimes difficult to answer. That's why an experienced injury attorney can help guide you and advise you about your legal rights. The longer you wait to speak to an attorney, the greater chance you have of forgetting important information that could help you in a potential case.

The best advice is to be careful while outside and to make sure you're wearing the right winter gear. But even that doesn't always prevent an injury.

Ice skating injuries - They happen. It's a fact. Even to experienced skaters. You will always see big signs posted at every entrance to every skating rink in New York that ice skating is a

dangerous sport. The warning will say that you “Skate at your own risk.” That is the same as saying buyer beware!

We know that many sports are inherently dangerous, yet millions of people aren’t going to stop participating in dangerous sports just because of the obvious dangers. Just the other day, Newsday reported on a tragedy involving a 15 year old girl who died while snowtubing at Killington Ski Resort in Vermont. Importantly, this girl and her teenage friends were on a skiing slope that had already closed for the day. The incident happened at 7:00 p.m., and the key fact here is that the slopes closed at 4:00 p.m. There were signs posted all across the ski resort that slopes were off limits after 4:00 p.m. because of snowmaking and snow grooming activities. Also, there was no snowtubing allowed on any ski slope.

What happened? The girl could not control the snowtube and went off the trail, tragically causing her death. Is the resort responsible for her untimely death? In all likelihood the answer is no. She engaged in a dangerous activity, in a prohibited and restricted area. The snowtube is uncontrollable- which is what makes it so much fun. However, snowtubes are typically used in special areas or chutes designed to keep the tubes in a runway style area, so that there is no way to run off a trail.

Many people have tried to sue skating rinks and ski resorts for injuries they suffered while engaging in these fun filled but dangerous activities. Most have failed. On occasion there have been successes, but those are the exceptions. Where you actively choose to engage in a dangerous activity and disregard the hazards and dangers associated with that activity (rock climbing, water skiing, sky diving), you run the risk of injury and the chance that you will not be able to bring a successful lawsuit for your injuries. But remember, every case is different. Let an experienced injury attorney evaluate your own case.

Be careful out there this winter, and have fun while you can.

In a personal injury lawsuit, will I have to be examined by a doctor for the other side?

By: Gerry Oginski

Q: During my case, will I have to be examined by a doctor for the defense?

A: In almost every type of injury case the answer is yes. When you put your medical condition in issue, and you claim you were injured because of another's wrongdoing, the defense has a right to have you examined by a doctor of their choosing. This allegedly (at least in theory) allows them to evaluate your current medical condition to see for themselves whether you are truly as disabled as you claim to be.

The reality is that there are many doctors who are routinely used by various insurance companies to perform "Independent medical exams." This term is really a farce, since there is nothing "Independent" about this exam. The defense insurance company selects this doctor. They send him your records. They pay his fee for the exam. In some cases, the referrals to doctors for these types of exams will make up the bulk of a doctor's practice. In that instance don't you think that the doctor is more likely to MINIMIZE your injuries, and make the defendant's position better, so as to encourage the insurance company to keep sending patients to the doctor to examine?

If the doctor gave an unbiased, totally objective medical opinion in every instance, I am pretty sure that many of the monetary offers by insurance companies would be much fairer and higher than they currently are. Remember, insurance companies are in business to MAKE MONEY. Not to give it away. Also, these doctors who are doing these exams see the patient only one time; and not for treatment. They don't have the benefit of seeing the patient many times, over a period of weeks, months or even years. There is no real relationship that

develops during this solitary exam. How can a physican realistically evaluate someone's medical condition without the benefit of seeing and evaluating them over time?

Slip & Fall - The 10 Most Important Things You Need To Know If You Slip and Fall in NYC

By: Gerry Oginski

Q: What are the top 10 most important things you need to know if I slip and fall?

A: 1. What was the weather like on the day you fell?
2. What were you wearing on your feet?
3. Do you wear eyeglasses?
4. Do you have a history of dizziness or falling?
5. Are you taking any medications that make you dizzy?
6. What did you slip or trip on?
7. After you fell, did you see what it was that you fell on?
8. Were there any witnesses to your fall?
9. Did you file an accident report with the owner of the property, or with the police?
10. How long do you think the dangerous condition existed before you fell?

Q: I slipped and fell on a city sidewalk and broke my leg. Do I have a case?

A: The key question is whether the City had 'notice' of the defect you fell over. Did they know about the condition and fail to fix it in time to prevent your accident? If they didn't have actual written notice, was the defect large and significant enough so that they should have known about it?

The answer to those questions will help determine whether we are able to prove that the City was responsible for your injuries. Remember, there may have been construction in the area where you fell that may have contributed to creating the defect you fell over.

With a claim against the City, you must file a notice of claim within 90 days of the date of the incident! This must be done correctly to protect your legal rights.

Why Are Some Settlements Confidential?

By: Gerry Oginski

Q: Why are some settlements confidential?

A: In some cases, insurance companies may offer a settlement before trial. Sometimes, in an effort to resolve the case, as an incentive they will offer an amount of money that is acceptable to the injured victim. But, in some instances, the insurance company wants an assurance that the terms of the settlement are not revealed.

They do this for two reasons. Neither one of which is out of the goodness of their heart. The first reason is that they don't want publicity associated with a settlement. Publicity about an insurance company paying money to an injured victim is never good for them especially since they earn their money by KEEPING their money, not giving it away.

Second, is that other attorneys with similar cases will never learn that the insurance company paid out a certain amount is a specific type of case. So, when the next lawyer tries to negotiate a case with the insurance company, he or she won't be able to say "You paid 'x'

dollars on the Jones case, so therefore you have to pay at least that amount on this case."

Sometimes, the only way an insurance company will offer such a settlement is on the condition that the terms of the agreement be confidential. Otherwise, there might be no settlement, and the case would proceed to trial.

A client might be willing to agree to this restriction if it were in their best interests. Some clients want to publicize the damage and injuries they suffered as well as any compensation they received for their injuries. In that instance a confidential settlement agreement would not be advisable.

Bankruptcy - In New York, Can I Bring a Lawsuit for my Injuries and Keep all the Proceeds?

By: Gerry Oginski

Q: If I recently declared bankruptcy, can I bring a lawsuit for my injuries and then keep all the proceeds? My injuries have nothing to do with my bankrupcty, right?

A: Wrong. When you declare bankruptcy, you are required by law to list all your assets with the Court. If you even suspect that you might have a potential lawsuit (malpractice or personal injury case) you must list that as a potential asset. If you inadvertantly neglect to put this potential asset on your list, and you go to an attorney (and don't tell him about your bankruptcy) who then starts your lawsuit, the defense has an absolute right to get a Court order to dismiss your case. (They will definitely learn about your bankruptcy sooner or later.) The reason is simple. When you declare bankruptcy, your bankruptcy 'estate' is no longer yours. A bankruptcy 'trustee' (a Court appointed lawyer) supervises how your assets are distributed - with Court approval.

Once you have declared bankruptcy, you are no longer legally capable of starting a lawsuit in your own name. The case must be started in the name of the bankruptcy trustee who must then hire an outside lawyer expereienced in malpractice or personal injury to handle your matter. If you are actually awarded money, either by a settlement or verdict, your attorney will receive a fee, the bankrupcty trustee will receive a fee, your creditors will be paid, and you will receive the remaining monies (in most cases) if there is any left to be distributed.

IF YOU HAVE DECLARED BANKRUPTCY WITHIN 10 YEARS, YOU MUST LET YOUR ATTORNEY KNOW THIS BEFORE YOU START ANY LAWSUIT.

What Is A Deposition and Will I Have To Testify?

By: Gerry Oginski

Q: What is a deposition, and will I have to testify at a deposition?

A: First, a deposition is a question and answer session where you will swear (or affirm) to tell the truth. The questions and answers are recorded by a Court stenographer, who will later transcribe all of the questions and answers into a booklet.

If you are bringing a lawsuit for injuries you or your loved one suffered then you will be required to testify about your knowledge of the events and your knowledge of the injuries. You will also be asked questions about how those injuries have affected you (or your loved one) and what treatment you've received to treat those injuries.

The attorney(s) for the people you have sued will be questioning you, usually in my office. Sometimes, because of an inability to travel, we can accomodate the injured victim and conduct the deposition closer to their home. Naturally, I will be there with you every step of the way.

Prior to your 'deposition' you will meet with me, either on the day you are scheduled to be asked questions, or on a scheduled day before the deposition. During that meeting, I will prepare you extensively about what you can expect will be asked of you by the other attorney(s). By the time we have finished our meeting, you will be aware of practically all the types of questions you will likely be asked by our adversaries.

During the deposition, if you have any questions or concerns, we can take a break and discuss them in the privacy of my office.

Once your deposition session is finished, you can expect to receive a copy of the booklet that contains all of the questions and answers asked and given. You will also receive special instructions about how you must review the transcript for any errors, and what to do if you find factual or typgraphical errors.

On another date, I will have an opportunity to then question the 'defendant' (the party that you have sued) to determine from them what happened and why. You are welcome to attend the defendant's deposition with me, however there are some instances where I will advise against being there, and in some instances I will encourage the client to accompany me.

If You've Been Injured, Do You Even Need A Lawyer?

By: Gerry Oginski

Q: Do I even need an attorney to represent me in my claim with the insurance company?

A: No you don't. Some claims, and some injuries don't even warrant an attorney's involvment. But...many do. How will you know the true value of your injuries? How will you know whether the insurance adjuster who makes you a first offer is doing the right thing? How do you know whether the insurance adjuster is simply trying to save his company money by low-balling you and giving you a take-it-or-leave-it offer? How will you know what your options are if you choose not to accept the insurance company's offer? What can you do to maximize the amount the insurance company offers you for your injuries? Do you need further medical care for your injuries in the future? Have you considered who will pay for future medical expenses for injuries caused in this particular accident?

What happens if you have a recurrence of your injury weeks, months or years from now? Will the insurance company re-open this case and agree to pay me more later? Why is the insurance adjuster so willing to settle my case now? Why did they just send me a check for my injuries? Should I cash it? What will happen if I cash this check? Can I go back to them for more if needed, or is this it?

The bottom line is that you may not need an attorney at all. If you have experience with insurance adjusters, and you know the true value and extent of your injuries, then you just might be better off negotiating directly with the adjuster. BUT, if you don't...then I'd strongly recommend speaking with an injury attorney who has many years of experience dealing with these exact types of cases.

For example, if you needed eye surgery, you wouldn't go see your family doctor for treatment. If you need brain surgery, you don't rely on a skin doctor to treat your condition. Many attorneys have focused and limited their practice to just a few areas of the law. Lawyers in New York are not permitted to say they are "specialists" in any particular field of law. However, we are permitted to tell you how extensive our experience is in the areas of law that

we do practice. We can also tell you how we have helped other similar clients, even though their experiences may not reflect what we can do for you. Again, beware of attorneys who claim they practice many different areas of law. It's very difficult to be good at everything.

The best thing you can do when faced with an injury caused by someone's carelessness is to become informed. Find out as much as possible about the attorney, the law firm, the facts of your case, your medical condition, the procedures you need to go through to process your claim, and what your legal options are. Only by becoming fully informed about your options will you be able to make an informed decision about which legal road you will take. Beware of the legal minefields when handling your own case. In case you need it, find an attorney who can guide you through those legal minefields and avoid the traps that experienced attorneys commonly see.

Legal Ethics - Is it proper for a NY lawyer to solicit an accident victim after a car crash?

By: Gerry Oginski

Q: My mother was in a car accident last week, and already she's gotten letters from lawyers asking if she's ok, and if she wants a lawyer? Is it ethical for a lawyer to send such a letter?

A: First, I hope she is feeling better. Second, in limited circumstances in New York, it may be acceptable for an attorney to send such a letter to a victim of an accident. The majority of lawyers feel such a letter to a victims' home is demeaning and degrading. Some lawyers feel this is nothing but a solicitation, which is clearly not permitted in New York. Other attorneys (the ones who send these letters) feel that it may be their only chance to entice the injured victim to come to them as a client.

The letter is supposed to only offer them legal assistance and guidance- should they want it. Again, how do you choose which attorney to use when you're inundated with a flood of letters from different lawyers promising to help you with your accident claim?

The answer is simpler than you think. Ask yourself why a an attorney would even bother to send such a letter. Are they really that desperate to need to send such a letter? How did they get your name anyway? I'll tell you how- maybe it came from the tow truck operator who took your car away. Maybe it was from an ambulance technician. Maybe it was from a police blotter at the police station. (That's public information that many investigators working for lawyers troll for in various police stations).

Ask yourself another question. Do you let a stranger into your house simply because he says he saw you need a paint job, and amazingly, he's a painter who is willing to paint your house for a great price? Did you call him? No. Did you seek out other customers of his to determine if he's reliable and professional? No. He just showed up while trolling through the neighborhood. Is this the type of painter you want working in your house? I don't think so.

The same rationale holds true for a lawyer that sends you an unsolicited letter following an accident. What do you know about that lawyer? Probably nothing. Does that mean that he (or she) isn't a good lawyer? No. But, again, think who you want for your attorney. Does it help knowing that your lawyer gets many cases this way, by sending out unsolicited lawyer letters hoping that a few unknowing people will answer the letter? The choice, as always is yours. Make an informed choice.

Plastic Surgery - Can I bring a lawsuit against my surgeon if he destroyed my breasts?

By: Gerry Oginski

Q: I just had a breast implants put in and I don't like the way they came out. Can I bring a lawsuit against my plastic surgeon if he won't fix them for free?

A: There are two issues here. The first is your unhappiness with the result of the breast implants. The second is whether you can sue if he does not repair the first result for free.

First- the fact that you had breast implants suggests that you were not satisfied with your physical appearance to begin with. Breast implant and plastic surgery cases are inherently bad cases for me to take because they involve subjective feelings, opinions and impressions by the patient. Specifically, the patient is not happy with how they appear initially, and after the procedure, they are still not happy with the result. Just because you are unsatisfied with the breast surgery results does not mean that there was evidence of malpractice.

There are always risks associated with any surgery. I am positive that your plastic surgeon gave you a detailed form called an Informed Consent sheet that described the procedure. You may have also been given brochures or reading material describing the risks, benefits and alternatives to this breast surgery you were going to have. Again, I assume that since you went forward with the surgery, you signed this consent and recognized that there was a possibility the outcome might not be perfect.

The second point is that you must address your displeasure with your plastic surgeon. There are times when the doctor will agree to revise the procedure at no cost to you. At other times the doctor believes he or she did a good job, but other factors contributed to the poor outcome, and he may not be agreeable to revise the procedure for free.

Remember, you are free to bring a lawsuit, but the question is whether your case really has merit, and whether it is financially beneficial for you and your attorney to proceed.

In my opinion, I do not accept plastic surgery cases unless it is clear, based upon expert medical review, that there are departures from good care (not just that the patient is unhappy with the outcome of their boob job, or nose job), that the departures were a substantial factor in causing injury, and that the injury is permanent.

Slip & Fall - The 10 Most Important Things You Need To Know If You Slip and Fall in NYC

By: Gerry Oginski

Q: What are the top 10 most important things you need to know if I slip and fall?

A: 1. What was the weather like on the day you fell?
2. What were you wearing on your feet?
3. Do you wear eyeglasses?
4. Do you have a history of dizziness or falling?
5. Are you taking any medications that make you dizzy?
6. What did you slip or trip on?
7. After you fell, did you see what it was that you fell on?
8. Were there any witnesses to your fall?
9. Did you file an accident report with the owner of the property, or with the police?
10. How long do you think the dangerous condition existed before you fell?

Q: I slipped and fell on a city sidewalk and broke my leg. Do I have a case?

A: The key question is whether the City had 'notice' of the defect you fell over. Did they know about the condition and fail to fix it in time to prevent your accident? If they didn't have actual

written notice, was the defect large and significant enough so that they should have known about it?

The answer to those questions will help determine whether we are able to prove that the City was responsible for your injuries. Remember, there may have been construction in the area where you fell that may have contributed to creating the defect you fell over.

With a claim against the City, you must file a notice of claim within 90 days of the date of the incident! This must be done correctly to protect your legal rights.

Depositions- Can I Be In the Room When You Question The Doctor Who Botched My Surgery?

By: Gerry Oginski

Q: When you question my doctor at a deposition, can I be present? Can I ask questions too?

A: During a lawsuit, each side gets to question the other side during a procedure called a deposition. (It's also called an examination before trial- EBT). During a deposition, it's an opportunity for me to get specific answers about what happened to you or your loved one. There are important strategies used by experienced trial lawyers when questioning a doctor in your case.

Not only are we trying to establish facts, as the doctor recalls them, but are also attempting to lock the doctor into a position about what was done for you, and why. I will always ask the doctor to read his treatment record, and then have him or her explain the reasons for treating you the way he did.

As a victim or family member of a loved one involved in the case, you are always welcome to be present when I question the doctor at his deposition. However, I must caution you that sitting across from the person whom you believe caused you or your family serious harm is very unsettling. The urge to reach across the table and do something physical is ever-present. The urge to verbally respond to a comment by the doctor is also very strong. Please remember, if you wish to be present, you can. BUT, the focus and emphasis is on questioning the doctor, NOT your desire to give him or her a piece of your mind.

If you have certain questions you feel are important to your case, by all means discuss them with me before the deposition. You will not be permitted to ask questions yourself.

Importantly, if you choose not to be present when I question the doctor...not to worry. I can send you a copy of the transcript so you can read it at your leisure. In my experience, 99 times out of 100, my client will choose not to be present during a doctor's deposition.

Failure To Diagnose Lung Cancer- The Ten Most Imporant Things Your Lawyer Needs To Know

By: Gerry Oginski

Lung cancer is deadly. The earlier you diagnose and treat it, the better off you'll be- hopefully.

Depending upon the type of cancer and when it's diagnosed, will determine your treatment options and survivability. Believe it or not, you don't have to smoke to get lung cancer. There's second hand smoke, there's carcinogen's in our environment, and our work

environments may have something to do with it.

As a lawyer, when a client comes to me wondering if their lung cancer could have been detected earlier, I need to know the following important answers:

1. Were you under the care of an internist, or any physician, during the time you believe you should have been diagnosed?

2. Did you make any complaints to your doctor that should have warranted a chest x-ray?

3. Does anyone in your family have a history of cancer, especially lung cancer?

4. What type of lung cancer were you diagnosed with?

5. What stage of lung cancer were you diagnosed with? (The stages are typically from Stage 0 to Stage IV, with IV being the most severe and deadly.)

6. How much time went by from when you believe you should have been diagnosed, until the actual diagnosis was made?

7. Did you ask your treating cancer specialist (an oncologist) if your outcome would be different if the cancer had been detected 'x' years ago? (This is very important, since different types of cancer have different growth patterns. Some are slow growing, and some are fast growing. If you have a slow growing tumor, and had made complaints that suggested the need for further follow-up and x-rays, you might have the basis for a case.)

8. What is your prognosis? (What do the doctors think about your survivability and the treatment still available to you?

9. Are you a smoker?

10. What type of cancer have you been diagnosed with?

Then, with all of that information, I must obtain your medical records, x-rays, CAT scans, and other information, and have a medical expert (preferrably a pulmonary specialist) review your records.

This expert will determine whether the standards of care in New York were breached, and if so, whether those departures from good care caused and contributed to your injuries. All of those elements must be present in order to start a lawsuit on your behalf. If any one of those elements is missing, it is impossible to prosecute a case for you.

What Does Speed, Time and Distance Have to Do with My Car Accident Case?

By: Gerry Oginski

Everything. In order to evaluate liability, a trial lawyer must be able to figure out your speed, the time it took to arrive at the accident point and the distance you travelled from one point to another.

We only need two out of the three elements to figure out the third. For example, if you travelled 100 feet in 10 seconds, we can easily calculate your speed. If you were travelling at 50 miles per hour, and you drove 1/4 mile, we can calculate exactly how long it took for you to travel that distance.

Speed, time and distance are crucial in determining liability in your case. What do you think the outcome would be in a case if you didn't exactly know your speed, and you testified that

you were travelling at 10 miles per hour, and it took you 2 minutes to travel 100 feet. Obviously, the numbers you recall or estimate are not accurate because they are totally inconsistent with physics.

Keep in mind that it's not always crucial for you to know exactly all the details involved in your accident. There are usually other witnesses involved who can add to whatever information you have. Anyway, when your credibility is at stake, you must tell the truth, and understand that while driving you are not looking to calculate speed, time and distance in anticipation of a pending accident or lawsuit.

Is A Doctor's Past Legal History Admissibile In My Current Lawsuit?

By: Gerry Oginski

In New York, if my doctor has been sued, and I bring a lawsuit against him now, can I use his prior cases against him at trial to show how bad he really is?

The quick answer is no, you can't. Remember, just because someone has brought a lawsuit in the past, doesn't necessarily establish that he/she is responsible for the patient's injuries. The facts of each case are very important. The previous case may have nothing to do with the type of claim you intend on bringing.

Even if the cases were somewhat similar, New York law does not allow us to use the prior case to establish that this particular doctor was responsible for your injuries in your case. In some limited instances, we might be able to prove habit or a pattern of behavior. For the most part, we cannot use it.

For example, if you get a ticket for running a red light and the following week get pulled over for driving over the speed limit- the fact that you had a prior ticket for running a red light has nothing to do with whether you were speeding one week later.

Does that mean it has no value? Absolutely not. When we investigate a case, we look to see if the doctor has been sued before, who was sued with him, who the attorneys were, and what the outcome of the case was. In some cases, we contact the attorneys who represented the patient to inquire about the facts of their case, to see if there are any similarities with your case.

If we know that a doctor has a history of being sued, we use it to negotiate a better settlement for you, as the doctor's insurance company will surely have information about the doctor's lawsuit history.

What Does It Mean If A Doctor Is Board Certified?

By: Gerry Oginski

What does it mean if a doctor is board certified?

A: It means they have completed a training program after going to medical school, and they have taken certification examinations to determine their proficiency in a particular specialty of medicine.

Generally in the United States, doctors go to medical school for 4 years. After medical school, they will then go on for further post-graduate training at a hospital. This is known as an internship/residency. The intership is their 1st year of training after medical school. After that

1st year, many hospitals consider the doctors to be in their residency. [This term comes from when doctors had to live on the hospital campus and literally be available day or night]. The length of a residency varies from 3 years up to 7 years depending on the specialty. During a doctor's internship & residency, they are employees of the hospital, and are [supposed to be] working under the supervision of an attending [senior] physician. In theory it sounds nice, but it doesn't always work in reality- especially in large municipal hospitals where the volume of patients can be overwhelming.

After the doctor completes their accredited internship/residency, then they go out into the 'real' world and start practicing medicine- either in a group practice, a solo practice, or with a hospital. In many specialties, the doctor must complete 2 years of practice (called clinical practice) before becoming eligible to take their board certification exam.

A board certification exam is a national exam, given to doctors in a specialty to test their knowledge and experience. If a doctor fails their board exam, they can retake it at a later date. Interestingly, they can continue to practice medicine in New York, without being board certified.

As long as the doctor is licensed to practice medicine, they can practice anywhere they choose. A doctor does not need to be board certified to practice medicine in New York. As a patient seeking medical services, you should ask your doctor whether they are board certified, because this establishes the basic minimum standards that the doctor must meet before being able to say that they are 'board certified'. If your doctor has not passed his boards, then you know that there was some deficiency with his/her ability to pass the exam.

Warning:
There are good doctors who are not board certified who are practicing medicine in New York. Likewise, there are board certified doctors who may not be good doctors. Just because someone is board certified does not mean that they were not careless at a given point in time, nor does it mean that they are not responsible for injuries they may have caused you.

Why You Shouldn't Rely on a Lawyer Who Tells You Your Case Is Worth Millions

By: Gerry Oginski

I went to two other lawyers before coming to you. Each of them told me my case was worth millions. Why aren't you telling me the same thing?

A: Simple. What those lawyers did was tell you something they could never guarantee.

There is no way for them to know how much money they could obtain for you, especially before any case is started on your behalf. Even if I were to give you a number that I believe you are entitled to, it would be absolutely wrong. I could give you a wildly outrageous number or a very small number. Both would be wrong.

At the beginning, there is so much information to obtain about your injuries, your medical records and how your injuries have affected you that it is impossible to tell you what your case is really worth at the outset.

It's true that there are similar cases that we may know the value of, but remember, each case is different, and each case has different facts that can make it difficult to compare with yours.

The job of a good lawyer is to gather ALL of your information, and then formulate the chances and likelihood of success of your case. A lawyer who does that stands a much better chance of explaining to a client the approximate value of their case.

I'll let you in on a little secret. I suspect that those other attorneys who told you your case was worth millions did so primarily to have you sign up with them as opposed to going to another attorney.

No matter what any lawyer says, it is impossible to guarantee such a result. If you don't believe me, just ask the lawyer to put that promise in WRITING. See how quickly they backtrack when you ask them to do that!

What Does a 'Right of Subrogation' Mean?

By: Gerry Oginski

When you go to the doctor or hospital for injuries you received from an accident or malpractice, in all likelihood your health insurance company will be paying your medical bills. [This does not include car accidents, where your no-fault insurance company will be paying for your medical bills up to a certain dollar limit.]

If you continue to receive medical care for your injuries and those bills are paid by your health insurance company, then your health insurance company has a right to recover those monies that they paid for your medical care. Why? Because your injuries were caused by someone else. If you bring a lawsuit claiming pain and suffering and also that you incurred medical bills and you get money for your injuries- your health insurance company wants to be repaid.

Technically, your health insurer 'steps into your shoes' and can bring a claim against the insurance company of the person or hospital who caused you harm. They can obtain their money directly from them. Alternatively, the health insurance company can bring a claim against you, the injured victim saying that since you settled your case, you are obligated to repay us for what we already paid out to your doctors. This is the 'right of subrogation'. It appears in very small fine print in most every health insurance policy in New York.

Some policies are very specific and say, "If you bring a lawsuit to recover money for your injuries, and we have paid for your medical bills, we have a contractual right to be repaid." The Courts in New York have consistently permitted health insurance companies to intervene in pending injury lawsuits to allow the health insurer to recover money that they already paid.

Top Ten Things To Look For In A Medical Malpractice and Personal Injury Attorney

By: Gerry Oginski

Being injured is no fun. Not knowing where to turn, who to trust, and what to do about your medical bills is frustrating.

Most people will never need a malpractice lawyer. That's good. Most people will never need a personal injury lawyer, and that's good too. But there are folks who do get injured because of someone else's fault, and they're the ones who DO need an attorney.

Maybe you know of a friend of a cousin who was related to someone who knew an attorney. You could call him to ask him questions about your accident. Maybe you could look in the Yellow Pages and call someone who has a big ad. Maybe you could walk into a storefront lawyer's office, right off the street. Maybe you could call the 800 number on a billboard you saw. You could do all of these things and maybe you'd be ok. Then again, maybe not.

The purpose of this article is to provide you, the consumer, with information about what you need to know BEFORE you ever step into a lawyer's office. I know some lawyers who want to

wait till the client gets into their office to explain to them their options. This way they can show off how brilliant they are- and maybe they are. But why not give the client information about how to choose an attorney, and let the client make their choice about who to use.

But, how do you choose among the many lawyers who advertise for your attention? The answer is not an easy one. Remember, not every lawyer advertises. Of those that do, not all of them are trial lawyers. You must ask.

So, here are the top ten most important things you need to look for in a medical malpractice or personal injury lawyer:

1. **Experience**

How many years has the lawyer been in practice? The greater experience, the greater likelihood this lawyer has seen cases like yours, and knows how to handle your case.

2. **What type of firm does the lawyer have?**

Is he part of a big law firm, or is he a solo practitioner? Just because the lawyer works in a big firm doesn't necessarily mean it's better for you. Likewise, just because an attorney is a solo practitioner doesn't mean he's not capable of successfully handling your case.

There are many advantages to using a solo practitioner- you get individual, personalized attention; an attorney who knows everything about your case; an attorney who returns your calls promptly; and someone who doesn't take on more cases than he can manage.

With a large firm you might have multiple attorneys handling different aspects of your case; different attorneys appearing in Court for conferences; your phone calls may not be returned as quickly as you'd like- but at the same time a large firm might have more resources than a solo practitioner such as paralegals and associates.

Ask your prospective lawyer whether he delegates his work to his junior people, or does he do it all himself? Does he return your calls, or does the junior lawyer call you instead? Does the paralegal do all the paperwork, or does a lawyer do it?

3. **Where is the lawyer's office?**

This is important only for people who are solely concerned about convenience. Some lawyers have multiple offices. If you're concerned about going to someone whose office is in the City, and you live in the Suburbs, keep in mind that most likely, you will not need to physically go to his office more than a few times. He should be readily available by phone or email.

If travelling to an attorney's office is still a concern, ask whether the lawyer can travel to your home. Most attorneys will accomodate a client, if they are physically unable to travel. However, if the client is simply reluctant to travel, then there is a very important reason to have the prospective client come to the lawyer's office: (1) To see how the lawyer operates, and (2) So the lawyer can see how the client adjusts to being in an unfamiliar setting. This last part is vitally important to an attorney who evaluates you as a potential witness at trial.

4. **Do you email clients?**

Do you send regular updates by letter or email? If I have a quick question, can I email you instead of calling you on the phone?

5. **"When my case comes up for a deposition (a question and answer session with your lawyer and the lawyers for the people you have sued) will you be there with me, or will I have one of your junior associates?"**

This is very important. You're hiring a lawyer. Some people hire a law firm and don't care who works on their case. An injured victim SHOULD care, because they want to be treated with

resepect and attention they deserve. In some firms, the lawyer you meet with will not be the one who appears at your deposition with you. In fact, depending on how busy the law firm is, it's possible that the lawyer you meet with may not even try your case!

That's why you've got to ask: "Will you be there at my deposition?"

6. **"When my case comes up for trial, will you be there with me, or will I have one of your junior associates?"**

Again, this is a very important question. The lawyer you get to know at your first office visit may not be the lawyer who tries your case. You may only get to meet your trial lawyer a few months before your trial starts. I know many people who don't like that approach to lawyering, and others simply don't care. As an injured victim looking for a lawyer to represent their interests, I can only suggest that you should care.

However, keep in mind that there are law firms in New York, and elsewhere, that have dedicated trial lawyers. Their job is ONLY to try cases. Their other partners or associates handle the other parts of your case. In some other firms, you get one attorney and he (or she) handles your case from start to finish. Find out from your prospective attorney which one you can expect.

7. **ASK THIS QUESTION TO EVERY ATTORNEY YOU SPEAK TO: How much is my case worth?**

Why? Because there are some attorneys who will claim, on your very first visit that your case is worth a ton of money- some even say "Millions!" Others are not so cavalier, and take a more cautious approach.

If a lawyer tells you your case is worth Millions, ask him to put that in writing. Why? Because no lawyer can promise or guarantee any outcome to a client. Watch what happens when you ask that lawyer to put his 'guarantee' in writing. He'll quickly backtrack and make some excuse for not putting it in writing. Be careful of an attorney who makes such promises without thoroughly knowing all the facts of your case, and without having reviewed your records.

8. **What are your success stories? What's your record?**

It's important to know how an attorney has done in the past on other types of cases. What results has he achieved recently?

Obviously every case is different. But you still need to know whether he's ever achieved large settlements or verdicts. If the biggest case he ever handled was small claims court, then maybe this attorney isn't right for your type of case.

9. **Does he have a web site? Does he advertise?**

Does he have a presence on the internet? Why is this important? You want to know what type of material he has on his website. Is it a basic information card with bland material, or does he provide a reader with important information they need to know to educate them, BEFORE, they ever call him or walk into his office.

10. **Does the lawyer offer a prospective client free reports to educate them about their options BEFORE, they ever call?**

Ask if they have free reports about your type of case. Not some canned brochure that anyone can stamp their name on, but a real substantial report that discusses your type of case. Can the reports be obtained directly from the lawyers website, or by calling his office for a copy?

Knowing this information will make you a better informed consumer. Hiring a lawyer is an important part of learning about your legal rights. Ask lots of questions and

trust your instincts about any lawyer you speak to. Good luck.

Five Reasons Why Your Malpractice Case Won't Be Accepted By A New York Malpractice Lawyer

By: Gerry Oginski

1. We can't prove the doctor did something wrong.

What do I mean? In order to prove a malpractice case in New York, your lawyer must prove that your doctor or hospital departed from good medical care. Well, how do you prove that? By having a medical expert review your records and determine that there were departures from good care.

2. We can't prove that the wrongdoing caused injury.

In New York, we must show not only that there was wrongdoing (departures from good care) but also that the wrongdoing caused injury. Again, this must be proven by a medical expert who has reviewed all of your medical records. If this element is missing, we cannot successfully prove your case.

3. We can't prove that you suffered significant and permanent injury as a result of wrongdoing by a doctor or hospital.

What constitutes significant and permanent injury? An injury that disables you from doing your daily activities. Something that is permanent and is expected to last for a long time, like a scar. A fracture is considered significant. There are many other significant injuries and obviously injuries affect different people different ways. Your lawyer needs to see how your injuries have affected you and what the future holds for you.

4. You have lied about important facts in your case or your past.

If you lie to your attorney, and he finds out about it, in all likelihood, he will not accept your case. Honesty is the utmost of importance. If you feel you have certain information you don't want to disclose to him that's one thing. But to actively lie about past lawsuits or events that happened is a big no-no. Your attorney is obligated to keep your information confidential. Hold him to that obligation.

5. You insist on running the show and tying the attorneys hands by insisting what he can and cannot do.

This is the 'kiss of death' for a case. Where the client believes they know more than the attorney and knows best how to develop strategy in their case. In a lawsuit, your attorney is your legal advisor. He provides you with the best legal options available to you, and together you should be able to make the best choices for your case.

There are instances where the client will demand that the attorney do things that either are not proper, or unfounded, that if done would ruin your case. Remember, you must have faith and trust in your attorney. If not, then you might want to look for another lawyer to represent you.

These are five of the main reasons why your malpractice case will be rejected by a New York Medical Malpractice Attorney.

4 Things Your New York Injury Lawyer Looks For When

You Show Up In His Office

By: Gerry Oginski

When you need to find an injury lawyer, you need to ask lots of questions. You might meet with more than one attorney before you feel comfortable with your choice of lawyer.

When you arrive in his (or her) office, you look around, look at the diplomas on the wall, look at how the office is run, and look at the furnishings. What does this tell you? Does a messy office reveal a lawyer who can handle your case? Does a clean office mean your lawyer has no other clients? You don't know from the looks of it. Use your gut instinct to tell yourself whether you can put your trust and your case in his or her hands.

At the same time you are deciding whether this lawyer is the right one for you, the lawyer is also looking at you to see if you are the right client for him. Here's what a lawyer, practicing in New York will look for in a client.

1. Honesty.

The client must be straightforward and honest about what happened to them. They must let the attorney decide what facts and information are important. We don't want a client who is selective about what they say. We also need to know a client's past history; were there any skeletons in the closet? Any convictions? Any prior lawsuits? We need to know in order to better help you.

2. Presentation.

How does the client present themselves when they talk to you? Are they quiet? Are they loud? Are they well dressed? Do they look at you when they respond? Are they comfortable telling what happened?

This is very important, because your lawyer is looking to see what type of witness you will make if your case has merit and ultimately goes to trial.

3. A Desire To Seek Help- Not Vengenance

There are some clients who come into a lawyer's office so outraged that they were harmed by someone else that all they want is revenge. That's a normal, healthy feeling. There are other clients who come to us asking for help because they can't pay their medical bills or their mortgage because they can't work from their injuries.

A client who seeks revenge is volatile and unpredictable on the witness stand. That doesn't mean they don't have a valid case. It simply means that it's going to be tougher to help this type of client, because no matter what the lawyer does, it probably will never be enough.

A client who genuinely seeks help and compensation to right a wrong is the perfect type of client a lawyer seeks.

4. A Desire To Get Better, and Improve Themselves.

There are some clients who want to 'milk the system'. They're waiting for their payday and will simply sit home and wait until their settlement comes. For those folks, they live for their lawsuit.

For many others, the lawsuit is a means of support to pay their expenses, to be able to afford surgery to correct their problem, and as compensation for their suffering. The client who is doing everything possible to get their life back to normal, is the ideal type of client. Some people want to return to work, even if they're in pain. Others are content to stay at home and watch TV while recuperating.

As with all types of cases, each one is different, and each case has it's ups and downs. Next time you're deciding upon what lawyer to use, keep in mind that your lawyer is deciding whether he'll choose you too.

3 Things To Know When You Cross-Examine a Doctor at Trial

By: Gerry Oginski

Your client has accused a prominent doctor of malpractice. Her case goes to trial, and your first witness is the well-respected doctor. How do you cross-examine him?

1. Learn as much medicine as possible that's involved in the case.

You have to be a mini-expert on the medicine before ever getting up in Court to question the doctor. Read medical textbooks, medical literature, and use other physicians as experts to teach you the medicine.

2. Ask only leading direct questions.

You must keep a tight leash on any witness whom you cross-examine. If you ask an open-ended question ("Tell us why the patient bled to death Doctor...") you will suffer the dire consequences of a 10 minute lecture to the jury by this medical witness. Big mistake. You don't want the jury to see how educated and wonderful this physician is. You want them to see how he answers YOUR questions.

"You operated on Mrs. Jones 1 year ago?"

"You perforated her aorta while examining her nose?"

"The patient bled to death as a result of that puncture, correct?"

"Good medical practice dictates that when doing this procedure you should stay away from the aorta, correct?"

"The aorta is not in the surgical field, right?"

Do not ask "So how is it that you ruptured the aorta while doing this procedure?" (That's an open ended question.) Instead ask "Did you expect to puncutre the aorta during this procedure?" "What steps did you take to make sure the puncture did not occur?" ...and on it goes.

3. Do not ask a question when you don't know the answer!

During the course of a lawsuit you will have plenty of opportunity to learn everything about what happened. In New York, this is called the discovery phase of the lawsuit. If you are at trial, and do not know the answer to a specific question, I strongly suggest you NOT ask the question, unless the answer will absolutely not harm you or your case. Remember, you never know what will come out of the witnesses mouth.

Here's a great example. A dispute arises between two men in a park. It's twilight. A scream is heard, and a witness to the scream turns and sees two men standing near eachother. One man's nose is gone and his face is bleeding profusely. The other man is just standing there.

On the witness stand, the defense attorney asks the witness whether he actually saw his client bite the man's nose off. The witness replies "No. I didn't."

"Then you're not sure my client was the one who bit his nose off?"

"Oh, I'm sure allright. It was your client."

"Really? How can you be so sure?" asks the defense attorney.

"Because I saw your client spit out the man's nose from his mouth!"

Cross-examination of a doctor is not easy. Experience is the key and learning all the medicine possible helps frame your questions.

Learn Why Some People Need a Big City New York Law Firm for Their Malpractice Case

By: Gerry Oginski

The answer is simple.

The reason some people seek out a big city law firm for their malpractice case is because they feel that only a New York City law firm can handle their type of case. Or, the injured victim feels that a certain firm has a stellar reputation that other, smaller firms just don't have.

Why go into the City when you don't have to?

This brings us back to the question of why someone would seek out a lawyer in the City. People have impressions of lawyers and doctors and professionals. There are some very good large malpractice firms in New York City. There are some excellent small malpractice firms on Long Island. Where you choose to go should **not** rest on your impression of an office at a fancy address in the City.

Rather, your decision about what lawyer or firm you choose should be based on what the lawyer can do for you.

1. What is the lawyer's experience handling your type of case?

2. Is the lawyer a solo practitioner who can give you undivided personal attention, with a track record of successfully helping his clients?

3. Is the firm you're going to a 'mill' where you're just another file number?

4. How many attorneys in a big firm will work on your case?

In all probability, even solo practitioners have the same access to electronic, online legal research that big firms do. So what's the difference? Personalized, individualized attention.

In a big firm, the lawyer who you meet with at your first meeting, most probably will not be the one who tries your case. In fact, that trial attorney may never have met you before getting your case ready for trial.

When you call the office, how many secretaries, paralegals, associates and junior partners do you need to go through to finally reach the senior partner handling your case?

With a solo practitioner, one call does it all.

So, to answer the question, why do some people need a big city New York malpractice firm?

They don't. They just think they do. Wherever you choose to go, just make sure your attorney

is right for you.

Why Won't You Take My Small Medical Malpractice Case?

By: Gerry Oginski

1. Brenda D'Client comes into my office with many problems.

"My doctor did my plastic surgery wrong. I can see my scar. See, look close, it's a line right below my belly. He promised me I wouldn't have any scars."

"I was given the wrong medication by the pharmacy and I have bruising all over my body."

"I had a terrible reaction to the anesthesia and now have to get follow-up treatment including a blood patch, and medications."

2. Each of these scenarios represent someone who strongly believes that they have been wronged by a doctor, pharmacy or hospital.

Unfortunately for each of them, they don't have all of the required elements needed to bring a successful malpractice case in New York.

In a malpractice action, I have to prove not only that there was wrondoing, but the wrongdoing has to have caused injury, and the injury has to have been significant and/or permanent. If any one of those aspects are missing, there's no case. Oh yes, all of those three elements must be confirmed by a medical expert, before I can go ahead and start a lawsuit for you in the State of New York.

3. So, why are these cases too small for most New York Medical Malpractice attorneys?

In the first scenario, Brenda's injuries are minimal. It becomes financially impossible to bring a lawsuit for someone where the injuries are so small as to be virtually unoticeable to the average person.

In the second scenario, Brenda appears to have been injured by the pharmacy's dispensing the wrong medicine. But in this case, the damages are limited, and Brenda is expected to make a full recovery shortly. Again, it becomes financially impossible to bring a malpractice/negligence lawsuit where the injuries are temporary (such as bruising).

In the third scenario, Brenda experienced a well-known side effect of anesthesia. For her, there's no malpractice here. There was no way to prevent this condition from occurring, and no alternatives to the procedure she had. Unfortunately, she had a bad outcome to a procedure, without any evidence of wrongdoing. Again, it becomes impossible to accept such a case to prosecute.

Conclusion

Since a New York medical malpractice attorney takes a case on contingency (this means that he only gets paid if he is successful in obtaining money for you), he must lay out a considerable amount of money to prosecute your case.

Not only does he have to make sure you have a valid and meritorious case, but has to determine whether your injuries rise to the level where you will receive sufficient money after all of his expenses and legal fee are taken out. What good does it do you, if most of the money is used for expenses and legal fees and you are left with a small amount of money?

It is for this reason that most New York Medical Malpractice lawyers can only accept cases that have a certain value.

Would You Allow A Trial Judge To Sit As A Juror On Your Malpractice Case?

By: Gerry Oginski

As a plaintiff's attorney representing injured victims, the answer is no.

Why then did a female trial lawyer in Mineola, Long Island agree to accept a trial judge onto her jury panel in a medical malpractice case?

According to the New York Law Journal, this female lawyer was quoted as saying "I selected this judge because I figured he'd be able to explain the defense's shenanigans to the other jurors."

The defense attorney however was quoted as saying, "I have a different point of view. I like intelligent and smart jurors. That's why I chose this particular judge."

Interestingly, the day after this article appeared in the New York Law Journal, I was participating in a continuing legal education program, judging a national law student mock trial competition. The judge assigned to our courtroom was the one who sat on the recent malpractice case that resulted in...(can you guess?), a defense verdict.

I learned that this judge was a conservative republican judge assigned to a criminal trial part. My only thought was, "What was the plaintiff's attorney thinking?"

Now- that doesn't mean that even if this person was not on that jury, and someone else was, that the outcome of that malpractice case would be different. But the purpose of selecting a jury is to try and select the best possible jury for your client's case. In my opinion, putting a republican judge on a jury in a malpractice case against a doctor and a hospital, in a conservative county is not a good choice.

In New York, lawyers, doctors, judges and other professionals must serve jury duty.

That doesn't mean, of course, that they must serve as a juror on your case. Find out more information about your prospective juror. Ask yourself, "Is this really the person I want judging my client's case?"

Why Shouldn't I Let My Family Lawyer Handle My New York Medical Malpractice Case?

By: Gerry Oginski

Have you ever wondered why there's so many lawyer advertisements?

It's because lawyers think that injured victims don't know how to choose an attorney on their own. Guess what? They're right! If you've got a billboard in front of you after you've been injured that says something like "Is your car totalled? Did you break your bones? Call our law firm..." Isn't this a call to action? Sure it is. But is this the best firm for you? Let's see.

Your family lawyer is great to have general legal issues taken care of; preparing your will, maybe some business matters, parking tickets, small claims court, or maybe even some personal injury. When you've been injured by a doctor or a hospital, your family lawyer is

probably the first one you're going to turn to for advice.

But, is he the right person for the job? Maybe, maybe not. Medical negligence, or medical malpractice is a very specialized area of law. Extensive knowledge of medicine, while not required, is often helpful in prosecuting a malpractice case. The defense lawyers who represent the doctors and hospitals are usually a sophisticated group of trial lawyers. You want your attorney to be familiar with the defense attorneys, and you want your attorney to have experience handling, prosecuting and trying malpractice cases.

It'll do you no good if the biggest case your family lawyer has had involved a minor injury or a 'soft-tissue' case. Ask your family lawyer if he handles malpractice cases regularly. Having a few personal injury cases, does not make him an expert trial attorney in a malpractice case.

Nor should you let your family lawyer put your case into suit to try and 'squeeze' a few dollars out of the malpractice insurance company- for a quick settlement. Why? Because it dosen't work with malpractice claims. They'll quickly realize that your lawyer doesn't have the ability to take your case to trial, and your case will suffer because of it.

A law firm that has taken cases to verdict and is not afraid to try a case stands a better chance of getting a good result, than a lawyer just looking for a quick settlement.

Just remember- your family lawyer may be a great lawyer- but think long and hard whether you want him (or her) to handle your malpractice case. Ask lots of questions, and choose wisely.

What Exactly Does A Personal Injury and Medical Malpractice Lawyer Do?

By: Gerry Oginski

He helps navigate the murky waters that can trap an unknowing victim into muck and mire.

When a person slips and falls, causing injury, your lawyer needs to find out why you slipped.

Was there a defect on the property that should have been corrected? Was it simply that you didn't see where you were walking? Was the staircase not up to code so as to make it dangerous? These are the questions your lawyer will need to examine.

Products causing injury

This is known as product liability. Let's say you opened a bottle of soda and the cap exploded off the bottle and into your eye causing permanent damage. Is the bottling company to blame? Possibly. How about a miter saw that is supposed to have a guard to protect your fingers as you slide the wood into the cutting blade? What about a car that permits you to move the gear into reverse without first putting your foot on the brake? (This is called a gear interlock to prevent kids from playing with the gear lever. It's happened where they slip the gears into reverse and the car starts to move causing injury).

Evaluation of a product that is commonly used or bought can be very technical. Many times we need to hire engineers to evaluate a product to see whether it was designed properly and was properly placed into the marketplace.

Medical Malpractice

Malpractice is a departure from good and accepted medical care causing injury. As with

anyone, doctors are held accountable for their actions, as we all are. In order to confirm evidence of wrongdoing we need to have medical experts review your records before being able to start a lawsuit for your injuries. Most cases that I see in my office do not meet the strict criteria for being able to start a case. Of those we accept, some will go to trial and others will be settled before trial.

Malpractice cases are one of the most hotly contested areas of law today. The defense attorneys we often encounter are extremely well educated and trained at defending these lawsuits.

Car accidents

We all know what terrible reputations lawyers get from all those tacky advertisements showing damaged cars and clients in wheelchairs holding up poster-sized checks with lots of zeros after some number.

But the fact is that there are accidents and very serious injuries that result from these horrible events. Lives are shattered from a moment of carelessness. Just look around at how many people still talk on their cell phone while driving even though it's against the law!

Most people aren't interested in these informative newsletters because luckily, a tragedy hasn't befallen them. That's ok. We hope that it never does. The purpose of this newsletter is to give my readers an understanding of what we as lawyers do, and how we can help if the need ever arises. You'll find that I like to inform my readers about their options before they ever need a lawyer, and before they ever step foot into a lawyer's office. How many other lawyers do you know who do that?

In an accident case, I look to see how the accident happened. Where were you driving? What were the road conditions? Was your car in good mechanical condition? Was someone speeding? Did someone turn where they shouldn't have been turning? Was horseplay involved? (Think back to when a turkey was thrown from a moving car causing terrible damage to the woman driving behind them).

While going about our daily lives we shouldn't have to worry ourselves about getting injured. Common sense should dictate what good conduct is and what is not. Unfortunately, there are many people out there who are simply careless about how they do their daily activities. Haven't we all seen people reading the newspaper while stuck in traffic- and they're driving! How about applying makeup on the way to work, and driving at the same time?

Imagine this scenario…

A woman is late for work.

She's in her car and traffic is crawling. She's putting on lipstick and looking in the rearview mirror to see if it's on correctly. At the same time her cell phone rings, and while answering it, she decides to light her cigarette. Unfortunately for her, the car lighter drops to her feet and now she's got her lipstick in one hand, the cell phone in the other, a cigarette dangling in her lips, and she's supposed to be paying attention to the road.

Can't you just hear the accident in your head, and visualize the crushing of metal, as her eyes are on the floor looking for the lighter? Believe me, there are plenty of cases like this one that have caused other people injury.

Imagine if people were never careless! There would be no accidents, no need for insurance, and there'd be no personal injury lawsuits. Unfortunately, we are not perfect and accidents do happen.

But how then do you determine whether the accident was something that couldn't be avoided or was the result of lack of attention? We must conduct a thorough and detailed investigation.

Remember, when an injured victim comes to us, they're telling us what happened to them from their point of view. We have to investigate and make sure that all other points of view (witnesses) can confirm what we've been told. When we do that, we build your case and can then support the facts that led to your injury.

Dog Bites

Did you know that certain types of dogs are more prone to bite someone than others? Let's look at the pit bull for example. Just because a pit bull bites someone, as opposed to a tiny Chihuahua, does that mean the owner of the dog will be held responsible? The answer depends on many factors.

If the dog has never had any prior vicious tendencies and has never bitten anyone before, how then can his owner be responsible for this biting episode? One could argue that all pit bulls in general, are inherently violent. Not a bad argument to make, but not a totally accurate one either. What if you learned that before biting, the dog was tormented and teased repeatedly by a guest? Would that change things? Sure it would.

Injustice, humiliation and psychological injuries

We can all tell when an injustice happens-

Someone is pulled over because the color of his skin is different from those living in the neighborhood.

Someone is denied entry to a club because their religious beliefs are different than those who run the club.

Someone is denied service at a restaurant because of the way they dress or the accent of their voice. How about a woman who was denied a partnership because she was pregnant? What about the indignity of a high school football player who was sexually abused while away at football training camp with his high school team?

Despite all of our advances today, there is still bigotry, prejudice and hatred in this country. If you're a victim of injustice or humiliation what can you do about it? There are certain types of lawsuits that allow victims of injustice to seek justice. They're sometimes called discrimination lawsuits, or violation of civil rights lawsuits. The pain inflicted by injustice can be devastating and have long-term social and psychological effects.

Your lawyer will ask about your history, both medical and psychological. You will probably be asked to have specific psychological testing and counseling to confirm and identify some of the problems you are currently experiencing.

I know that some people believe that if an injury can't be seen that means it's less meaningful than a horrible disfiguring injury. That's not always true.

I'll bet there's something in everyone's childhood where they can remember a parent or an older child saying something bad about you. Looking back all those years, you still vividly remember the hurt you experienced that day. That's injustice. There's no 'physical' injury, but the emotional scar is ever-present.

So, "What does a lawyer do?"

A lawyer is someone to guide you; to help you through your trouble; to explain the law to you and how the law applies to your facts. A lawyer should be advising you of your legal options and what you can do to correct the injustices that have happened to you. That's what a good lawyer does.

Top 10 Reasons Why You Won't Find A New York Injury Lawyer In The Yellow Pages

By: Gerry Oginski

Open any yellow pages book in New York under the heading 'lawyer' and you'll be immediately bombarded with every type of injury and claim you could ever make. Full page ads, double page ads, blazing color, unsightly photos, screaming bold headlines…how does an injured victim choose a lawyer among all this clutter?

Here's a sampling of statements found in current yellow pages ads in the Greater New York Metropolitan area:

"Tough, aggressive, experienced."

What does this mean? That you're a pit bull who knows how to bark and bite?

"Serious trial lawyers for the seriously injured."

What does this mean? That if you're not seriously injured you need a trial lawyer who's not serious?

"Over 70 years combined experience."

What this means is that each attorney has limited experience, but if you pool everybody's experience together, we can make is seem like we've been around for hundreds of years.

"Special consideration for senior citizens."

This is an obvious play for cases involving elderly people. Just what special consideration would this firm give to senior citizens that it doesn't give to all its' clients?

"Experienced in obtaining large cash awards quickly."

Does this mean that this firm never takes cases to trial? The only large awards that are resolved quickly are clear cut on liability, causation and damages. Do I want an attorney who is experienced in obtaining large cash awards slowly? What's the rush? If I rush, isn't there a good chance that I'll get less money for my injuries than I deserve?

"You made a mistake once, now choose the right lawyer."

Guess what type of law this firm practices? Divorce.

"Get the money you deserve!"

OK, sign me up and show me the money. What if I deserve more than you can get for me?

"Call the law firm that never sleeps."

That's an interesting way to distinguish oneself. Being up 24 hours a day, bleary eyed, and tired? If you never sleep, how can you adequately represent injured victims?

Photo of lawyer holding briefcase in one hand, large cardboard check in other, smiling. Client, on crutches, in a leg cast, looking with total glee at the cardboard check, with her hands open wide as if to exclaim "WOW!" Give me a break. Believe it or not, this violates the disciplinary rules in the State of New York. It's a no-no.

How about an ad without any name, or address, just an 800 phone number?

No good. Violates the rules. Would you call a 'no-name' law firm?

All these ads make you feel rushed to get your cash. Sort of makes you feel "lucky" you got hurt, doesn't it?

So, with all of these great lawyer ads, how does a consumer who's been injured pick the right one? Do you have to call each and every one? That would be extremely time consuming and not very effective.

Do you trust the firm because they show pictures of crashed cars and an ambulance nearby? How about the photo of a worker falling in mid-air from a scaffold? Can you relate to him? Maybe you can relate to the photo of the elderly woman slipping on ice and another photo of her lying on a stretcher in the hospital? Do these illustrations and photos make you all warm and fuzzy about the law firm you're about to call? I personally don't think so.

Here's the top 10 reasons you won't find a New York Injury Lawyer from an ad in the yellow pages:

1. You can't tell one ad apart from the other.

2. The lawyer ads all say the same thing.

"Call me," "Personal attention," "Large Cash Awards," "Lots of experience," "Pick me, ooh, pick me!"

3. Many ads scream at you, without telling you how they can help.

4. Do you call a firm just because they have a larger ad than someone 20 pages into the book?

5. Every ad says that I can talk to a lawyer for free, but what are the fees to handle my case? None of the ads talk about that.

6. Who pays the legal expenses if I don't win my case? Many ads don't tell you.

7. How do I know if one attorney is any better than the other? I can't tell just from an ad.

8. Aren't these ads just trying to sell me their services? "I don't want a salesman, I want a lawyer who knows how to guide me through the legal system."

9. I don't want to go through 40 pages worth of yellow pages ads- I need help now. Maybe I'll go online instead.

10. Do you really want to pick a lawyer they way you choose a plumber?

Learn Why An Injured Victim Needs To Tell Their Injury Lawyer Everything - Not Just Bits and Pieces

By: Gerry Oginski

Here's What Happens When Pieces Of The Story Are Missing

Think about this: When I speak to a medical expert and send him a client's medical records to review, it is extremely important that we have all of the necessary documents. If some crucial piece of information is missing, my expert may come to a conclusion about your case that is inaccurate because he doesn't have everything he needs.

Image what happens if your case proceeds to trial and you don't tell me everything in your

history or background and we don't learn it during the discovery part of your case. At trial you can be sure the defense will have learned it through their investigation and it'll blow up on you at trial. I guarantee it.

The defense will take the missing information and ask our expert the following questions:

Q: Doctor, if you were aware that Mr. Jones was a drug addict, would that change your opinion of the case?

Q: Doctor, if you knew that the patient chose not to take his blood thinner medications to prevent stroke, and he had a stroke, would that change your opinion about the treatment rendered by these doctors?

Q: Did you know that Mr. Jones told the emergency room nurses that he wasn't allergic to any medication?

Q: Assume the nurses asked him if he was allergic and he said no.

Q: Assume that the nurses gave him penicillin because he specifically told them he wasn't allergic to any medications.

Q: Assuming those facts to be true, and by the way, you know that he didn't tell the nurses he was allergic, right?

Q: If he didn't tell the nurses he was allergic to penicillin, and they asked if he was allergic, are you still saying they are responsible for the reaction he suffered when he was given penicillin?

So what happened here?

The expert doctor was never told that the patient failed to inform the nurses that he was allergic. He came to conclusions about the treatment based on incomplete and inaccurate information. The physician had to concede the point on cross-examination that if he had not told the nurses about his allergy, then there was no way the hospital could be responsible for his allergic reaction.

Let's look at it another way: Why would a client with injuries hide information from his lawyer?

The reasons are endless. Some clients feel that it's none of the attorney's business. Some don't like others to know their intimate details of an illness or personal details about their finances. Whatever the reason, a client that withholds information may seriously hamper and jeopardize their case.

The key is to let the attorney determine what information is important and relevant. If I know about a problem in the case, let's say someone was convicted of a crime in the past, I know how to deal with it properly and can advise you how to handle the questions that you will be asked. If you lie about your past history (Q: Have you ever been convicted of a crime?) that is literally the 'kiss of death' for your case.

Remember, your credibility is the most important part of your case. If you are found to have lied during your testimony, the Judge will instruct the jurors that they may disregard all or part of your testimony. In New York, this jury instruction is called "Falsus in uno," which means that if you lied about one thing, there is the possibility that you have lied about other things as well. How can a jury believe you if you cannot even acknowledge your past problems?

When an injured client comes to a lawyer for help they must build a mutual trusting relationship. You must feel confident with your lawyer and his or her abilities. If you don't, you

should seriously consider getting another lawyer.

5 Secret Tips a Good Malpractice Lawyer Uses To Screen Your Case

By: Gerry Oginski

When an injured victim calls a lawyer, a good malpractice lawyer can tell in a few minutes whether there's a potential case. Here's 5 tips to clue you in to what they look for.

Most folks are unsure where to begin when calling a lawyer's office. They want to know if they have a case, but don't know what the lawyer needs to hear. Most want to come into the office to talk. Others want advice over the phone. A good medical malpractice lawyer looks for these 5 things:

(1) An ability to tell the lawyer what happened.

If the victim can't talk or has little memory of the events, then the lawyer needs to speak to a family member who might have more information.

It's ok if the victim can't recall what happened. The lawyer can usually put the pieces of the puzzle together with medical records and other witnesses. However, if the injured victim can talk but can't articulate why they think something was done wrong, proving a case becomes much more difficult.

Also, if the victim can't describe what injuries they suffered as a result of the wrondoing, it becomes impossible to prove a successful case.

(2) An ability to listen.

Your malpractice lawyer needs to know specific information. He will ask you a series of questions that establish basic information such as "How old are you," "What do you do for a living," "What do you think the doctor did wrong," "What permanent injuries do you have from the wrongdoing," "Has any doctor criticized the care you received from your other doctors?"

There are some potential clients who keep talking and simply don't want to hear what I have to say. For those people, I know at the outset that dealing with them will be difficult.

(3) An ability to ask questions.

Most people who call a lawyer for help have never been in that situation before. That's why they're calling for help. It's natural for a victim to have questions about the legal system, legal fees, how lawsuits work, and what their chances for winning their case are. The more inquisitive they are, the better informed they'll be.

(4) The potential client who continually asks "What's my case worth?" is usually the type of person who will live for their case, as opposed to living their life. What do I mean?

There are people who live their lives and try to restore their dignity by going back to work, or improving their lives despite their disability. There are others who want to milk the system, and are content to sit home and watch TV until their lawsuit is finished.

From a lawyer's perspective, a person who makes every effort to overcome their disability

tends to generate much more sympathy than someone waiting for their ticket to be punched.

(5) Is the injured victim shopping around for a lawyer?

There are some folks who jump from one lawyer to another looking for a better deal, a better lawyer, a lawyer who tells them only what they want to hear, or a lawyer who doesn't know about their other cases.

I can usually tell within minutes whether this is the case. That's ok if it is, I just want to know about it up front. A client's honesty is paramount to keeping a good working relationship. If the client isn't honest about the facts of the case, or they're hiding something from me, we'll usually find out about the inconsistency during our investigation.

If we don't, I guarantee the defense will find out about it during the lawsuit and it will definitely hurt your case.

Conclusion: Finding a good malpractice lawyer is easier if you've done your research and know what to look for in a good lawyer. Ask your potential lawyer if they have free reports and information on their web site that informs them how lawsuits work before they ever walk into a lawyer's office.

When you make that call to a malpractice lawyer, keep in mind these 5 tips, and you'll have a much smoother experience than you might otherwise have had.

How Not To Get Ripped Off By Furniture Stores This Holiday Season

By: Gerry Oginski

How many times have you bought furniture and been told, "Your furniture will arrive in 4 weeks." Eight weeks later, you're still wondering when your furniture will arrive.

"It's coming from China," "It's coming from North Carolina," "There's been a delay," says the salesman.

Isn't it interesting that the store never takes any responsibility for the delay? Don't they do this for a living? This isn't the first time customers have ordered furniture and the delivery has been delayed for weeks or months.

What is a customer to do?

This holiday season, if you are buying furniture,

(1) Make sure you ask when you will receive your furniture, if it's not in stock. Then, ask them to put it in writing. Then, ask them to waive the delivery fee if your furniture is not delivered on time. See what happens. I'd be surprised if any store does this. If they did, they'd earn my loyalty as a customer.

(2) Before making a major purchase, check out the store at the Better Business Bureau online and see if any complaints have been filed against the store.

(3) Go online and do a google search to see what other customers have said. This way you walk in knowing what type of store you're dealing with.

(4) Make sure your purchase is in writing, and actually read the papers they ask you to sign. You'd be surprised to learn about hidden fees and penalties that often appear in the fine print

of a furniture sales contract.

(5) When you start making your calls to the store asking where your furniture is, keep detailed notes of who you spoke to, when you spoke to them, and the substance of your conversation.

Understanding your legal rights are crucial when dealing with furniture stores that don't honestly tell you when you'll get your furniture. Veteran New York attorney Gerry Oginski cautions buyers about large holiday purchases. "Ask lots of questions, and put all the details in your sales contract." Learn more about your legal options at www.oginski-law.com, a website devoted to helping consumers learn their rights.

Warning Labels and Warning Signs Don't Warn

By: Gerry Oginski

How many times do you hear warnings about what you should and shouldn't do? After looking at warning labels and signs all day, we become desensitized to the warnings and they lose their importance.

Walking in the airport we see signs saying "Hold handrail while going up escalator." At the ice skating rink we see signs that say "Slippery, use caution." On our medication bottles we read "Warning-may cause harm if not taken as directed." On our laptop computers, cell phones, and digital cameras we see signs on the batteries that say "Warning-do not dispose in open fire."

What are these warnings supposed to do? Warn us of dangers to specific activity. Does it work? Maybe. Then again, maybe not. Think about the last time you really paid attention to such a warning. Did you read the fine print when you were given a prescription bottle- the entire warning packet? Admit it- if you're like most people, you didn't.

Or, how about this one, "Warning, don't operate heavy machinery if taking narcotic sedatives."

Why are these warnings necessary? Mainly because some folks don't use their common sense when going about their daily lives. Almost each warning we see and hear about arises from some incident involving someone who got hurt by not being careful.

"Don't drink the gasoline if you are siphoning gas from one tank to another."

Do we really need all these warnings? Does the warning above really alert us to the inherent dangers associated with drinking gasoline? Isn't it common sense not to drink gasoline? I'd like to think so, but some would disagree.

The other day there was a horrible tragedy involving an 8 year old boy from Queens, New York, who was playing with a barbeque lighter in his home. You know what happened. He thought it was a toy and was making little fires under his bed. Three of his brothers died along with his grandfather. All because he thought the lighter was a toy.

Do you really think a warning that said "Danger- keep away from children," would have prevented this tragedy? Unlikely. Or this warning, "Danger, don't touch open flame, you could get burned."

Unfortunately, warnings do not replace common sense. It also goes without saying that nothing replaces constant vigilance of your children. Veteran New York personal injury attorney Gerry Oginski recently observed a sign at a hotel that said "There is no substitute for parental supervision."

"The warnings that we see every day don't have much significance when we're inundated with them from every direction. We become desensitized to the dangers and warnings in our daily

lives," notes Gerry Oginski. Paying close attention to our kids and our own actions helps minimize the dangers we face in our lives every day. So be careful this holiday season.

5 Holiday Tips To Keep You From Being an Emergency Room Malpractice Victim

By: Gerry Oginski

The holidays are notorious for over indulging on food, overexertion while shoveling snow, and high levels of stress. Unfortunately, this puts many people in the emergency room needing immediate medical care.

What happens in the emergency room when the hospital is understaffed because the doctors and staff are on vacation and they're short-staffed? Your care may suffer.

Here are 5 important tips to help you through the holidays if you wind up in the emergency room:

1. Make sure you are seen by an attending emergency room doctor. An attending is a doctor who has completed all of his postgraduate training, and is now working for the hospital. Most emergency rooms are staffed by doctors-in-training, called residents, and are supposed to be supervised by a senior physician. If you are seen by the resident doctor, you should ask to also be personally evaluated by the attending physician.

2. If you are able, ask lots of questions. "Why do I need this test," "What is the purpose of this medication," "Are there any alternatives to treat me, other than what you are recommending?" "What will happen if I choose not to have the treatment?" Do not accept what is given to you blindly.

3. If you have x-rays, an MRI scan or a CAT scan, ask whether the attending radiologist has read the films. Do not rely on the radiology resident in the emergency room to read the films. "Oh, but the attending isn't in now, he reads it the next day." No good. If the attending radiologist isn't available, ask the emergency room doctor to read the films himself.

4. If you are given medication, either in pill form or by intravenous line, you must ask if there's the potential for an allergic reaction. Allergic reactions can kill you. You must ask.

5. If you are allergic to any medication, make sure the emergency room staff notes it on your chart, and make sure you are given an 'allergy bracelet' to let everyone know about your allergies. In practically every hospital, allergy bracelets are available to warn hospital staff about a patient's allergies. Don't rely on a note in your chart to inform the doctors and hospital staff about your allergy.

Veteran New York malpractice lawyer Gerry Oginski says "Keeping these tips in mind while in the emergency room will minimize your risk of being a medical malpractice victim during this holiday season."

7 Ways You Know You Survived Medical Malpractice in 2006

By: Gerry Oginski

1. You're alive.

Some victims of malpractice don't survive and die as a result of injuries inflicted on them.

2. You can walk.

Some malpractice victims lose the ability to walk. Having this freedom is something we all take for granted each day.

3. You can talk.

The ability to speak and communicate is priceless. Those people who have had brain tumors or neurological injuries are speech impaired. They struggle every day to make their wishes known.

4. You can tie your shoes.

Believe it or not, this simple act becomes impossible when our muscle and nerve groups are disabled. We teach our young kids how to tie their own shoes, and it gives them a sense of independence. When we can no longer tie our own shoes because of malpractice, our daily lives have been affected.

5. You can eat.

Being able to eat independently is incredible. Many elderly folks can no longer eat by themselves and need help. Then again, some malpractice victims cannot eat on their own and need a feeding tube, or assitance with getting the proper nutrition.

6. You can see.

Our sight is another sensory device we all take for granted. Some people lose their sight from causes unrelated to malpractice. However, there are a number of cases where I have seen malpractice victims lose their sight directly due to malpractice. Having sight and then losing it is much worse than never having it at all.

7. You can recognize your family.

Some malpractice victims lose the ability to recognize their friends and family- just like alzheimer victims. They live in a shell where they no longer have the ability to understand who is familiar and who is not.

We should all be thankful for what we can do and accomplish each day of our lives. When we look at malpractice victims and their serious injuries, we are able to point out what part of their life has been taken from them- not what they have left, but what's been taken from them. That's the true measure of damages.

You're Loved One's Died- You Suspect Foul Play

By: Gerry Oginski

Death- Who said it's a natural part of life?

Whoever said it might be right, but when you're at the hospital and the emergency room doctor tells you your 50 year-old husband just died after collapsing at work, you want answers.

An autopsy investigation reveals that your husband had a leaking aortic aneurysm (a weakened blood vessel) that ruptured. You remember that your husaband had complained of increasing back pain for the last few weeks, and a visit to his primary care doctor resulted in a prescription only for muscle relaxants. You then learn that if your husband had the aneurysm

detected, it could have been treated electively, and he'd have lived a long healthy life. Now you want even more answers.

Doing nothing simply causes the unanswered questions to linger, fester and build steam. Family members often point a finger at those close to the victim. The guilt surfaces rapidly. "Why didn't you do more to help?" "Why didn't you make him go to the doctor again?" "Why didn't you take him to the hospital?"

When a family member dies unrelated to any accident, we all want to know, why? Since we can't look into a body and determine what was the cause of death, we look to doctors who perform an examination of the body after death. This is called an autopsy. These doctors are called pathologists, or medical examiners.

The doctor literally opens up and looks inside and investigates. The medical examiner is supposed to look at each of our body systems, circulation (heart, arteries, veins), respiration (lungs, mouth, trachea), renal (kidneys, ureters, urethra)...literally all of our internal organs and our external organs.

By the end of the examination, the doctor reaches conclusions about the cause of death. Since we are a generally litigious society, many medical examiners are mindful of being blunt and pointing fingers at a culprit who may have caused a person's death. However, in their own subtle way, a medical examiner can and often indicates the precise reason for your loved one's death.

Once you know why your loved one died, it is often possible to work backwards and review his condition in the weeks and months leading up to his death. Medical records are invaluable, as are doctor visits made close in time to the death. The questions that a good medical malpractice lawyer always wants to know are:

(1)Was there wrongdoing or a misdiagnosis that should have been detected? (2) Did the wrongdoing or misdiagnosis cause or contribute to the death?

Finally, a good lawyer wants to know, **If the condition had been detected and treated earlier, would the outcome be different? Would the death have been preventable?**

If the answer is 'yes' to each of these questions, then it sounds as if you'd have a valid case in the State of New York. How do we know if the answer to each would be 'yes'? We have to hire a medical expert to review all of your loved one's records.

A medical expert needs to put all the pieces of the puzzle together to answer all of your "WHY" questions. Hospital records, doctors visits, interviews with family members, and the autopsy report are all part of the puzzle.

Sitting around doing nothing solves nothing. Getting answers when your loved one dies is crucial- especially when you suspect foul play or wrongdoing.

5 Typical Defenses in a Medical Malpractice Case

By: Gerry Oginski

A medical malpractice case is typically defended with the following 5 important defenses:

(1) We didn't do it, but...

(2) If we did it, it was an acceptable risk,

(3) However, if we did it, and it wasn't an acceptable risk, then the patient wasn't

hurt by it, but...

(4) If the patient was hurt, he wasn't hurt that badly,and finally,

(5) We didn't do it, but even if we did, the patient also contributed too.

It is the extremely rare case where the defense admits causing injury and the extent of injury. Those cases are settled quickly without ever going to trial.

The majority of medical malpractice cases in New York are settled prior to trial. Of the remaining 5-10% that are not settled, the physician wins the majority of them at trial. Defense counsel have gotten their clients off the hook using the defenses listed above.

Obviously, the list above is overly simplistic, but it's easy to see how it applies in any malpractice case.

Jimmy D'Victim arrives in my office claiming that hernia surgery caused a perforation in his colon. The defense will quicly claim that (1) Jimmy needed the surgery, (2) That a perforation is a known recognized risk of the procedure, (3) That there is no real injury, (4) That if there is an injury it's minimal, and (5) That he caused all of his own problems because he moved during surgery or failed to follow the doctor's instructions before, during and after surgery.

Is it any wonder that most malpractice cases are won by the defense?

Why Injured Accident Victims Are Never Millionaires

By: Gerry Oginski

How many times have you read the headlines in the newspaper "Man wins $20 Million," "Woman awarded $35 Million Dollars after slipping on banana peel," "Jury verdict of $17 Million for brain damaged infant."

Don't you feel envious, even for just a moment? Don't you feel jealous that someone, somewhere, is going to get all those millions of dollars?

Well, that might be your first impulse, but looking at the facts you realize that you wouldn't want to trade places with that injured victim- ever.

During closing arguments in a trial, an attorney will talk about how much money they feel their client is entitled to. A good analogy is to imagine someone taking out a classified ad in the newspaper with the following headline: "$10 Million Dollars- Free! Just show up tomorrow morning." Don't you think every single person in the world would show up?

But wait! Before you can get your "Free $10 Million Dollars" you first must be a victim of medical malpractice. You must suffer brain damage because the anesthesiologist put the airway tube into your stomach instead of your airway. How many people do you think would still line up outside the door seeking the "Free $10 Million Dollars?"

There may be some crazy folks who don't care what they do for that kind of money. But hold on...what if there are more conditions before you can get that money?

Before you can ever see one dime, you have to be permanently and forever disabled; confined to a wheelchair, have no bowel control, and require a full-time nurse to attend to your every need. You need help eating, feeding, going to the bathroom, waking up and going to sleep. You need physical therapy 5 days a week, and you can only communicate with your family with grunts and moans.

How many people do you think would still take the money under those

circumstances?

I don't know anyone who would go to that length to get $10 Million Dollars- even if someone was giving it away 'Free'. The next time you read the news headlines where some injured victim won millions of dollars don't think what they'll ultimately receive after appeals are exhausted. I guarantee you, they'd rather have their health than any amount of money. That money isn't going to make them healthy and whole again. It'll only provide the best medical care they can buy to support them and their broken family.

The next time you see an injured victim winning a large award, take a close look at the facts of the case, and the injuries that person suffered before wishing you were in their shoes. Doing so will make you a better person.

My Father Was a Medical Malpractice Victim - A True Story

By: Gerry Oginski

I was 14 years old when my mother came home from the hospital and told me my father had died. "How did it happen?" I asked. "Why did it happen," my brother questioned. "What happened?" asked our dazed and confused family.

From that day forward, I began to learn what a malpractice lawyer does. I learned that we had more questions than answers. My dad was young, only 46 years old. He wasn't supposed to die. He had a family with three young children. He was gainfully employed and worked hard to provide for our family.

Our lawyer got the hospital records, and he had a medical expert review the records. The more our lawyer probed, the more questions we raised. "Why was he given that medication?" "When did the nurse arrive?" "Why wasn't a blood test ordered?" "What happened when..."

Years later, while I was in college, our case came up for trial. I joined my mom for part of the trial, since it was during final exams. Being in Court was unfamiliar territory. Everything was formal. The procedures, the words, the questions-all need explaining. Our lawyer was a big-time lawyer whose hair was gray and was respected by numerous lawyers who passed him in the hallways in the courthouse. Their nods and greetings were deferential- with respect for his accomplishments and greatness.

I watched with fascination the rapt attention everyone had during cross-examination of the primary target in the case- a young doctor in training who committed the gravest of medical sins. Our lawyer was intense. The barrage of questions put to the young unapologetic doctor were non-stop. The answers were not satisfactory to our lawyer, or to the jury, or so it seemed to me.

The tension in the Court room was palpable and created knots in my stomach. The defense attorney was gentlemanly and put on airs. In my book he was a phony and I was hoping the jury would see through it.

Closing arguments came after three weeks of trial. I managed to arrive just as the trial resumed that day. I rushed from school to be in Court with my mom. What I witnessed that day caused me to apply to law school. Before that day, I was a biology major and was intent upon applying to medical school. You see, my father was a doctor and most of my family are doctors. I thought that was the path I'd naturally take. Not after witnessing closing remarks.

It is now twenty three years later and I vividly remember the day our famous lawyer made his closing remarks to the jury hearing our malpractice case. Neither the lawyer or my mother are

alive today, but my memory of that trial lives on till today.

I remember most clearly the accusations directed at the young inexperienced doctor. I saw his red face and neck. I wanted to reach across the aisle of the courtroom and pummel him with my fists. That would be true justice! That would satisfy my anger that had built up for years waiting for this disputed case to come up for trial. Fortunately for the doctor, my senses overcame my desires to quash this little bug. He never knew what I wanted to do to him that day.

On that day, I realized that this lawyer- this ordinary looking, gray-haired man, who had accomplished great things legal- was telling a story so simple and clear that I realized anyone could do this. That day, I decided to become a lawyer.

One would think that with such a great lawyer anything would be possible. Unfortunately for my family, the results were not what we would have hoped. Despite this second loss, the first being losing my dad, I picked myself off and sent out those law school applications. I had one thing on my mind...to become a trial lawyer.

I've been a medical malpractice trial lawyer for the past 17 years now. The first 4 years as a defense lawyer representing doctors, hospitals and folks sued in accident cases. The next 13 years I spent representing injured victims in their quest for justice. When asked by a colleague which I prefer, representing injured victims or the wrongdoing doctor, my answer has always been clear...the injured victim.

My experience helped me understand what injured people have endured. It has allowed me to be more compassionate about the people I have the privilege of representing. This is my calling.

This is a true story.

How Much Money Is Your Malpractice Case Worth?

By: Gerry Oginski

Every injured victim that walks into a lawyers office wants to know how much their case is worth. Some don't really care about the money; some want revenge. Some want the doctor's license revoked; some want the hospital punished. Then again, some want total and full compensation.

"YOUR CASE IS WORTH $2 MILLION DOLLARS," says Jim Bob, Lawyer extraordinaire. "Oh no, your case is worth more than that," says lawyer Dewey Cheatem. "Just sign right here with me and I promise you I'll get you millions!" screeched the TV advertising lawyer.

Whatever the motivation, a civil lawsuit for medical malpractice and personal injury seeks money for the injured victim. But how are you to know how much your injury is worth?

The answer is not so easy to answer, and here's why...

If you listen to each of those attorneys above, they all promise you something that they can't do. How do I know? Just ask each of them to put that guarantee IN WRITING. They'll never do it. That I guarantee!

In every State, and in every County there are multiple factors that go into the mix to determine what your case is worth. It is important to remember that no two cases or injuries are the same. Having said that, I'm going to explain the basics:

1. Economic loss: This one is easy. How much money did you lose because you were injured? Were you out of work for days, weeks or months? Did your employer pay

your salary during that time? If not, you can calculate the amount of money you would have been paid had you not been injured.

What if you have a permanent disability that prevents you from working in the future? Well, now things get a little more complicated. Your lawyer will need to hire an economist to predict what your earnings would have been for years into the future. He will also have to predict what perqs and benefits you'd have received if you worked to retirement age.

This gives us hard numbers that we can use to show the extent of your permanent injury.

But what if you didn't lose time or money from work? What if you were a housewife (or househusband), or unemployed at the time of the injury? Does that mean that you're not entitled to collect any economic loss? Yes. But all is not lost. There is still pain and suffering, and possible claims for loss of services that I'll explain in a moment.

2. Pain & Suffering: How do we know that your fractured hip in Brooklyn, New York is worth the same as in Cincinatti, Ohio? Your lawyer is usually able to do research which will tell him (or her) what similar cases have settled for or resulted in jury verdicts and appeals.

Here are important points to know which will help you answer the original question, 'how much is your case worth?':

1. What is your race or nationality?

2. What town do you live in?

3. What is the race or nationality of the people you have sued?

4. What County have you brought your lawsuit in?

5. How old are you?

6. What is your life expectancy (based upon statistical tables)?

7. How long were you in the hospital?

8. Over what period of time have you received medical care for your injuries?

9. What problems do you still have from your malpractice?

10. How are you disabled or limited from doing those daily activities that you used to be able to do?

11. Do you have kids?

In the case of an 80 year old woman who fractures her leg, her case has less value than say, a 35 year old executive who lost 1 month from work, was in the hospital for 3 weeks and now limps from the injury.

Take a look at a recent settlement in New York City...

It involved a young man who had both legs amputated when the Staten Island Ferry crashed because of negligence of the crew. The City of New York decided that this injury was worth almost $9 Million dollars. This was one of the largest settlements ever for an injured victim in New York. Why is his injury worth more than a family who lost their father when doctors misdiagnosed his lung cancer?

The answers can be confusing. The answer can also depend on which lawyer you hire and how experienced he (or she) is in negotiating and trying cases.

So beware the lawyer who tells you what your case is worth as soon as you walk in the door. A thorough investigation of your case, your injuries, your disabilities and limitations all go into the mix to determining what your case is worth. Even then, there's no guarantee you can get that magical number. But try you must. Remember, keep an open mind and ask your lawyer lots of questions.

Injured in an Accident? 5 Reasons Why You Don't Need To Hire An Attorney

By: Gerry Oginski

You've just been injured in an accident. Get ready for the onslaught of mail from lawyers at home. Be prepared for those ugly billboards showing pictures of crashed cars and wreckage with victims crawling away. Beware the yellow pages ads that proclaim quick and fast settlements for your injuries.

Do you need an attorney? No, and here's why:

5 Reasons Why You Don't Need An Attorney After You've Been Injured In An Accident

1. You know it all.

By knowing it all you have more knowledge and experience than a New York personal injury trial lawyer. That's good. You know what the law is and whether your injuries are serious enough to prevent you from getting thrown out of court. Knowing it all means you know how to negotiate with the insurance company. You are aware of the common tricks they use to get unsuspecting victims to settle cases, like sending a low-ball settlement check to the client with the appropriate closing papers, telling them all they have to do is sign here and the check is theirs. You must know how to find out what the insurance policy limits are, and whether there is any excess insurance available to pay for your injuries. Having all the information means you know how to say "No" to an insurance company offer and start a lawsuit on your own behalf. It also means knowing how much time you have to file a claim with the insurance company, and how much time you have before you need to start your lawsuit.

2. You know how disabling and permanent your injuries are.

Doesn't it feel good to know that you can convey how serious and permanent your injuries are? You can clearly and concisely express your frustrations and feelings to the insurance company. Just don't expect them to shed any tears for you.

3. You know the true value of your injuries in the county you live in and don't need a lawyer to tell you otherwise.

Knowing it all means that you know your injuries are worth more than the "McDonald's Lady" who won a large award. It means knowing that your injuries are worth more than the insurance company has ever seen before. It means knowing that in your town and in your county, the same type of injuries for the same age individual is similar or different than your own. Knowing it all means that you know where to search for information that you can use to show the insurance company that your injuries are worth more than a similar victim. It means that you know what medical records and documents the insurance company needs to confirm your injuries and permanent disability.

4. Why should you have to give part of your compensation to some lawyer you don't even know?

Why do you need to give up 1/3 of your award, when you can do it all yourself? You know that

handling an accident claim and then a lawsuit is no different than reading a do-it-yourself book, similar to building a deck in your backyard. If your neighbor the lawyer can do it, so can you! Why pay someone to do it for you? Do you think they could possibly obtain more money for your injuries than you can? If you don't think so, then by all means, don't hire an attorney. But if you have that nagging suspicion that they just might be able to achieve a better result, then you owe it to yourself and your family to call a personal injury lawyer right away.

5. You have more experience than a New York personal injury trial lawyer and know that you can overcome any defense the insurance company throws at you.

You know that with every claim and every lawsuit, the insurance company and their lawyers will fight you tooth and nail on everything from liability, to causation, to the extent of your injuries. You must know all of those defenses and how to overcome them. You must surely know of how to contact witnesses and obtain their statements, and how to use them to your benefit. Of course, you also know how to try your case and achieve success- all the while trying to support your family and recover from your injuries.

Conclusion

So, do you need an attorney after you've been in an accident? I leave that question for you to ponder. If you know it all, then you don't need an attorney. However, if you think you might benefit from legal counsel and their experience, then don't wait. Call an experienced injury lawyer immediately to make sure you know and understand your legal options. Good luck in your quest for justice!

Lawyer Advertising Rules-A-Changing

By: Gerry Oginski

LAWYER ADVERTISING IN NEW YORK IS ABOUT TO CHANGE

Starting this fall, you no longer have to worry about seeing cheesy ads on television or in print from celebrities hawking lawyers and law firms in New York. It's true. The advertising rules for lawyers are changing. No more Bill Shattner (from Star Trek) telling you how great a particular law firm is. No more photos of lawyers standing in front of a courthouse, or even inside a courtroom. Our rule-makers (and many lawyers) felt that many ads were simply degrading to the legal profession. (You think?)

Also banned are computer pop-ups, misleading testimonials and catchy nicknames that lawyers have used, like "The Hammer" or "Pit Bull." Let me ask you a question. When you see an ad like that, do you really want to rush out and call someone because you saw a pop-up ad on your computer? Do your fingers rush to the phone to start dialing a lawyer because he tells you how quickly he can get you cash for your injuries? When you see an ad with a wrecked car and a person in a wheelchair, smiling, holding up a cardboard check with lots of zeros on it- does it make you want to throw up, or does it make you rush to the phone and call that lawyer?

I've written many articles on lawyer advertising, and recently wrote about why you won't find a medical malpractice lawyer in the Yellow Pages. The reason is exactly why the advertising rules in New York are changing for lawyers. The ads are disgusting, and totally uninformative.

All lawyer ads say the same thing-FREE CONSULTATION…NO FEE UNLESS WE WIN…WE WIN MILLIONS…Is it any wonder that a consumer can't pick a lawyer? Just look in your local yellow pages under the heading LAWYERS. You will easily see 40 pages of lawyer ads, ALL SAYING THE SAME THING. The only difference is the size of the ad, (2 page ad, 1 page ad, 3/4 page, 1/2, etc.)

The funny thing is that you could interchange the names on the ads in yellow pages, and it

wouldn't make any difference.

For those of you who missed my recent lawyer advertising article, I am reprinting it here:

Top 10 Reasons Why You Won't Find A New York Injury Lawyer In The Yellow Pages

Open any yellow pages book in New York under the heading 'lawyer' and you'll be immediately bombarded with every type of injury and claim you could ever make. Full page ads, double page ads, blazing color, unsightly photos, screaming bold headlines…how does an injured victim choose a lawyer among all this clutter?

Here's a sampling of statements found in current yellow pages ads in the Greater New York Metropolitan area:

"Tough, aggressive, experienced." What does this mean? That you're a pit bull who knows how to bark and bite?

"Serious trial lawyers for the seriously injured." What does this mean? That if you're not seriously injured you need a trial lawyer who's not serious?

"Over 70 years combined experience." What this means is that each attorney has limited experience, but if you pool everybody's experience together, we can make is seem like we've been around for hundreds of years.

"Special consideration for senior citizens." This is an obvious play for cases involving elderly people. Just what special consideration would this firm give to senior citizens that it doesn't give to all its' clients?

"Experienced in obtaining large cash awards quickly." Does this mean that this firm never takes cases to trial? The only large awards that are resolved quickly are ones that are clear cut on liability, causation and damages. Do I want an attorney who is experienced in obtaining large cash awards slowly? What's the rush? If I rush, isn't there a good chance that I'll get less money for my injuries than I deserve?

"You made a mistake once, now choose the right lawyer." Guess what type of law this firm practices? Divorce.

"Get the money you deserve!" OK, sign me up and show me the money. What if I deserve more than you can get for me?

"Call the law firm that never sleeps." That's an interesting way to distinguish oneself. Being up 24 hours a day, bleary eyed, and tired? If you never sleep, how can you adequately represent injured victims?

Photo of lawyer holding briefcase in one hand, large cardboard check in other, smiling. Client, on crutches, in a leg cast, looking with total glee at the cardboard check, with her hands open wide as if to exclaim "WOW!" Give me a break. Believe it or not, this violates the disciplinary rules in the State of New York. It's a no-no.

How about an ad without any name, or address, just an 800 phone number? No good. Violates the rules. Would you call a 'no-name' law firm?

All these ads make you feel rushed to get your cash. Sort of makes you feel "lucky" you got hurt, doesn't it? So, with all of these great lawyer ads, how does a consumer who's been injured pick the right one? Do you have to call each and every one? That would be extremely time consuming and not very effective.

Do you trust the firm because they show pictures of crashed cars and an ambulance nearby? How about the photo of a worker falling in mid-air from a scaffold? Can you relate to him? Maybe you can relate to the photo of the elderly woman slipping on ice and another photo of

her lying on a stretcher in the hospital? Do these illustrations and photos make you all warm and fuzzy about the law firm you're about to call? I personally don't think so.

Here's the top 10 reasons you won't find a New York Injury Lawyer from an ad in the yellow pages:

1. You can't tell one ad apart from the other. 2. The lawyer ads all say the same thing. "Call me," "Personal attention," "Large Cash Awards," "Lots of experience," "Pick me, ooh, pick me!" 3. Many ads scream at you, without telling you how they can help. 4. Do you call a firm just because they have a larger ad than someone 20 pages into the book? 5. Every ad says that I can talk to a lawyer for free, but what are the fees to handle my case? None of the ads talk about that. 6. Who pays the legal expenses if I don't win my case? Many ads don't tell you. 7. How do I know if one attorney is any better than the other? I can't tell just from an ad. 8. Aren't these ads just trying to sell me their services? "I don't want a salesman, I want a lawyer who knows how to guide me through the legal system." 9. I don't want to go through 40 pages worth of yellow pages ads- I need help now. Maybe I'll go online instead. 10. Do you really want to pick a lawyer they way you choose a plumber?

So, for those lawyers who claim that our first amendment rights are being infringed upon, I say- Nonsense. These ads are ridiculous. The only way a consumer can choose an attorney wisely is by getting as much information as they can. Making an informed choice is the only choice when choosing a lawyer.

When you call a lawyer's office, ask if they give out free written information about how lawsuits work. Do they provide information, such as on a website, that answers frequently asked questions about injury victims and the legal process? Is there any way for you to get all this information BEFORE you ever step into a lawyer's office?

There is…you just have to know where to look. For a good example go to my website, www.oginski-law.com where I have over 200 frequently asked questions. I have over 70 original articles posted online. On my site I have hundreds of law-related news articles, especially those involving jury awards and settlements in injury cases in New York and across the country.

I am very pleased to report that I get compliments every day from people across the country about the content and information on my website. That's the key that most lawyers don't understand. By providing relevant content to information-starved people, an injured victim can make a truly informed choice about their options.

It's about time those lawyer ads were changed!

You've Been Googled! Now You Have To Shut Down Your Web Site, Urged Defense Counsel

By: Gerry Oginski

Well, it finally happened. I'd been Googled. Not by my friends, but by my adversaries in a medical malpractice wrongful death case.

Their googling apparently caused apoplectic seizures that rippled through the defense firms representing the doctors in my case that was marked final for trial on April 10, 2006 in Kings County, here in New York.

The first inkling of trouble was a telephone call by adversary #1- someone who up until that time, I thought I had a good working relationship with. "Gerry, I want to give you a heads-up about an order-to-show cause that you'll be getting shortly," he said. "What's it about?" I

asked.

"Your website. We want you to shut it down for the duration of the trial," he answered. "What are you talking about?" I asked incredulously. "What could my website possibly have to do with a trial that we're supposed to start in one week's time?" I stated, having difficulty controlling my tongue and the tenor of my voice.

"We think that potential jurors might be prejudiced if they read the material on your website, and that's why we want you to shut it down," he responded.

Let me digress a moment. On my website which currently gets over 3000 unique visitors per month, I have over 65 articles that I have personally written, I have 200 frequently asked questions, I have 213 links to other resources, and over 285 news articles about verdicts and settlements across the country. In addition, I have posted deposition transcripts of doctors in cases I have handled that are de-identified. I have removed all identifying features in each of the depositions I have posted. The reason I posted these transcripts is to show people what I do, how I do it, and it makes for interesting reading.

If one Google's my name, "Gerry Oginski" you will get 953 sites that refer to me and my website, my blog and other writings I've posted online. If you take off the quotations, you'll get 12,500 references to my name. If you do a Yahoo search with the same name in quotations, you will get almost 8,000 sites that refer to my name.

The original Google search that my adversary performed "Anesthesia, wrongful death and Oginski" revealed his client's deposition in the very case we were about to try. This was the only posted deposition in an active case. Even though it was de-identified and you could not determine who it involved, he asked me to remove it from my site for the duration of the trial because of the possibility that a juror could find the de-identified transcript while doing a search and read it during the trial. After much debate, and knowing that there is no case law on this topic anywhere in New York, I agreed to voluntarily remove the deposition from my site. You would think that my willingness to be courteous and professional to my adversary would have ended this issue. It did not.

He was still insistent that my website be shut down, because there was material on my site, "That if viewed by a potential juror, would prejudice that juror," he wrote in his motion papers.

On April 10, 2006, when we appeared in the Medical Malpractice Trial Ready Part in Brooklyn, NY, my adversary was insistent that the Court shut down my site. He referred to three articles I wrote as being somehow prejudicial: "Insurance Companies and how they protect their profits," "5 Typical Defenses in a Medical Malpractice Case," and "Medical Malpractice: 10 Reasons Why Most Victims Won't Recover a Dime." The last article he cited because I include discussions about jurors biased by the insurance industry, the plaintiff's inability to hire good qualified experts, and the basic premise that 'juries like doctors'.

Defense counsel's arguments were, impressively, based on total speculation. He argued that a potential juror might ignore the trial judge's instructions not to discuss the case with anyone, that he might go online and perform a search about the attorneys or the topic involved in the case, that he would actually find information about the case, and that he might be prejudiced by reading such material. He wrote:

"We live in the 'Google' world where nearly everyone has access to the internet and many people perform internet searches as a means of obtaining information. Jurors, in fact, often attest to a desire to 'research' the issues or attorneys on the internet. As a result, it is possible or even likely, that at least one juror (or prospective juror) will review the above-describe prejudicial materials on the plaintiff counsel's web site…While an admonishment could be given by the trial judge, it is submitted that that would more likely result in an invitation to go to the aforementioned web site and provide a road map on how to get there."

He also argued,

"…the limitation on free speech must apply to written statements disseminated by plaintiff's counsel in a medium known to be viewed by prospective jurors, such as the website of plaintiff's counsel in the very matter set to be tried before them."

My argument was simple:

1. Shutting down my site would have absolutely no effect on a juror intent on ignoring the Court's instructions from doing online research,

2. All of the material posted on my website is freely available on the internet, and was originally posted on the internet first, and then added to my site later,

3. If the Court felt compelled to shut down my site, then logically, it would have to shut down every lawyer's website (including all defense attorneys) in every case that came on for trial in every County in the State of New York. (The Courts' response was, I think, facetious, "Maybe I will have to shut down every lawyer's site…")

4. Shutting down my website would not only be unconstitutional- a judicial lockdown of my right to free speech, but would create undue hardship financially since I receive all of my direct cases from my online presence,

5. The information posted online is truthful and provides consumers with abundant information they need to know before they hire an attorney,

6. The Courts' curative instruction to any potential juror would be all that was needed to address potential extracurricular research on the attorneys or the topic involved in the trial,

7. A decision that required me to shut down my site, regardless of the duration, would have significant implications in the legal community, and would simply make bad law.

The Court initially wanted to have the trial judge address this issue in chambers, before starting the trial. However, with persistent urging by the defense, he relented and agreed to render a decision on this novel issue 60 days after receiving opposition papers. Because of this personal attack on my website, the trial would not proceed forward until this issue was resolved.

UPDATE

With anticipation building, and only two weeks to go before the Brooklyn Trial Judge rendered a decision on whether to shut down my website, I settled the underlying malpractice case.

With a window of opportunity quickly closing, my adversary finally got serious about settlement negotiations. I'm happy to report that we settled this wrongful death case just before the Court rendered a decision.

This means that the Court no longer has the opportunity to render a decision about whether to shut down my website. Unfortunately, this does not prevent defense counsel in other cases from making the same kind of ridiculous argument as was made in my case.

The argument was absurd- that potential jurors would ignore the trial judge's instructions and go online to do research about the lawyers and the medicine involved in the case. The defense felt that this would somehow prejudice a potential juror from fairly deciding the case. Nonsense. We are all inundated with information every day, whether by newspaper, radio, advertisements, magazines, and the internet, so that selectively shutting down one website would, in my opinion, be meaningless. This was just another attempt to delay a meritorious case. What will defense attorneys think of next?

I read an online comment recently by an attorney who read what was happening with my website. He suggested that the lawyers should each have the ability to shut down three websites of their choosing, instead of having three choices to remove jurors during jury

selection. Excellent idea!

How Can A Medical Malpractice Lawyer Help You?

By: Gerry Oginski

A Medical Malpractice lawyer can help you find out whether you do, or don't have a valid medical malpractice case.

Most clients who come to me are not sure whether they have a valid case. However, most know what happened to them. "I walked into the hospital with only a small problem, and I came out without my leg!" "She was healthy when she saw Dr. Jones, but she died on the operating room table..." "I got the medication from my pharmacy, but after I was hospitalized, I looked at the bottle and it was different from what was prescribed!"

The lawyer's job is to investigate your case.

How does he do this in order to help you? Simple. He (or she) will request your medical records from your doctors and hospitals. He will (and should) personally review each of those medical records to determine for himself if there is a potential case here. He will then send all of your medical records to a medical expert for evaluation.

In New York, an attorney must confirm with a medical expert that you have a valid malpractice case before he can ever start your lawsuit. This requirement is designed to prevent 'frivolous lawsuits' against doctors and hospitals. Your lawyer must then affirm that he has consulted with a medical expert who is knowledgeable in that field of medicine and confirms the basis for a case.

I'm sure you know someone who's afraid to call a lawyer to discuss their potential case. Well, they shouldn't be afraid for a number of reasons:

(1) The consultation, either by phone or in person, is usually free,

(2) There's usually no cost involved to the victim to investigate-The lawyer incurs those costs. If you're unsure, ask your lawyer when you call.

(3) If you have a valid case, and your lawyer starts a lawsuit on your behalf, the lawyer will get reimbursed for those expenses at the end of the case, if he recovers money for you. [In New York, the client is ultimately responsible for all expenses on the case whether they win or lose.]

DO NOT LET TIME GO BY WITHOUT CONSULTING A LAWYER, IF YOU THINK YOU HAVE A POSSIBLE CASE

In New York, as with all states, there are strict time limits that a victim has in which to start a lawsuit against a hospital or doctor, or a city hospital or clinic. If you do not file within that time frame, there's a good chance you will have lost your ability to ever bring a lawsuit for your injuries.

So, don't delay. If you have questions about a potential case, pick up the phone and call. Get an opinion from an experienced lawyer. Learn all you can about choosing an experienced lawyer, and then make your decision.

5 Common Legal Phrases You Always Hear in Court But Don't Really Know What They Mean Until Now

By: Gerry Oginski

Q: When a judge says "Objection Sustained," or "Objection Overruled" what does that mean?

A: It means that a lawyer has voiced an objection about a question or about some evidence that the lawyer wants to introduce. When the judge says "sustained" it means that the question is improper, or that the evidence cannot be used.

If you hear "Objection Overruled" it means that the lawyer can continue asking the question and get an answer, because the court has ruled that it's a proper question, or that the evidence is proper and can be admitted. The judge is overruling the lawyer who objected to the offending question, and permitting the question.

Q: What is hearsay?

A: Hearsay is a word used to describe what somebody said to somebody else. It arises when a witness is on the stand, and is asked about a coversation he heard from someone else. "Mr. Jones told me that he spoke to Donald, and Donald said..." or "Mr. Jones told me that he didn't have the photographs..."

Well why is this important? Because the lawyers for either side do not have the opportunity to question either Mr. Jones, or Donald, since they are not witnesses, and are not in court. Thus, it's what someone has heard someone else say, and now tries to repeat it in Court.

How do we know that the statement is reliable if we cannot cross-examine the person who made the statement? How can we search for the truth of the statement if that person isn't in Court? We can't. Therefore that, in a general sense, is called hearsay.

There are many exceptions in law that permit different types of hearsay to be spoken or discussed at trial, and this article will not touch on those exceptions.

Q: What is a plaintiff and a defendant?

A: The real question is "Who is a plaintiff?" A plaintiff is the term used to describe a person who brings a lawsuit (usually a civil suit, as opposed to a criminal lawsuit which is usually brought by a prosecutor).

A defendant is someone who has been sued.

Q: What is an examination before trial?

A: Although it sounds like a doctor's exam, it's not. It's really a question and answer session with all the lawyers present, usually in a conference room at a lawyers office. This allows both sides to question all the people involved in the lawsuit to find out what they know, and what they remember about the events surrounding the lawsuit.

An examination before trial, also known in shorthand as an EBT, is also called a deposition. These question and answer sessions are done well before trial. The testimony is preserved since there is a coufrt reporter present to record all the questions and answers, and this is put into a booklet for all parties and lawyers to read.

Q: What does it mean when a lawyer asks for summary judgment?

A: It means that the lawyer feels his client's case should be decided immediately, without any further testimony or evidence. It means that the lawyer feels there is overwhelming evidence in that lawyer's favor to require the Court to short circuit the entire trial and render a decision at that time.

Don't Settle Your New York Wrongful Death Case Without Knowing the New Law

By: Gerry Oginski

A new New York law put into place in January 2006 means that when you settle your wrongful death case, you will be entitled to earn interest on your money, while you wait for the Surrogate's Court to finalize your settlement.

In the past, when a wrongful death case was settled, litigants needed to wait for approval from the Surrogate's Court in order to have the Court oversee and supervise how the monies would be distributed to the family members. The problem was that the Surrogate's Court would often take many months to reach a conclusion before rendering a final deciscion that allowed the litigants the approval necessary to obtain their settlement monies. During those months spent waiting for court approval, their settlement money was being held by the insurance companies, and gaining interest for the benefit of the insurance companies.

This has now changed.

When a wrongful death suit is tentatively settled now, your attorney must apply to the TRIAL court for permission to tentatively settle the case. Once the trial court grants their approval, the attorney is able to submit closing papers to the insurance company that will allow your lawyer to obtain your settlement check. From that check, the attorney will be able to immediately (subject to the trial court giving approval) retrieve his expenses that he has documented to the satisfaction of the court, and also be able to obtain his (or her) attorney's fee.

Once that has happened, the case then awaits final approval from the Surrogate's Court to decide how the settlement monies will be distributed. During this hiatus, interest is being generated for the benefit of the litigant, so that when the money is distributed, the interest is also divided according to the formula worked out by the court.

Medical Malpractice - NY Lawyers No Longer Required To Ask Clients To Pay Them Back If Case Lost

By: Gerry Oginski

MEDICAL MALPRACTICE & PERSONAL INJURY LAW IN NEW YORK

A new law just went into effect the other day. Lawyers no longer are required to pursue their clients for expenses the lawyers incurred on their behalf in unsuccessful lawsuits, in cases where the lawyers' fee was payable only if the client won.

It used to be that a New York lawyer was obligated to tell their clients that even if they lose their case, they were still responsible for paying the lawyers expenses he spent on their case. For example, if the lawyer spent $25,000 prosecuting a medical malpractice lawsuit, and they lost the case, the lawyer was legally within his right to turn to the client and ask the client to reimburse the lawyer for the $25,000.

In reality, it didn't really work that way. Most practicing medical malpractice and personal injury lawyers would not ask a client to reimburse them for their expenses if they lost the case. Can you imagine the indignity that results from such a case? Not only do they lose their case, but now they're hit with a huge bill for the lawyers expenses? What happened to "No fee, no recovery?" Well, if you ever looked in the fine print in one of those ads, or in a lawyers' retainer agreement, there was always one sentence which said "The client is ultimately

responsible for the legal expenses incurred on their case."

Importantly, the law that Governor Pataki just signed says that a lawyer is no longer REQUIRED to pursue their clients for expenses. In most cases, at least in the greater New York metropolitan area, most medical malpractice attorneys would not ask their client to repay their expenses if they lost the case. It's just bad business.

In 18 years of practice I have never asked a client to reimburse me for my costs if we lost a case. However, I know that in some upstate counties there are lawyers who have no problem asking their client to foot the bill for all of their legal expenses if they lost the case- and guess what? Legally, they were totally within their right to do so.

Now, lawyers are not faced with the dilema to ask the client for their legal expenses. What does this mean for the prospective client who needs a medical malpractice or personal injury lawyer?

Make sure that your lawyer puts a sentence in your retainer agreement that says that he will, or will not seek reimbursements of his legal expenses if you lose your case. This way you know exactly what will happen at the end of your case, and whether you'll be on the hook for thousands of dollars.

Medical Malpractice- 10 Reasons Why You Shouldn't Sue Your Doctor

By: Gerry Oginski

1. You like your doctor

So, what's wrong with that? Nothing. Most of us like our doctors. That's why we trust them and keep going back to them for treatment. But should the fact that you like your doctor prevent you from seeking compensation when he or she committed wrongdoing that caused you physical and emotional injury?

The law in New York permits anyone who has been injured by another to bring a lawsuit for compensation. This law originated from common law and goes back hundreds of years. In fact in some religions there is evidence that this type of law goes back thousands of years. It makes good common sense. If another person causes you harm, you are entitled to obtain money to pay for your medical expenses, your lost earnings, your future lost earnings, the damage to your property, and of course, compensation for the pain and suffering you endured.

So, should the fact that you like your doctor prevent you from bringing a lawsuit? It might make you feel uncomfortable, but I guarantee that when you start to think about your disabling injuries and how your doctor caused them, the anger and hostility you feel will usually outweigh your fondness for your doctor.

2. What good will the money do for you?

This is a common rhetorical question that defense attorneys often ask plaintiff's lawyers. "The money won't bring your loved one back," "The money won't make you whole again," "The money you're asking for isn't going to change anything..."

However, money is the only thing that our justice system allows us to recover when an injured victim sues their wrongdoer. While those comments above may all be true, we are prohibited from taking justice into our own hands. Therefore, what else can we obtain for the injured victim? Money is the only thing that allows us to pay the medical bills that were generated as a result of the wrongdoing. Money is going to make the victim more financially secure. Money

will help the injured victim with ongoing medical care and rehabilitation. The injured victim will not be a burden on a City or governmental handout. Money will help his children go to school or camp. Money may help with modifications needed in his home- such as a wheelchair ramp or modified kitchen appliances.

Money can never make us whole, or replace the agony and suffering that was caused by a doctor or a hospital. But the money is supposed to make those wrongdoers think twice about doing that same action again, and hopefully prevent the next person from being a malpractice victim.

3. Your doctor's reputation will be tarnished

Contrary to popular opinion, (or at least from the doctor's insurance company) this is not an accurate statement. Most people living in a civilized society recognize the right to sue. The fact that a doctor has been or is sued is not that significant. If you ask a doctor if they've been sued, they will often be quick to explain how the case had no merit. Importantly, the physician will still continue to practice medicine and there will usually be no disciplinary action taken as a result of a civil medical malpractice lawsuit. The belief that a doctor's reputation will suffer a blemish if sued, is simply not correct.

4. Your doctor will be banished from his community

Once again, this statement is not true. The doctor will continue to practice medicine (even if they lose the malpractice suit against them, and are required to pay the injured victim money). The doctor will not lose their license, and in all probability, the award will not be reported in the local papers, and most of his patients won't even know of the lawsuit or the award.

5. Your doctor will shut his medical practice

No he won't. He might be outraged that he has to defend a lawsuit and take time away from his practice for a few days, but there is no reason for him to shut his medical practice.

In very extreme cases where the physician is a threat to the health and well-being of his patients, the New York State Department of Health can and will shut down the doctor's practice and revoke his license to practice.

But, in the majority of cases, this does not happen, and the doctor continues on with his practice and his life.

6. Your doctor may lose his license

Not true. A civil lawsuit in New York has no effect on whether a doctor does or does not lose his license to practice medicine. In order for a New York doctor to lose his license, the New York State Department of Health investigates a complaint of wrongdoing. After extensive investigation and after a hearing where the physician gets to explain what happened and why, the Department of Health reaches their own conclusions about whether treatment was rendered in accordance with good medical care or whether there were deficiencies.

The options to punish or cure the deficiencies are many, and only as the most extreme- and last resort option would the Health Department revoke a physician's license. But simply by bringing a lawsuit against a physician for monetary compensation does not affect his license to practice medicine.

7. Your doctor may alter your records

Believe it or not, this has been known to occur in rare instances. When it does, the attorney representing you may be able to prove it. If your lawyer is able to prove that your doctor altered your records, the doctor could suffer significant penalties and could lose his license to practice medicine. The fact that he may or may not alter your records should not prevent you

from investigating and/or pursuing an action on your behalf. There are usually other ways to determine what treatment was rendered, and often such action by a doctor can help your case by showing the extent to which the doctor tried to cover up the wrongdoing.

8. Your doctor may apologize and tell you it was all a mistake

There are recent medical and insurance studies that have confirmed that when doctors and hospital staff are straightforward and honest about what happened, patients and their families tend to understand that 'not everyone is perfect'. In fact, some hospitals encourage the doctors to fess-up and tell the patients they screwed up, and apologize, and arrange to have the hospital immediately reconcile financially with the patient and his family. The studies indicate this works.

Does that mean that you shouldn't sue because the doctor apologized? Not necessarily. An apology may not solve your problems. You need to decide whether such an apology is sufficient. Most people will tell you it's not.

9. Your friends and family may think you're a gold-digger

If you live your life concerned about what your friends and family think, then maybe you shouldn't sue-under any circumstance. Your friends have not experienced what you have gone through. Nor do they live with the constant pain and disability that you have. They may not truly understand what you will live with for the rest of your life.

Some folks simply don't want their friends and family to know they're involved in a lawsuit. The reasons are endless. "I don't want anyone knowing my business." "I don't want my neighbors knowing how much of an award I received." "I don't want my family members asking me for money- this is for my future- I can't work anymore, and I can't afford to give it away." "I don't want my relatives to argue with me about why I sued my doctor."

You must decide for yourself whether these concerns outweigh your legal right to bring suit and recover money for your injuries.

10. Your injuries aren't that disabling

There are cases where the injuries are significant, but have cleared up after many months or years. The fact that you may no longer be permanently disabled is a factor to determine how much your case is worth. If you are no longer disabled- we congratulate you and your success in overcoming your injuries. If you can do those activities that you used to do, we are extremely pleased with your recovery. You should know however, that such success means that the value of your case may be limited to the time you were injured and disabled. Most people would agree with this result. You only can receive compensation for the time you were injured and disabled.

Many injured folks may make a recovery, but still be unable to do all of those daily life activities they used to do. Where there is an ongoing problem or disability, the value of your case is generally greater than where you have totally healed.

Medical Malpractice: 10 Reasons Why You Should Call A Lawyer

By: Gerry Oginski

1. BECOME INFORMED

There's a commercial for a mens clothing store in New York that says "An informed consumer is our best customer." This is true for people who have potential medical malpractice and

injury cases. From the moment the phone rings until we've finished their case, the most important aspect of my job is to inform you, the client, whether you have the basis to bring a lawsuit, what your chances for obtaining money are, and to give you the best legal advice possible.

Without good legal advice, your ability to make informed choices are limited. That's why you need as much information as possible, and as soon as possible. You don't want to be told that the time to bring your lawsuit has lapsed, which leads me to the next topic:

2. LEARN WHAT YOUR TIME LIMIT IS TO START A LAWSUIT

You must know how much time you have to bring a claim and/or a lawsuit. There are many different time limits in New York, depending on the type of case you have. In a car accident case you generally have three years from the date of the accident in which to start a lawsuit. However, you only have 30 days to file a claim with your insurance company if you want them to pay for your medical bills.

There are many different exceptions to the time limits in New York. For example, if you were treated in a City Hospital such as Coney Island Hospital or Jacobi Hospital and you feel a doctor or nurse treated you improperly that resulted in injury, you'd have only 90 days to file a claim against them. Then you'd have only one year and 90 days from the date of the malpractice within which to start a lawsuit. BUT WAIT! You can't start your lawsuit until after you've filed a claim against the agency that 'owns' the hospital. See...it gets complicated. That's why it's so important to learn about the time limits you have. YOU MUST BECOME FULL INFORMED.

If you wait too long to seek legal advice, you might not be able to start a lawsuit because your time has lapsed. Find out now, then make your decision about whether you want to proceed with a lawsuit.

3. MEET WITH THE ATTORNEY TO SEE IF YOU'RE COMFORTABLE WITH HIM OR HER

Not every attorney will fit every client. It's like a first date. Some people you'll feel comfortable with, and others you won't. You won't know until you actually meet with the lawyer. Look at the surroundings. Look at how organized the lawyer is. Is the lawyer a professional. Does he or she appear confident in their abilities? Is the lawyer explaining and answering your questions, or is he or she trying to sell you on how wonderful he is? Use your common sense when deciding whether this lawyer is for you.

If you're unsure, tell the lawyer honestly that you're not sure whether you're going to choose him, and need to speak to other attorneys before you make a decision. Being open and honest with your lawyer is extremely important. Most lawyers will understand your reluctance to immediately sign up. Some will pressure you to sign a retainer before you leave the office. Remember, this is YOUR CASE. You must feel right with whichever lawyer you choose.

4. EVALUATE THE LAW FIRM

Does the lawyer have support staff to handle any questions or issues if your lawyer is busy? Does he have partners? Is he a solo practitioner, or is this a large law firm? Is the lawyer you meet with the one who will be with you every step of the way? Or will your case be assigned to different lawyers as it makes its' way through the legal system?

If you have questions about the status of your case will the lawyer you meet with call you back, or will you get a call from some paralegal you've never met before? When you call the office will you have to give them a file number for them to know who you are and what's going on with your case, or will the attorney have these facts at his fingertips?

Answers to these questions will help you decide if this lawyer and this law firm are the right match for you.

5. DOES THE LAWYER HAVE FREE INFORMATION FOR YOU BEFORE YOU EVER WALK IN THE DOOR?

Before going to meet the lawyer, can you get information about lawsuits and his experience from any written materials like a brochure or his law firm website? Look to see what information they provide. Is the lawyer hesitant to talk to you on the phone? Are there any pamphlets or booklets the lawyer has written that he sends to prospective clients to give them information about their type of case?

Remember, becoming informed is the key to understanding your legal rights.

6. ELIMINATE SURPRISES- ASK ABOUT FEES

Most lawyers who handle medical malpractice and injury cases in New York do not charge any fee to meet with them or to investigate your case. If an attorney accepts your case, they will have you sign a retainer agreement which sets out in detail the terms of the fee arrangement. In injury cases, typically the attorney will receive 1/3 of the net fee (after expenses and disbursements have been re-paid). In a medical malpractice case, the lawyer will get a fee that is much less, and works on a sliding scale- as the client's share goes up, the lawyer's fee drops.

7. ASK ABOUT EXPERIENCE

In most medical malpractice cases, a lawyer's experience is the key to getting not just fair compensation but just compensation. You must ask not only how long the attorney has been in practice, but how long they've handled cases like yours, and whether they have handled cases similar to yours. Obviously past experience does not guarantee a future result. However, with past similar cases the attorney has the ability to properly advise you about what needs to be done to try and achieve the best result possible.

8. ASK ABOUT PREVIOUS CASES SIMILAR TO YOURS

(See #7 above)
What if your attorney has never handled a case like yours? Well- you can still stick with this attorney. I'm sure he can learn everything he needs to handle your type of case. But remember this- This is the only time you'll be able to bring a lawsuit for your injuries. Don't you think you might be better off with an attorney who has handled these types of cases for years and years? The choice, as always is yours. Make your decision after carefully thinking about the risks and benefits of chosing one lawyer over another.

9. ASK ANY ATTORNEY YOU MEET, WHO HE WOULD USE IF HE NEEDED A MEDICAL MALPRACTICE LAWYER

If the lawyer you meet with is confident of his or her abilities, they should have no problem recommending another attorney for you to get another opinion. However, if they are hesitant, or refuse to give you another name of an attorney to consult with, I would personally questions why not? Obviously, they don't want to lose you as a prospective client. However, I have found that lawyers are totally upfront with clients and give them the information they ask for, more likely than not, the client will return to their office and ask them to be their lawyer.

10. YOU HAVE NO OBLIGATION WHEN YOU CALL AN ATTORNEY FOR INFORMATION IN NEW YORK.

Just because you meet with an attorney, without paying any fee, does not obligate you to sign up with or stay with that attorney. We hear so often in attorney advertising "There's no obligation!" What this means is that you have a choice. If you like the attorney and are confident of their abilities, great! If you don't, say "thank you for your time," and move on to the next attorney. You are under no obligation to stay.

How to Become a Medical Malpractice Lawyer in New York

By: Gerry Oginski

There's an old joke that asks "How do you get to Cargenie Hall?" The answer is "Practice." The same can be said for becoming a medical malpractice lawyer in New York.

My first boss, a well-known trial attorney in New York, told me one day after an exhausting and productive day, that trial lawyers are not born great trial lawyers. Rather, they must practice their trade day in and day out. Only through experience and practice can one become a truly good lawyer.

Becoming a lawyer

In order to become a lawyer in New York, you must attend four years of college. You then must take the LSAT (law school admission test) and apply for admission to law school. Law school is usually a three year program, and once you finish school- you must take the New York State Bar Exam. This is a two day exam that tests your knowledge of general and specific areas of law. Once you pass the bar exam, you must pass an interview with the character and fitness committee in the County in which you live. Once you have passed the interview you will be permitted to practice law in the State of New York.

Gaining experience

Most attorneys will go to work for a law firm to gain experience, and after a few years, move to a different firm. Some will open their own law firms, and some will remain where they started. One of the best ways to gain experience in medical malpractice law in New York is to work in a defense litigation firm that handles medical malpractice defense. There you will learn to handle the file, deal with paperwork, attend court conferences, deal with clients, take depositions, and if you're lucky, assist senior attorneys with trials. In years past, the younger associates at such defense firms could easily count on starting their own trials within one to two years of passing the bar. However, with malpractice cases being so complex, and physicians and insurance companies being weary of the young novice attorney representing such significant matters, it's unlikely that you will be handling your own trial until you are either a partner, or have many years of experience under your belt- even if you are the smartest attorney to come out of your class.

Medical malpractice law

Medical malpractice law is a sub-specialty of tort law- also known as personal injury law. The only way to become good at it is to gain experience by practice and guidance with a senior trial lawyer who handles these cases on a day to day basis. Not only do you need to learn the law specific to medical malpractice issues, but you also have to become somewhat of an expert on the medicine involved in the case.

Learning the medicine occurs by reading medical literature, medical textbooks, speaking with physicians, consulting with your medical experts, and treating doctors. Learning how to apply that knowledge to your case is what takes time and experience. Learning how to cross-examine a doctor at a deposition or question him skillfully at trial is what separates the good attorney from the excellent attorney.

Contrary to what we see on television, the key to being a good trial attorney who handles medical malpractice cases is preparation. Preparation of the medicine, preparation of your records, exhibits, your clients, and your experts; in a word: Preparation. You must know your case better than your own client does. You must educate the Court about your case, the law

involved specifically in your case, and must convey your knowledge to the jury in a way that makes your case more believable than your adversary's case.

My own experience

In my daily practice, I truly enjoy handling medical malpractice cases. I enjoy speaking with potential clients who call to see whether they have valid cases that warrant investigating and prosecuting. The hardest part of my job is telling a potential client that I cannot accept their case. When that happens the natural question is "Why can't you take my case?" The answer to that question can be simple or complex depending on the type of case they're calling about.

Being able to help victims of medical malpractice is always rewarding, as many of these victims cannot help themselves and need legal help with rebuilding their lives, their finances and their frail bodies.

For those who call for tort reform, keep in mind that there are many instances of valid malpractice cases here in New York that so few contrarians even wish to discuss. Rather, they want to focus on a few bad apples who bring cases that are questionable. Instead of focusing on a few bad apples, keep your mind focused on what can be done to prevent malpractice from happening, and once it does happen, how to properly and fully compensate the injured victim.

7 Words You Hear in Law But Were Afraid to Ask What They mean

By: Gerry Oginski

OBJECTION SUSTAINED!

Yelled the judge during a heated trial. Meaning: One lawyer has determined that the question being asked by the other lawyer has a problem with it and should not be answered. The judge must decide instantly whether the witness can answer the question or not. When the objection is sustained it means that the question will NOT be allowed, and the witness IS NOT to answer the question.

OBJECTION OVERRULED!

Again, a lawyer has objected to a question being asked, and again the judge must decide immediately whether the witness can or cannot answer the question. By saying "Objection overruled" it means that the witness CAN answer the question, and any objection by the attorney is disregarded.

Keep in mind that when a lawyer objects to a question, he may do so for more than one legal reason. Even if the Court decides against the lawyer who objects, ultimately, the lawyer has protected his client's rights, since he has preserved his objection for an appeal if one is taken at a later time.

Meaning: If a lawyer appeals a decision or verdict against him (or her), the higher court looks in the transcript of the trial to see if the lawyer 'preserved his right to object' and actually objected at the time the question or decision arose. If he did, then the higher court will likely address the issue. If the lawyer never objected to the problem at trial, and only objected after the decision was against his client while on appeal, the Court will probably not address the issue and claim that the lawyer waived his right to preserve this issue on appeal.

SURROGATE'S COURT

This is the Court where papers are filed when there's been a death, and you need to have

someone in the family appointed as administrator or executor of the estate.

Q: What is a deposition, and will I have to testify at a deposition?

A: First, a deposition is a question and answer session where you will swear (or affirm) to tell the truth. The questions and answers are recorded by a Court stenographer, who will later transcribe all of the questions and answers into a booklet.

If you are bringing a lawsuit for injuries you or your loved one suffered then you will be required to testify about your knowledge of the events and your knowledge of the injuries. You will also be asked questions about how those injuries have affected you (or your loved one) and what treatment you've received to treat those injuries.

The attorney(s) for the people you have sued will be questioning you, usually in my office. Sometimes, because of an inability to travel, we can accomodate the injured victim and conduct the deposition closer to their home. Naturally, I will be there with you every step of the way.

Prior to your 'deposition' you will meet with me, either on the day you are scheduled to be asked questions, or on a scheduled day before the deposition. During that meeting, I will prepare you extensively about what you can expect will be asked of you by the other attorney(s). By the time we have finished our meeting, you will be aware of practically all the types of questions you will likely be asked by our adversaries.

During the deposition, if you have any questions or concerns, we can take a break and discuss them in the privacy of my office.

Once your deposition session is finished, you can expect to receive a copy of the booklet that contains all of the questions and answers asked and given. You will also receive special instructions about how you must review the transcript for any errors, and what to do if you find factual or typgraphical errors.

On another date, I will have an opportunity to then question the 'defendant' (the party that you have sued) to determine from them what happened and why. You are welcome to attend the defendant's deposition with me, however there are some instances where I will advise against being there, and in some instances I will encourage the client to accompany me.

Q: What is an appeal?

A: An appeal is a request to a higher court to review and re-evaluate a decision made by a lower court. Appeals are complex, and are most often decided on the legal issues, as opposed to factual issues.

For example, in a jury trial, facts are elicited from witnesses, medical records and evidence. The jury must decide whether the injured victim's version of the events, more likely than not, supports a finding in his favor. If the scales of justice tip even slightly in plaintiff's favor, then they are entitled to be compensated for their injuries.

In an appeal, the higher court looks to see whether the legal instructions given to the jury were appropriate, and whether certain evidence was properly admitted or excluded during the trial. If an error of law was made, the court must then decide whether it was a harmless error, or one that had irreversible consequences. If there was a legal error, there is a good chance the court will throw out the lower court decision, and order a new trial. There are other options as well, but we need more time and space to cover them all.

Q: What does it mean when my health insurance company says they have a 'right of subrogation?'

A: When you go to the doctor or hospital for injuries you received from an accident or malpractice, in all likelihood your health insurance company will be paying your medical bills.

[This does not include car accidents, where your no-fault insurance company will be paying for your medical bills up to a certain dollar limit.]

If you continue to receive medical care for your injuries and those bills are paid by your health insurance company, then your health insurance company has a right to recover those monies that they paid for your medical care. Why? Because your injuries were caused by someone else. If you bring a lawsuit claiming pain and suffering and also that you incurred medical bills and you get money for your injuries- your health insurance company wants to be repaid.

Technically, your health insurer 'steps into your shoes' and can bring a claim against the insurance company of the person or hospital who caused you harm. They can obtain their money directly from them. Alternatively, the health insurance company can bring a claim against you, the injured victim saying that since you settled your case, you are obligated to repay us for what we already paid out to your doctors. This is the 'right of subrogation'. It appears in very small fine print in most every health insurance policy in New York.

Some policies are very specific and say, "If you bring a lawsuit to recover money for your injuries, and we have paid for your medical bills, we have a contractual right to be repaid." The Courts in New York have consistently permitted health insurance companies to intervene in pending injury lawsuits to allow the health insurer to recover money that they already paid.

Q: What is 'hearsay'?

A: That is a legal term used to describe statements made by someone who is not in court to tell us about what they heard.

Why is hearsay not admissible in Court?

Because an attorney does not have the benefit of actually questioning the person who made the statement. Without being able to cross-examine the person who made the statement, it would be very easy for someone to make up testimony, and nobody would ever know if the statements were true or not. Cross-examination allows an attorney to question the witness, and allows the jury to see and hear the person and how they answer the questions. Are they truthful? Are they shifty? Are they secretive? Are they hiding something? The only way to truly unravel this is to have the witness in court telling the jury what they heard themselves.

7 Reasons Your Lawsuit Never Ends

By: Gerry Oginski

You meet with your lawyer to see if you have a valid case. He asks you hundreds of questions about what happened and delves into your personal life and your family's life. He then says, "Let me worry about the legal issues. I'll let you know when you have to come back for a deposition..."

If this sounds familiar, it should because it's the right way to handle an injury case in New York.

1. Your lawyer first has to determine if you have a valid case.

To do that he has to investigate everything about your claim and about you as well. That takes time. He has to obtain your medical records, obtain any accident reports, and find out what medical treatment you've had and what treatment you'll need in the future. He needs to know what you were earning and evaluate your lost earnings and your lost future earning capacity. Do you need rehabilitation? Will you need vocational training since you will be unable to perform the type of work you were doing? Experts need to be hired to evaluate your case and review your records. This all takes time.

So, why does it feel as if your lawyer isn't doing anything and your case keeps going on and on? Maybe you're not getting any updates about what's happening. This leads me to the next reason your lawsuit never seems to end.

2. Once the investigation is complete and it turns out you have a valid case, your lawsuit will START.

This means that your lawyer will prepare papers to start your case, file them with the Court, and have them served on the people you are suing. All of these things are done by your lawyer without your involvement. (With the exception of you reading and signing the papers that start the lawsuit.) Your lawyer does this all the time, and it should be routine for his staff as well. Sometimes the lawyer forgets that the client needs to be kept informed about each step in the litigation process. Being informed keeps you, the client, in the loop about what is actually happening.

3. After the lawsuit starts, why does it still seem like nothing's happening?

Something's happening, but it doesn't directly involve you. Once the lawsuit papers are given to the people you are suing, they have to send those papers to their insurance company so they can open a file and hire an attorney to represent you. Once a lawyer is assigned to handle their case, their lawyer will prepare papers to answer your lawsuit. This is known as an 'answer' to the complaint you've served. Only after the answers are received can your lawyer notify the Court that 'issue is joined'- which means that all the parties to the lawsuit are now involved, and can we please set up a scheduling conference with the Court.

4. Why does it take so long for the lawyers to answer the complaint, and the Court to set up a conference?

Typically, the person who is served has 20 days in which to serve a response to the complaint you have made. Sometimes, it is difficult to actually serve the person or company whom you are suing because they may have moved and are no longer at the address that they used to be. When that happens, your lawyer's assistant (known as a process server) has to track down that person or company in order to properly serve them with the legal papers. If this is unsuccessful, then it will be difficult, if not impossible to start the lawsuit against those people who caused you harm. This step is crucial in order to proceed with your case.

If the person you're suing is properly served with legal papers, their attorney may sometimes ask for additional time to answer your papers since they'd like time to learn the facts from their client before submitting their answer. This is known as 'requesting an extension of time to answer the complaint' and is a courtesy most attorneys will grant.

Once your lawyer receives the answer to your complaint, and requests a conference with the Court, he no longer has any control about when the conference will be held- that's entirely up to the Court to determine. With many cases to deal with, Courts can be backlogged many weeks or months.

5. When we get a scheduling conference, why does it still seem as if things are moving slowly?

There is an unfortunate saying that "The wheels of justice turn slowly." Once a conference is scheduled your attorney will know when you will need to be deposed- which is a question and answer session at your lawyer's office. It will likely be months later that you will have your deposition. The lawyer for the other side needs time to obtain your medical records, and do any other investigation needed before he questions you at your lawyer's office.

Your lawyer will be present together with the other side's lawyer(s) and a court reporter. This will be the second time you will be in your lawyer's office, and it will feel as if your case is moving right along- since you are directly involved in the proceedings.

Once your deposition is completed, you may again have that sense that your case has crawled

to a standstill- but you shouldn't feel that way. Your case is moving in the right direction.

6. Why is it taking so long for other depositions to be completed?

Sometimes, the attorneys have scheduling conflicts that prevent scheduled depositions from going forward. Sometimes one lawyer is on trial on another matter and cannot attend a particular deposition. Other times the witness who is scheduled to be questioned may not be available and their deposition needs to be re-scheduled. Attorneys frequently acknowledge this possibility and give courtesies to their adversaries when possible. Sometimes it is simply not possible and arguments arise between the attorneys and the Court is needed to intervene. Sometimes the delay may be intentional and the Court's assistance is required to resolve the issue.

7. When there are many people to question, there may be many weeks or months between depositions.

During this time, it may seem as if nothing is happening with your case. Call your lawyer to find out why there's a delay and what is he doing about it. Become informed and try to stay in the loop. Keeping informed about the details of your case will make you more comfortable that it's proceeding the way it should, and will inspire more confidence in your attorney that if you don't hear from him for months.

SUMMARY A lawsuit is not a race. It's an investigation and prosecution of an important case that must be assembled and cared for one fact at a time. Keep in touch with your lawyer and ask questions. This way you'll know that your case is moving forward and has not fallen between the cracks. Importantly, you'll understand why your case is moving at the pace it has and what you can expect in the future.

10 Misconceptions About New York Medical Malpractice Lawyers

By: Gerry Oginski

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. They hate doctors and hospitals.

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. They are responsible for increases in health care costs and the premiums that doctors pay for their malpractice insurance.

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. They like to go to trial.

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.

Medical Malpractice - How to Become a Black Belt when Questioning a Doctor

By: Gerry Oginski

Learn how to be a black belt attorney when questioning a doctor at their deposition.

1. Never give advance warning of what you intend to ask.

A black belt is confident of their abilities. They don't need to show off. They don't need to put on a show. They certainly don't need to impress the doctor with their legal prowess. When questioning a doctor at a deposition, I always advocate asking the key questions in the case AT THE VERY BEGINNING of the questioning.

Most physicians are not anticipating that the key issues will be discussed at the beginning. Most defense attorneys will prepare their doctor-client for the typical credentials checklist..."Where did you go to medical school, where did you do your residency, are you board certified, etc." By going directly to the heart of the case early on in the deposition, you might stand a slight advantage and get an unexpected answer you would not have obtained had you started with the standard questions.

2. Question the doctor as if you are cross-examining him at trial.

I advocate using leading questions at a deposition. Why not? It's good practice for trial, and it doesn't give the doctor much wiggle room when answering a question. Obviously there are times when I need a descriptive answer, and have no problem asking the "Why?" question during a doctor's deposition. There are also times when I want a doctor to talk at length about why he rendered a particular treatment, or what was the standard of care for treating a particular condition.

In New York, lawyers are no longer permitted to obstruct depositions by continually objecting to questions. Virtually every question asked must be answered, even though the defense attorney raises an objection. The only time a question does not have to be answered is when it is "palpably improper" or addresses something that is inherently privileged material..."What did you talk to your lawyer about before the deposition?"

3. Be respectful.

A black belt is always respectful to an adversary and to their colleagues. This is not a sign of weakness. Just the opposite. It is a sign of strength. Being hostile and argumentative with a doctor at their deposition, in my opinion, is not productive. If you are attempting to 'push the doctor's buttons' by being hostile, your intention may be worthy, but the method you are

using is self-defeating, and not appropriate.

Everyone in the conference room knows what role they play. The doctor looks at you as the 'bad guy'. The defense attorney looks at you as an adversary. You look at the doctor as the culprit who caused your clients' horrific injuries. I advocate putting all this aside. Be respectful, and give the doctor the respect he deserves. Then, with your exacting questions, tear him apart step by step- and do it with a smile on your face.

"Please define erbs palsy. Please describe how a baby can get erbs palsy. Is there any other way to get erbs palsy except by putting excessive lateral traction on the baby's head? Would you agree that putting excessive lateral traction on the baby's head would be a departure from good medical care?"

Remember, each question is a building block for the next one. Build up your case with carefully crafted questions that establish the standard of care, then show through the doctor's own records, that those standards were not followed.

4. Understand your limitations

A good medical malpractice lawyer knows what he knows and also knows what he does not know. (Some call this Murphy's law). The doctor has spent years studying medicine. Expect that they will have a greater breadth of the key issues in the case than you. Accordingly, you must prepare extensively. Get out those medical textbooks. Search those medical journals. Re-review the hospital records. Call your medical expert and discuss the case. Have your expert teach you the medicine.

By the time you are ready to question the defendant doctor in your case, you should have an excellent understanding of the medicine and be able to discuss the medical issues with ease. If you can't, you should spend more time studying. You have to become an expert on this limited area of medicine involved in your case. That is the only way you can properly and adequately take the doctor, head on, in a battle of questions and answers.

5. Do not expect the defendant doctor to scream "OK, I give up!" during the deposition

Unlike sparring in the ring (known as kumite), the doctor will often be defensive and at times may verbally attack either you or your knowledge of the medicine. When sparring in martial arts, a black belt looks to score points by hitting key vital areas of the body. An attorney who seeks to be a figurative black belt at questioning a doctor also seeks to hit key issues in the case- and looks to score those vital points as well.

However, I advocate that when you get a key answer that is favorable to you, simply move on to another question. Do not thrust your hand in the air and yell, "Yes!" Do not smile that 'all-knowing' smile like you're better than everyone else in the room. Do not throw that figurative football in a hoop-roaring dance in the end zone. Instead, just move on to the next question and go after the next issue in your case.

CONCLUSION

Following these ideas will lead you on your quest to become a 'black belt' when questioning a doctor at their deposition.

Cross-Examination Of An Expert Medical Malpractice Witness In An Erbs Palsy Case

By: Gerry Oginski

I had the privilege of questioning an expert in an erbs palsy case last week. In Federal Court the parties are permitted to question experts prior to trial in the form of a deposition (a question and answer session with the attorneys present). The expert, after reviewing the records prepares a written report that descirbes his evaluation of the records, his opinions, and the bases for his opinions.

In the case I had, the expert was a world reknowned expert in maternal-fetal medicine; a subspecialty of obstetrics & gynecology. The expert's curriculm vitae (CV) was over 40 pages long. In my first set of questions to the expert, I told him quite honestly I was very impressed with his CV. He literally had published hundreds of articles, chapters in textbooks, abstracts, and presentations. Yet in all the hundreds of articles and publications to his name, he didn't have a single publication about the issue directly involved in this case. He hadn't done any studies on the issue of shoulder dystocia, erbs palsy, or the diagnosis, treatment or prevention of shoulder dystocia and erbs palsy.

Also look to the witness' clinical experience and current status at their hospital. This expert who was going to be giving opinions about whether doctors at a hospital in New York rendered the appropriate medical care hadn't done a vaginal delivery in a long time. Nor had he had any recent experience with shoulder dystocia, or any deliveries where erbs palsy was diagnosed at the time of delivery.

POINT:

Even though your opponent produces a well-known expert against you, pay careful attention to just what the witness is an expert in. A careful review of his CV often reveals plenty of fodder for cross-examination.

LOOK AT THE BASIS FOR EACH OF THE CONCLUSIONS THE EXPERT HAS REACHED

If the facts upon which the expert rendered an opinion is inaccurate or faulty, then his conclusion will also be faulty. It is the obligation of every attorney to whittle away those inaccurate facts that the opposing expert has relied upon, to show that this experts' opinion is no longer valid.

"Doctor, assume that Mrs. Jones testified that she had pressure placed upon her belly during her labor. Would you agree that fact would be most consistent with the application of supra-pubic pressure? Would you also agree that the only time supra-pubic pressure is used is when there is a shoulder dystocia? If Mrs. Jones' recollection of pressure being applied to her belly is correct, then you'd agree that this is evidence of shoulder dystocia?"

"Now doctor, in your conclusions, you felt that there was no evidence of a shoulder dystocia based on the information in the medical record, correct? However, you'd agree that the individual who delivered this child made very few notes in the record, and in fact the record is devoid of any mention of shoulder dystocia, correct? Yet, you decided to base your conclusion on a record that was missing a great deal of information?"

"Isn't it true doctor that another physician testified that McRobert's maneuver was used during the delivery? You discounted what this witness had to say, didn't you? If you had credited what he said- and he was actually in the delivery room, you'd agree that his statement that McRobert's was used, together with mom's testimony that pressure was placed on her belly, would strongly suggest that a shoulder dystocia was present, correct?"

"If shoulder dystocia is present then that person doing the delivery is obligated to call for help, for the senior-most doctor to help with maneuvers to get ths child delivered without putting excessive traction on the baby's head. You'd agree that excessive lateral traction, in light of a shoulder dystocia can cause, and in fact is the most likely cause of erbs palsy."

KNOW THE MEDICINE

In any malpractice case, you must become familiar with the medicine involved in your case. You must become a mini-expert in the narrow topic of medicine in your case.

In an erbs palsy case, the attorney must know the basics: Shoulder dystocia, erbs palsy, brachial plexus injury, McRoberts, Woods-corkscrew maneuver, cutting an episiotomy, sweeping the posterior arm. fracturing the clavicle, the zavanelli maneuver, sonogram, intra-uterine anomalies, maladaptation, malalignment, cervical dilitation, normal progression of labor, first stage of labor, second stage of labor, apgar scores, lateral traction, downward traction, gestational diabetes, glucose tolerance test, maternal obesity, ACOG statement on shoulder dystocia (American College of Obstetrician and Gynecologists guidelines for recognizing and treating shoulder dystocia).

BE POLITE.

Show that the expert's conclusions are inaccurate, and do it with a smile!

KNOW THE MEDICAL RECORDS

Make sure you review those medical records over and over again. Know it better than the expert and your adversary. It will prove well worth it when you can point to a specific part of the medical record that the expert cannot recall.

ONLY BY THOROUGH PREPARATION AND EXHAUSTIVE RESEARCH OF THE TOPIC CAN YOU PERFORM A SUCCESSFUL CROSS EXAMINATION OF A MEDICAL EXPERT IN A MEDICAL MALPRACTICE CASE.

Car Accidents - When To Sue, Who To Sue, Why Sue At All

By: Gerry Oginski

Don't you just hate it when you see those tacky TV ads about accident lawyers? How about that obnoxious billboard you just passed on the highway showing a crashed car and someone being taken away by ambulance? Or what about those endless yellow page ads where they show a car driving off a cliff, and someone smiling in the foreground holding a nice big fat check with lots of numbers on it? It all makes you feel warm and fuzzy inside, doesn't it?

Not. It makes me sick. Don't get me wrong. Every lawyer in New York is permitted to advertise according to the Court rules (which were recently made stricter at the beginning of this year). However, there is something to be said for tasteful ads, and ads that are trying to sell you something.

When you're in a car accident, the last thing you think about is finding a lawyer to sue the driver of the car that caused your accident. The first thing on your mind should be how to get better. You need to recuperate, regenerate and get your strength back. You need to worry about the important things in your life like putting food on your family's table, and going back to work.

Well how can you go back to work if you're still in the hospital after weeks of surgery and rehabilitation? Can you go on disability? Who will pay your medical bills? What if you don't have medical insurance? How can you feed and clothe your family if you can't work? These are all very important questions that often arise after a car accident.

In New York, your own car insurance will pay your medical bills- up to a maximum of $50,000. This is known as no-fault insurance. Once the details of the accident are resolved, to figure out who really caused the accident, the insurance companies settle up on their own regarding the

medical expenses they had to pay.

But what about that often-heard phrase, "Pain & Suffering"? Aren't you entitled to that as well? The answer is yes. However, in order to obtain compensation for your pain and suffering you will probably need to start a lawsuit against the owner(s) and driver(s) involved in your car accident.

How much time do you have to start a lawsuit for your injuries arising from a car accident? In New York, you generally have only **THREE (3)** years from the date of the accident within which to start a lawsuit for your injuries. **HOWEVER, YOU HAVE ONLY 30 DAYS FROM THE DATE OF THE ACCIDENT TO FILE A CLAIM WITH YOUR INSURANCE COMPANY TO GET THEM TO PAY FOR YOUR MEDICAL EXPENSES!**

A car accident is traumatic- no question about it. Your road to recovery is the most important part of events after the accident. Whether you have a valid and meritorious case hinges on many facts that only an attorney should be evaluating. Don't rely on good-hearted friends and family to tell you their tales of woe when they were involved in an accident years ago. You need an experienced attorney who has handled cases like yours.

You need someone who has experience in Court and isn't afraid to go to trial if the insurance company refuses to settle for an appropriate amount of compensation. You need a lawyer who can guide you through the minefield of litigation. Hopefully, with good legal counsel you'll be able to make the right choices that will help you recover both emotionally and monetarily.

Medical Malpractice - What's My Case Worth?

By: Gerry Oginski

In the legal world, this is known as "Damages." "OK, so how much are my "Damages" worth?"

Before any good New York medical malpractice lawyer gives an answer, he'll need to know many things. Let's start off with "Special Damages" or what you would call "Out of Pocket Damages" or economic damages.

SPECIAL DAMAGES:

Your lawyer will ask about your bills from doctors, ambulances, hospital admissions, private nurses, medications, medical supplies, travel and lodging arising from the need for additional medical treatment, wheelchairs, walkers, prostheses, handicapped-accessible van, and future medical expenses for ongoing medical problems.

Other damages your lawyer looks at include the cost to pay for household help, lost wages, lost work benefits, future losses, loss of earning capacity, increased cost of living, special training or occupational therapy you may need because of your injuries, and property damage, if any.

PAIN & SUFFERING:

Here is a term that's often heard, and often mis-understood. This is an intangible item of damages that has no set amount. It's different for every person, and for every case. Nevertheless, a jury will be permitted to make an award for your 'pain' and the suffering it caused from the time of the medical malpractice until the time of the verdict. The jury will also make an award for future pain and the suffering you are likely to endure for the remainder of your life. Your lawyer will either ask the Judge to take notice of your expected life expectancy, or have a medical expert talk about your life expectancy. This way, the jury will be able to make an award for future damages for the duration of your expected lifetime.

Contained within this award for past and future pain and suffering is something called "Loss of

enjoyment of life." This means that you have been deprived from your everyday life and are therefore permitted to be compensated for it. New York law does not allow a separate award for this aspect of your claim. It's included within any pain and suffering award that is made for you.

If you are married, your spouse is entitled to an award (called loss of consortium, or loss of services) for all the effort he or she has made to care for you as a result of your significant injuries.

Importantly, your lawyer will want to know which of your injuries are visible, and which are not able to be seen? He will want to know how you felt immediately after the event and how you have felt since the malpractice until today. He will want to know what medical and psychological treatment you have received for your pain, suffering and disabilities arising from the malpractice. He will also want to know what your treating doctors have said about your prognosis (your future medical condition). Will you get better? Will you get worse over time? What treatment is available to you to correct your problem?

A good lawyer asks whether you have feelings of sorrow, anxiety, humiliation, anger, frustration, and even fear when thinking about your injuries. Just as important, your lawyer will need to know how your injuries have affected you in your daily life. Are you able to participate in sports, gardening, housework, woodworking, playing musical instruments, playing with your kids, cooking, cleaning, doing the laundry, ironing, washing the car, yard work and similar daily activities that you previously did without worry.

Have you had to abandon your social life and vacations? Have your club activities or charitable and social activities changed? Are you still able to dance, go to cultural events like shows or plays or even go to museums? Can you still babysit and help your friends in need? Can you go to church, temple or other religious activities?

It is only after you have discussed these items with your lawyer, in depth and in detail that your lawyer should be able to tell you what your medical malpractice case is worth- at least in general terms. Be wary of the lawyer who guarantees that your case is worth "X" dollars, since it's impossible to ever guarantee an outcome, regardless of the true value of your case.

In my opinion, being informed about your legal options is the best thing you can do to help yourself understand your case. A good lawyer is your guide to understanding your options. Only then can you make informed choices about your injuries and the value of your case.

Comment from Gerry

I hope you've enjoyed reading this book. I've certainly enjoyed writing and creating it. With this information you will become a better, more informed consumer, should you need professional legal help with your accident case or medical malpractice matter.

Remember, always contact an attorney immediately if you think you might have a case- so that your time limit does not expire. ***Also, please do not rely on anything contained within this book as legal advice. This is general information for the consumer to make you more informed about your options and your rights. Keep in mind that the law changes often, and you should always consult an experienced New York medical malpractice attorney to get the most up-to-date information about your specific matter.***

Finally, I strongly urge you and encourage you to go online to my website, www.oginski-law.com for more free information about medical malpractice and injury law. There are free reports and even news articles about recent verdicts across the country. On my website you can read actual testimony of doctors in cases I've handled- it's riveting reading. Read our monthly newsletter. Go online now and see for yourself why my website has been declared a 'news-junkie' haven for lawyers and law-related articles. I guarantee you'll learn something new.

As always, call me about any injury from an accident or medical care. I guarantee a straightforward and honest answer every time. 516-487-8207

MEDICAL MALPRACTICE & INJURY LAW in New York

Everything you need to know about Medical Malpractice and Injury Law in New York- before you walk into a lawyer's office

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