

# 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.
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*Comment: I hope this article has opened your eyes to certain facts that need to be addressed with any New York attorney you choose to handle your injury case. Remember, the more information you have, the better choices you'll make.*

*If you have any questions, please feel free to call Gerry (at no obligation or expense to you) at 516-487-8207.*