

# IN CASE OF DEATH

## HOW TO FIND YOUR WAY AFTER YOUR LOVED ONE HAS DIED

How to find a lawyer & how to learn whether you have a case...



### HAVING A WILL

Many people don't realize it, but having a will can help your surviving family for years to come. Often, we are afraid to confront our natural fears and even to discuss the possibility that we will one day no longer walk the ground we so enjoy. As a result, when a death occurs, family members are left to wonder (and fight) over who gets what remaining asset.

Fights over money and personal assets are so common in the legal world that it's amazing more people don't take the time to get a will.

A will tells the world and your family how you want your assets distributed. Without it,



It happens in the blink of an eye. One moment they're there...the next, forever taken from us. The emotions that flood over ourselves and our families range from sadness to anger and hatred. Some surviving family members revert into a shell. Others use the death as a call to action. However it affects you and your family, it's never easy to deal with. This booklet helps you understand what your legal choices are, and also how to

choose a lawyer that can best help you and your family.

As always, if there are any questions, we're only a phone call away, 516-487-8207.

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LEGAL OPTIONS AND INFORMATION YOU NEED TO KNOW

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## Important papers you need to find

Q: If a family member has died and I need to come to you for legal advice, what documents do I need to bring to our meeting?

A: First, I want to express my condolences if that is the case. It's never easy when a loved one has died. It's even more difficult if you believe that their death was caused by someone's wrongdoing or carelessness.

Second, the following documents will help me to proceed with an investigation into your case:

1. An original death certificate (the funeral home will be able to provide this). Also, ask the funeral home for a bill marked "paid in full."

2. Let me know whether an autopsy has been performed. If so, I can arrange to obtain a copy of it from the medical examiner's office.

3. A list (handwritten is just fine—it doesn't need to be typed) of the names and addresses of any doctor your loved one saw within the last two years.

4. A list of the immediate family members, their addresses, together with their ages, dates of birth and social security numbers.

5. If your loved one had a will, please bring a copy with you. (I need this to know who the executor or executrix (female executor) is.)

6. If your loved one did not have a will, one of the close family members, (you'll choose) will

need to be named as the administrator of the estate. This simply means that that person will stand in place of the deceased loved one. He or she will have their name put on the litigation documents, but importantly, that person does not receive any different or greater share of the recovery simply because they are the administrator or executor.

7. If you have copies of any medical or police records, bring them.

8. Bring any medical insurance cards, bills and receipts from any health insurance company about the treatment your loved one received recently.

9. If your loved one was employed, bring copies of their tax returns and w-2 forms for the last three years.

10. When you meet with me, try and bring any family members who have knowledge or information about the specific events that led to your loved one's injuries and untimely death.

All of these documents assist me in promptly evaluating and processing your matter. Any original documents are returned to you, except for the death certificate. The Surrogate's Court requires an original death certificate for their file.

## So, you may want to sue...

### UNDERSTANDING A WRONGFUL DEATH LAWSUIT

Q: What is 'pecuniary loss'?

A: This is a term used to describe the financial loss that the family has suffered from the death of a family member.

If a person were earning say \$30,000 per year, and they were 35 years old, we could project over the next 30 years how much they could be expected to earn over their working lifetime. In many cases, we use an economist to make these projections. The economist uses tables, guidelines, and generally available statistics to help guide us in determining how much money that person would have likely earned over their lifetime. Naturally, some things can never be measured with absolute certainty. Companies can fold, go bankrupt, people can be fired, and their health has worsened. But on the positive side, we also look at raises, bonuses, increased productivity, successes and factor that in as well.

Q: What if the person who died was not earning a living, or was retired? Can we still claim economic loss to our family?

A: Unfortunately, the answer in New York is no. The current law does not permit us to claim that the family suffered a financial loss if they were not bringing in an income. What about social security income? Usually it's not a significant amount. Considering that most people on social security use their monthly payments for basic necessities such as rent, food, and clothing for themselves. There's usually not much left over, if anything, to spend on family members or grandkids.

Q: Can family members recover for time they've been out of work while caring for a family member before they died?

A: The short answer is no. The longer answer is maybe. If it was a spouse, (husband or wife) who cared for their significant other while alive, then we can bring a claim for loss of services for that limited time period.

If the family had to hire and pay someone to do household chores; cook, clean, wash, etc., then we can try and claim those expenses as well.

However, where other family members took days or weeks off from work to help out with family tasks, the law does not really permit us to recover those lost wages. **NOR DOES THE LAW PERMIT US TO SEEK EMOTIONAL DAMAGES FOR THE FAMILY'S LOSS OF THEIR LOVED ONE.** This is the most tragic part of such a claim.

The family has been devastated and they cannot recover compensation for their emotional suffering from the death of their loved one.

If you want to change this law, write to your congressman and senator. This is the only way this will be changed.

Can you sue your employer?

Q: My husband was a construction worker who slipped off a scaffold at his job site. He broke his neck and died from his injuries. Can I bring a lawsuit against his employer?

A: No, not his employer. You can however bring a lawsuit against the owner of the property, the general contractor and any subcontractor that may have been involved with your husband's injuries and death.

## HOW MUCH TIME DOES OUR FAMILY HAVE TO START A LAWSUIT?

In New York, in a case involving wrongful death, you generally have two years from the date of death within which to start suit. **HOWEVER, BEWARE OF THIS WARNING-**

There are exceptions to this rule!

THE TIME TO FILE A LAWSUIT MAY BE LESS IF YOU NEED TO SUE A CITY, STATE OR MUNICIPALITY OR A CITY OR STATE HOSPITAL.

In those cases, your time to file a claim (which is different than filing a lawsuit) is generally 90 days from the date of the incident. You would then have only one year and 90 days within which to start a lawsuit.



## WARNING!

DO NOT RELY ON ANYONE EXCEPT AN ATTORNEY TO GUIDE YOU WHEN DETERMINING HOW MUCH TIME YOU HAVE TO FILE A LAWSUIT.

Why do I say this? Because on occasion, a client will call me, or come into my office after the time to file suit has lapsed and say “My friend said I have 4 years to file suit...” “My mother’s girlfriend had a case, and she said I have until...”

Once the time to file a lawsuit has lapsed, there is nothing anyone can do to start a case for your loss. That is why it’s so important to get good legal advice soon after the incident has happened.

Q: Why do we need an economist for my mom's death case?

A: An economist is an expert who studies the economy and understands what happens to money over time.

In many cases where a loved one was working, we can show that had they lived for the rest of their natural life, they would be expected to earn at least the same amount of money they were earning at the time of their death. An economist brings his/her expertise to the case by showing that those earnings over time, would be a significant amount of money that your family has now been deprived of.

The economist can also make projections, such as bonuses, benefits, increases in salary, to show what your mom could very likely have earned if she lived a natural life. Having an economist gives the jury a handle on the type of money your family lost. Without these calculations and testimony, the jury would literally have to guess and speculate- which is simply not permitted and would not be allowed at trial.

If your mom was not working, and was instead a 'stay-at-home' mom, the economist is also useful in calculating the value of her services to your dad and the rest of your family. Now that she's no longer around, you might have to hire a nanny, or house-cleaner to do some of the things that mom used to do all the time. An economist is needed to support this type of claim.

Q: What is an autopsy, and why would it help a potential case?

A: An autopsy is an in-depth examination of a dead person, by a doctor. The doctor who performs the examination is usually a pathologist who looks to find the precise cause of death. They do this by looking at all of the internal organs, including the brain, heart, lungs, liver, kidneys, and spleen. Each area of the body

is examined for evidence that contributed or caused that person's death.

In a case involving claims of wrongful death (where a person or family has claimed that their loved one died because of someone else's carelessness) having an autopsy is crucial to proving your case. While an autopsy is vital to support such a case, it can also shed light on the possibility that your loved one did not die as a result of wrongdoing.

It's a double edged sword. The autopsy could help your claim by showing that your loved one died from wrongdoing, or it could show that the treatment or actions that happened before death did not play a role in causing the death.

There are some religions that prohibit autopsies, and in those cases, it becomes extremely difficult to prove, with a reasonable degree of probability, that wrongdoing (such as malpractice) caused their death. In those cases, we must rely on other evidence to support our claim.

I am often called upon by grieving families to ask whether an autopsy should be performed on their loved one. As in life, there are no set answers to this crucial question. Emotions run high following a family death; questions about improper treatment may cloud a family's judgment; uncertainty about the cause of death may also add to a feeling of helplessness.

The most common case where an autopsy is performed is in a traumatic accident. In murder or homicide cases autopsies are always performed as the police want to know exactly what caused the person's death. They can usually use this information to track the perpetrator.

In New York, if a person dies suspiciously, or within 24 hours of having had surgery, an autopsy will usually be performed to determine the precise cause of death.

For example, I had a case where a man on dialysis came home one day, and was found later by his family in his bathroom having bled to death. The walls were covered with blood and there were open bandages all over the floor. An autopsy was able to confirm that the man's shunt (the place where the dialysis needle was put into his arm each session) had gotten infected and progressively larger with each session. Nobody recognized that he was starting to bleed when he left the dialysis center. Unfortunately, when he arrived home, the shunt ruptured and since it was connected to an artery, blood shot out all over the bathroom, creating what looked like a murder scene. It was only through the autopsy that we were able to prove our case successfully.

Autopsies are usually performed by the County Medical Examiner. In the five boroughs of New York City, Brooklyn, Bronx, Queens, Manhattan and Staten Island, autopsies are performed by the New York City Medical Examiner's Office. In Nassau, it's the Nassau County Medical Examiner, and in Suffolk, it's the Suffolk County Medical Examiner.

**Q: You're Loved One's Died– You Suspect Foul Play.** 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.

**A: 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 husband 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.

## Money

Q: When you settle a death case, how soon can the family obtain the settlement money?

A: The quick answer is soon. The longer answer is, 'it depends.'

In a death case, I have to prepare papers to let the Surrogate's Court (that's the court that is responsible for overseeing a person's estate) know what is happening. I have to let them know about the settlement, and I have to include many supporting documents showing and explaining why a case has settled for the amount it did.

Some of the supporting papers include:

1. An affidavit from the person who represents the estate (usually a family member),
2. An affirmation from the attorney explaining in detail how and why this settlement is appropriate,

3. An accounting that shows exactly how much money was spent on your case, and what the attorney's fees are, and what monies are to be distributed,

4. Funeral bills,

5. Liens (a promise to re-pay Medicare or Medicaid, for example),

6. A document called a 'Waiver & Consent', which means that each family member who is entitled to receive a share of the money agrees to the proposed settlement and distribution.

These are the main documents that must be sent to the Court. Depending upon how quickly we can prepare them, and send them to the family members for signature and get them returned will determine how quickly we can get file them with the Court for approval.

In some cases, a family member might not be able to be located, and this will inevitably delay getting final approval. In other cases, a family member might not agree to the settlement or the way in which we propose to divide the settlement proceeds. In that instance, that family member must object to our papers, and the Court will hold a hearing on this issue. Again, this will delay the final approval of the final settlement.

In addition to the procedure described above, there is a new provision in the Surrogate's law that allows the attorney to apply to the Trial Court where the case was settled. The attorney asks the Courts' permission to obtain the settlement monies, and if approved, the money is deposited into an interest-bearing escrow account.

From that amount, the attorney's fee and his expenses can be paid, together with any other immediate expenses that the family members have incurred (such as funeral bills and/or medical bills).

Once that happens, the matter transfers back to the Surrogate's Court where we must ask for final approval for distribution of the settlement proceeds.

The final answer is that the attorney will process the paperwork as quickly as possible and submit the necessary papers to both the Trial Court and the Surrogate's Court, assuming there is no delay in getting the papers back from the family members. There is always the possibility that despite the best intentions of the family members and the attorney, a court clerk deems the papers to be inadequate or missing information.

In that case, the additional paperwork must be obtained and completed and again submitted to the Court. Once all papers have been successfully submitted to the Court, the Trial Court has 60 days to either agree or disagree with the settlement. The Surrogate's Court on the other hand does not have a fixed amount of time within which to provide final approval.

Most surrogate's courts do make efforts to finalize these matters, knowing that family members are expectant and anxious to conclude these legal proceedings.

Once the Surrogate's Court has approved the settlement, all final closing papers are submitted to the insurance company, and they must make payment within 3 weeks (if they haven't already made payment, and that money is sitting in an interest-bearing escrow account).

## HOW TO CHOOSE A LAWYER

Your friend gives you a name...you see an advertisement in the newspaper...you look in the yellow pages...who do you call? Who is the best lawyer for your problem?

### 10 THINGS YOU ABSOLUTELY NEED TO KNOW TO START A LAWSUIT

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. 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.

## 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. This rule was recently changed and now says that a lawyer is no longer required to collect their expenses if they lose the case.
- 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.

*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.*

## **Learn the top 10 things you need to know when choosing a medical malpractice and personal injury attorney**

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 traveling to an attorney's office is still a concern, ask whether the lawyer can travel to your home. Most attorneys will do this if you 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 respect 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.

Attorney Oginski has been in practice for 18 years as a trial lawyer practicing exclusively in the State of New York. 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.

*Gerry represents injured people in injury cases and medical malpractice matters in Brooklyn, Queens, New York City, the Bronx, Staten Island, Nassau and Suffolk Counties. You can reach him at <http://www.oginski-law.com>, or 516-487-8207. All inquiries are free and totally confidential.*

## Learn what top 5 items will get your medical malpractice case rejected by a New York Medical Malpractice Attorney

### 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.

## **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 traveling 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 traveling 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.

# ***SPECIAL REPORT***

## ***Five Deadly Sins That Can Wreck Your Injury Claim***

***(Avoid them and you may have a shot at winning)***

### 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.

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#### **Q: Are all injury and malpractice lawyers trial lawyers?**

A: No. There are many lawyers who handle accident and malpractice cases and never try a case. In the trade these lawyers are sometimes called 'inside lawyers' or 'paper lawyers'. They handle the file and any paperwork associated with the case. When it comes time to appear in Court for trial conferences or for trial, that same attorney may not handle your case. Instead, there may be a 'trial man' or 'trial woman' or a 'trial attorney' in that law firm who handles the trials that come up.

When you speak to an attorney about handling your case, please ask them whether they are the one who will be trying your case if your case goes all the way to trial. You might be surprised at the answer.

#### **Q: I was looking in the yellow pages for an attorney-I'm so confused! There are so many ads and they all say the same thing. How do I choose the right one for me?**

A: When you look in the yellow pages for an attorney, keep in mind that not all lawyers advertise. Of those that do, remember that the lawyer that pays the most for the biggest ad, is placed at the front of the lawyers section. Does that mean that he or she is the best lawyer for you? Not always.

Look critically at the ad. Is the ad telling you how great the

lawyers and the firm are? Or are they explaining to you how they can help you and answer all your questions? Is the ad filled with corny photos and cartoons showing injured people and crashed-up cars? Or how about a person in a wheelchair holding up a really large check for a lot of money? Did you know that the State Bar Association frowns on lawyers with ads that show injured people holding up checks, or even sitting with a pile of cash. In fact it's not even ethical to have such an ad, since it would imply that the lawyer can get this type of result for every client.



While that might be nice to do, in reality it doesn't happen all the time. The State Bar doesn't want unsuspecting and unknowing members of the public to be lured into such an ad with misleading advertising.

Lawyer advertising must abide by their State rules that govern them. Remember, it's not always the largest ad that's going to catch your eye. Many lawyers think that the larger the ad, the consumer probably thinks that he (or she) is the best because they have the largest ad. Not true. It simply means that they paid for the biggest ad, and got the first placement. What about those other full page ads for lawyers that come after the first one? Aren't they just as good (or bad) as the others? Could be. But you shouldn't judge how good an attorney is just by the size or graphics in an ad. There are ads in many yellow pages that fill not one, but two full size pages! It costs an absolute fortune to do this. But some consumers may think that if a lawyer can afford to pay such large amounts of money to the yellow pages to attract clients, then he (or she) must be doing something right. Again, this is not necessarily true.

There is a school of thought that says, "I only need one good case to pay for my ad for the year. If I bring in a minimum of two cases, then the ad has already paid for itself." Interesting thought. But what if the ad doesn't pull in any clients? Then the investment didn't pay off.

To answer your question: What to look for? An ad that gives you answers; that explains the process to you; that tells you the firm won't hesitate to explain everything you ask; and gives you the information for free. See if they offer you free reports filled with useful information BEFORE you ever step into the lawyer's office. Take a look at their website and see what type of special free reports they give you; or what types of questions and answers they provide.

Then make your own informed decision and call the attorney you feel will provide you will the best assistance- not just how big the ad is.

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

A: 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 it 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?

**Q: How come on your website, you have over 200 frequently asked questions and answers, and most other lawyer websites have only a few or none?**

A: Good question. I don't know why most lawyer websites don't give readers much information.

My feeling is that you, the consumer, should have as much information as possible to help you understand your options. Only by learning about your rights and learning about the subject can you make an informed decision about what you need to do. In my opinion, a consumer should have this information BEFORE he or she ever walks into a lawyers office.

That's why I have so many questions and answers- to help you learn and understand how medical malpractice and injury cases work in New York.

**Q: On an infant's case, or on a death case, how do I know that everything is being done appropriately?**

A: In New York, the Courts oversee all lawsuits. In particular, the Courts must approve any settlement involving an infant (any child under the age of 18) and any death case.

After an infant's case or a death case has settled, I must apply to the Court for permission to formally settle the case. If the Court does not approve of the settlement (for various reasons) then I cannot settle the case, and we must attempt to remedy the problem immediately. [In 16 years of practice, I have not had any Court refuse to sign a settlement that I have recommended, and the Client accepted- but I have seen it done to other attorneys.]

The Court reviews a large packet of materials in support of the proposed settlement to make sure everything is correct, and all documentation about expenses, calculations, allocation of monies and the proper parties are reviewed. Only upon receiving the Courts' approval, are we permitted to finalize a settlement.

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**ABOUT GERRY OGINSKI**


Attorney Oginski has been in practice for 18 years as a 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, Attorney Oginski 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, Attorney Oginski 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.

**Legal organizations:**

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

**Community Services:**

As part of giving back to the community, Attorney Oginski has lectured to high school students interested in medicine. Here's what these students had to say:

"Dear Mr. Oginski,  
Thank you for taking the time on Wednesday, January 21, to meet with the Medical Explorers and to explain your career to us. We found it very interesting that you had started out going to school as a Pre-Med student and ended up studying law. Through your experience, we were able to learn that we can still be involved in medicine without necessarily becoming doctors.

Your description of the anatomy of a malpractice suit was fascinating! We did not realize the amount of investigational and procedural work needed to even file a complaint, let alone argue the Plaintiff's case. It is amazing how much time and effort goes into proving a doctor's departure from good care at one particular moment, on one particular day.

The tips you gave us on how to practice aggressive medicine were very informative. We now have a greater understanding as to the importance of writing things down and keeping good records. It did not occur to us how crucial minor notes could be in a malpractice lawsuit.

Once again, thank you for coming to speak with us; it was a pleasure to have you!  
Sincerely, Amanda G., Secretary, Medical Explorers."

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On November 7, 2005 I received this wonderful note from one of my clients, S.P. She wrote "Going through the litigation process was difficult because I had to relive the surgery, but Gerry, you made everything flow and very easy. Your law office is the definition of what an ideal legal professional should be. Gerry, all the research and knowledge you had regarding malpractice law and other cases made me very impressed as a client. It was an exceptional service and I will never forget it."

I received this incredible note from a man, whose case, I felt, did not have merit.

"Dear Mr. Oginski,  
I can't thank you enough for sending me the most helpful

package of information concerning medical malpractice. It has heightened my awareness to a degree of confidence that will allow me to make more informed decisions." Sincerely yours, B.Z., Glendale, N.Y.

Contact information

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*Call Gerry personally,  
anytime.*

516-487-8207

*All calls are confidential and there is no cost or obligation.*