

# **SPECIAL REPORT**

## ***Why Most Medical Malpractice Victims Never Recover a Dime***

***(An Insider's report on medical malpractice cases)***

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# ***Why Most Medical Malpractice Victims Never Recover a Dime***

## **Who Is Behind This Report – and – “Why Should I Listen To You?”**



I want to first thank you for requesting this special report. I think that the information I give you here will help you in your quest to obtain compensation for your injury case.

I have written this report so that consumers could have good, solid information before hiring an attorney or dealing with the insurance company. As I point out later, not every case needs a lawyer! There are lots of books on the market that you could buy, and you could get this information after making an appointment with an attorney, but I want you to have this valuable information right now, for free, in your home and on your own time.

Hello, my name is Gerry Oginski and I have been representing individuals against insurance companies since 1992. Before that, I worked four years for a law firm that represented insurance companies. I've been on both sides and use that experience to great advantage for my clients. I limit my practice to personal injury and medical malpractice cases; so if you want a divorce or a will, or have a traffic ticket, I can't help you. (If you live in Brooklyn, Bronx, Queens, NYC, Nassau or Suffolk, call us anyway. We can usually provide you with the name of other attorneys who may be able to help you with your situation. We do not charge for this service). I am an active member of the New York State Trial Lawyers Association, as well as the Brooklyn Bar, Queens Bar, and Nassau County Bar Associations.

I represent many people who have been injured by the negligence of others. I also represent the families of loved ones who have died in wrongful death cases. While each case is different, and past results cannot be used to predict future success, I can tell you that I have been privileged to help my clients and their families recover millions of dollars for their wrongful death and medical malpractice cases.

### **Why a Free Report?**

I am tired of insurance companies taking advantage of people before they have a chance to talk to an attorney. For years, one major insurance company encouraged claimants to not hire an attorney. You may not need an attorney to represent you in every case by you do need to be armed with certain important information. I prepared this report so that you can be informed, quickly.

Most attorneys require you to make an appointment in which you would get some of the information that I have provided here. Some may pressure you to sign a contract right then and there. I believe that you should be able to have this information, right now, and without any pressure. The hiring of an attorney to represent you is a very important step that should not be taken lightly.

Frankly, this method of talking to you also saves me time. I've packed a ton of information into this report and it saves me the hours of time that it would take each day just to talk to all of the new clients who call me. I cannot and will not accept every case. So, rather than cut you short on the phone, writing this report gives me a chance to tell you what you need to know so that you can make an informed decision about what steps to take with your case. Even if I do not accept your case, I would like you to be educated about the process so that you don't fall victim to the insurance companies.

### **I Am Not Allowed to Give Legal Advice In this Special Report!**

I know the arguments the insurance company will make—and so should you—even before you file your claim. When you were injured you entered into a war zone. The insurance industry has spent hundreds of millions of dollars to inflame the public against you and me. We will be in this together. I am not allowed, however, to give legal advice in this report. I can offer suggestions and identify traps, but please do not construe anything in this report to be legal advice until you have agreed to hire me AND I have agreed, in writing, to accept your case. (Because I value personal service, I do not accept every case that comes my way—I couldn't—the numbers are staggering. I explain this in more detail later.)

### **What is a Medical Malpractice Case?**

You may have a medical malpractice case if you are injured as a result of preventable error or negligent care while receiving medical treatment. The Harvard Medical Malpractice Study revealed that over half of all injuries caused by medical management (i.e., those not caused by the patient's initial injury) were preventable, and another quarter of those incidents were caused by negligence. Medical malpractice can occur at virtually any stage of treatment, as one-fifth of medical management errors occur outside of the hospital.

“Hospital medical errors kill an estimated 98,000 patients each year.” – more than car accidents and breast cancer combined. *This figure does not even include fatal pharmacy mistakes or medical errors in nursing homes, clinics and surgery performed in an*

**DID YOU KNOW THAT MANY LAWS ARE DESIGNED TO PROTECT DOCTORS, HOSPITALS AND BIG BUSINESSES?**

It's true! In New York, in cases involving the death of a baby or young child, it is extremely difficult to obtain significant compensation for the baby's family! Why? Because the current law does not take into consideration the fact that the young child was not yet earning a living. The wrongful death law in New York only allows a family to recover for the child's past pain and suffering, lost income, and loss of guidance and support that child could be expected to provide to his parents and family. The same is true for elderly people that die at the hands of a doctor or hospital. Since they were no longer earning a living, the surviving family members cannot receive appropriate compensation for 'lost wages' under the current law. The same might apply for a mother who stays home to raise her child, instead of a mother who returns to work to support her family.

Interest groups pushing for "tort reform" would like people to believe that "frivolous" lawsuits are resulting in increasing costs for members of the health care industry. Medical malpractice insurance is not the problem – medical malpractice is. Contrary to the interest groups' arguments, not every doctor is susceptible to "phantom lawsuits" – only a small fraction of the physicians' community is responsible for a substantial number malpractice claims. According to the editor of one malpractice study, "The majority [of plaintiffs] lose their jury trials and never receive a dime." In fact, in New York, approximately 95% of all medical malpractice cases are resolved prior to, or during trial. Of the remaining 5% the go all the way to a jury verdict, approximately 70% of those cases are won by the doctors and hospitals.

Even plaintiffs that receive awards that seem extraordinarily large, often never see the amount awarded by the jury. Many of these awards are drastically reduced on appeal, to less than half of what was originally awarded, and many awards are *set aside*. *The media almost never reports these reduced or vacated judgments.* **A New York Court has recently set aside a verdict of \$112 Million Dollars. – This decision was not reported in the media, and was only mentioned briefly in the New York Law Journal (a daily paper for attorneys).**

#### **You Are At War – But It's A War That Can Be Won**

The day you were injured, you entered a war zone. Insurance companies have declared war on injured people and their attorneys. Some of them write letters to claimants to discourage them from seeking legal representation. They have waged war in the media and their propaganda has had a tremendous effect on juries and their verdicts. The success that the insurance companies have had in tainting the minds of jurors has emboldened them to not offer fair settlements until you prove to them that you are ready, willing and able to go to trial.

#### **What Must be Proven to Win a Case?**

Medical malpractice cases are among the most difficult cases a lawyer will ever handle. A medical malpractice case requires the injured party, the "plaintiff" to prove that his or her doctor or hospital, the "defendant," deviated from what is good and

accepted medical care that the law considers them to have been “negligent.” The plaintiff is also required to prove that the doctor’s negligence was a cause of the injury that the plaintiff has. Simply put, it means that there must have been wrongdoing, and the wrongdoing had to have caused injury, and the injury has to have been significant or permanent.

Because of the tremendous hurdles of obtaining a recovery in a medical malpractice case, most experienced malpractice lawyers agree that the injury suffered by the plaintiff must be significant. The court system is simply not set up to handle “small” medical malpractice cases. We believe that either the monetary damages (medical bills and lost wages, for example) must exceed \$100,000 or you must have suffered a significant and permanent disability or disfigurement.

Your case must be proven by expert testimony. That is, other doctors in the same specialty as the negligent doctor must be willing to say that the conduct of the defendant fell below accepted standards. Making a mistake or getting a bad result is not enough – we must prove that it was a significant error, that more likely than not, directly led to your injury.

In order to determine whether you have a case, we must first gather all of the pertinent medical records involved in your care. Once all of the records are received, they are reviewed to see if, based upon our experience, it looks as though there is a provable case of medical malpractice. If the case looks meritorious, experts in the appropriate specialty must be consulted and retained. Again, these experts must be of the opinion that the medical care received was substandard.

Once we have retained experts who are prepared to testify on your behalf, other records, including employment records and tax returns must be obtained. These will aid us in proving the damages that have been suffered due to the defendant’s negligence.

### **The Reasons Why Most Malpractice Victims Receive Nothing**

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 plaintiffs 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 either 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 filed 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

- a. The injury was an unforeseeable consequence of the initial condition/injury,
- b. The injury was due to the patient's non-compliance with prior medical advice,
- c. The risk of the patient's particular injury was a known, recognized, acceptable risk (acceptable to whom?),
- d. Some other party was responsible for causing the injury, or
- e. 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 plaintiff 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 represents you.

**WARNING!**

Not every attorney who advertises in the Yellow Pages claiming they handle medical malpractice cases is an experienced malpractice attorney. There are few rules that control what lawyers can say in ads. It's hard for a consumer to know which attorneys are experienced just based on ads. Later in this report we tell you exactly how to find the right attorney for your case.

7. **The statute of limitations has expired.** This is the time a person 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 Plaintiff 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 that 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.

## **How Do I Find A Qualified Personal Injury or Malpractice Attorney?**

Choosing an attorney to represent you is an important but daunting task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads...all of which say basically the same thing. You should not hire based solely on advertising—anyone can buy a slick commercial. Heck, you shouldn't even hire me until you trust that I can do a good job for you.

### **How Do You Choose?**

How do you find out who in your local community is the best for your case? I believe that there are certain questions to ask that will lead you to the best person for your case—no matter what the specialty. It may involve some time on your part, but that's OK because the decision as to who your attorney will be is very important.

The world of personal injury and medical malpractice cases are much too specialized for someone who does not regularly handle these cases. Too many times we have looked at cases that other- inexperienced- attorneys have handled. You should be aware that the insurance companies who defend personal injury and medical malpractice cases know who the attorneys are in your area who actually go into court to try cases and who do not. The insurance companies use that information to evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: who is representing the plaintiff? **If this information is important to the insurance company, shouldn't it be important to you?**

If an attorney who has never tried a malpractice case or who 'handles' a lot of automobile cases but settles them all represents you, you may not be in the best of hands. *I believe it is so important that you get into the right hands that in this report I give you the names and telephone numbers of other good attorneys in our area who you should call if you don't become my client.* Why do I give you the names of my competition? Easy—I believe that we are all on the same side in battling the insurance companies (there's an insurance company behind just about every case.) These people are attorneys who I have a great deal of respect for in our area. It is my desire, above all else, that people with meritorious cases get into the hands of the experienced, good, trial lawyers.

### **So how do you find out who is good in your area? Here are some tips.**

1. Ask a friend for the name of an attorney.
2. Ask an attorney you know to recommend an attorney who handles accident cases.
3. Look in the yellow pages for an attorney. However, understand three important things with the yellow pages: (1) Not everyone advertises in the Yellow Pages. Most of my cases come from referrals from other attorneys or from satisfied clients. (2) Be careful about the ads that tout too many different specialties. (3) BE careful about the full-page ads. This advertising typically attracts a lot of cases, including the small cases that we do not accept. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile.
4. Check out an ad for an attorney you saw recently.
5. Call the Bar Association in the town in which you live for the name of an attorney. They probably have a lawyer referral service. Understand that lawyers have signed up and

may have paid a fee to be listed in certain specialties. Their names come up on a rotating basis. This is another good source for an initial appointment. Just take the questions we talk about here to that interview.

### **HOW DO YOU KNOW IF THE ATTORNEY YOU MEET IS THE RIGHT ONE FOR YOU?**

You must ask questions.

### **HERE'S A LIST OF VITAL QUESTIONS YOU MUST ASK ANY ATTORNEY YOU MEET WITH:**

1. Ask whether they have information just like this report and/or a web site so that you can find out more about qualifications and experience before you walk in the door.
2. The most important qualification an accident attorney can have is experience handling the type of case you have. An attorney who handles real estate closings and contracts may not be ideal attorney to handle your accident case or complicated medical malpractice matter. *You must ask how many years the attorney has been practicing, and whether he's handled similar cases.*
3. Beware of any attorney who contacts you in writing just after you have had an accident. Attorneys are allowed to do this, but some actually buy lists of police accident reports each week and solicit the cases. You have to ask yourself the question of why an experienced, respected attorney would need to come looking for you that way.
4. Beware of an attorney who has a stable of doctors he wants to refer you to. As I discuss in this report, this can actually be the "kiss of death" to your claim.
5. *Will the attorney you meet with be handling your case each day? Or will your case be handed off to a young associate who is just learning the ropes?*
6. If you call the attorney's office after normal business hours, is there any way to reach him directly? Or will you be required to leave a message and wait for the attorney to call you back at some later date?
7. How quickly does the attorney return your calls?
8. If the attorney appears in Court on my case, will he notify me about what happened, either by letter or by phone call?
9. How often will I receive updates about the status of my case?
10. Will I have to call the attorney to get updates, or can I rest assured knowing that the attorney will contact me regularly about the status of my case.
11. What types of specialty cases do you handle? Medical Malpractice, car accidents, real estate, criminal, contracts, slip & fall.
12. How many cases does each attorney handle?
13. Are you trial attorneys? Have you picked juries?

14. When was your last trial that you took to verdict? What was your last verdict?
15. What was the last case you settled? For how much?
16. Why is my case worth your time and effort?
17. Can you name another attorney I could speak to get another opinion, before I make my final decision?
  - a. If the attorney will not give you the name of another colleague, I would suggest that this may not be the attorney for you. They should have nothing to worry about, and in fact should feel comfortable recommending someone they trust and believe is good at what they do. In all likelihood you will wind up staying with the original attorney you spoke with, assuming of course that you have developed a good rapport with him during your consultation, and that he has answered all of your questions to your satisfaction.
  - b. You've been injured. You shouldn't have to worry about how your attorney is going to handle your case. You should be comfortable with your attorney. You're going to be together for a few years, so if you have questions, now is the perfect time for them. You should be concentrating on getting yourself well again so you can go back to your daily activities and resume work.

#### **HOW IS THE OFFICE RUN?**

1. Are you a volume attorney, where you take any case that comes in, in an attempt to settle it for a small amount?
  - a. If you happen to meet with an attorney who handles a huge amount of volume, find out how many paralegals he has on staff to handle the paperwork. How often does he review your case and have direct contact with you. These types of 'volume' offices are occasionally referred to in the legal business as 'mills' where they take cases in, and just as quickly resolve them for small amounts, to generate cash flow.
2. Are you selective in the cases you accept?
  - a. A selective attorney spends countless hours and dollars reviewing each case to determine whether the case has merit, and whether the potential reward to you justifies his time, effort, and investment of his own money to prosecute your case.
  - b. This type of office is much more conducive to a personal approach to the practice of law where the attorney spends considerable time counseling you about the merits of your case and the likelihood of success. Remember, as in life, there are no guarantees. However, with the right information an informed consumer is much better equipped to handle decisions and make informed choices about what needs to be done on his or her case.
  - c. An attorney who spends the time to answer all of your questions, and is willing to speak to you, *at your convenience*, is much more likely to be personally responsive to your concerns as the litigation proceeds. Obviously we all get busy during our day, and it's understandable if a phone call needs

to be returned. But, you should not feel rushed or pressured into making decisions that will affect your case or your settlement.

***Once you have decided on an attorney, make sure you both understand your goals and you understand how the relationship between you and your attorney will work.***

3. In my practice, I generally send copies of the pleadings and important correspondence to the client. I regularly update the client about their case, and give them our best insight into the pace and timing of the case. I encourage clients to call whenever they have questions, and I always return their calls shortly afterwards. Cell phones and beepers are amazing things, however in some cases it's impossible to return the call immediately particularly if I am on trial or in a deposition or in Court on another matter. Attorneys are not permitted to use their cell phones in any Courtroom in the State of New York. If I am in Court for a conference and I am waiting to see the Judge to discuss a particular case, you can understand why I might not be able to return your call at that moment. Rest assured, as soon as I am able, I call you to discuss your concerns. You are also invited to make an appointment to come in at a time that is convenient to you.

**If you don't hire us, or if we decline your case, please consider calling from this list of experienced personal injury and medical malpractice attorneys:** (This list is not meant to be all encompassing or an endorsement of any particular attorney, but is simply intended to give you a good start! These attorneys, in our opinion, are very good trial lawyers. If you have any questions, email us at [lawmed1@optonline.net](mailto:lawmed1@optonline.net).)

Thomas A. Moore	212-267-4177
Patrick Bisogno	718-745-0880
Evan Torgan	212-232-2500
John Carro, Jr.	212-213-5005
Stephen Erickson	516-684-2900
Harvey Weitz	212-553-9000
Jean Hazelton	631-283-6400
Jeffrey Korek	212-385-4410
Ivan Schneider	212-553-9000
David Golomb	212-661-9000
John Bonina	718-522-1786
Eleni Cofinas	212-732-9000
Robert Conason	212-943-1090
Arthur Luxenberg	212-558-5500
Andrew Siegel	212-532-0532
Robert Kelner	212-233-7890
Ben B. Rubinowitz	212-943-1090
James R. Duffy	516-746-2840
Fred Queller	212-422-3600
Robert Sullivan	212-732-9000
Hunter Shkolnik	212-684-1880
William Groner	914-686-3700
Herbert Subin	212-285-3800
Richard Gurfein	212-406-1600
Henry Miller	914-946-8900

### **What Do I Do For You In A Medical Malpractice Case?**

Here is more or less a complete list of the tasks I may be called to do in your case. Remember that each case is different, and that not all of these tasks will be required in every case. They are:

- ✓ Initial interview with the client.
- ✓ Educate client about personal injury claims.
- ✓ Gather documentary evidence including police accident reports, medical records and bills.
- ✓ Analyze the client's insurance policy to see whether there are any coverage's which the client has that may pay all or a portion of the medical bills while the claim is pending.
- ✓ Analyze the client's insurance coverage and make suggestions as to what coverage should be purchased for future protection.
- ✓ Interview known witnesses.
- ✓ Collect other evidence, such as photographs of the accident scene.
- ✓ Analyze the legal issues, such as contributory negligence and assumption of risk.
- ✓ Talk to the client's physicians or obtain written reports from them to fully understand the client's condition.
- ✓ Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money they spent to pay your bills must be repaid.
- ✓ Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans and employers may assert that they are entitled to all or part of the client's recovery.
- ✓ Contact the insurance company to put them on notice of the claim, if this has not already been done.
- ✓ Decide with the client whether an attempt will be made to negotiate the case with the insurance company or whether suit shall be filed.

- ✓ If suit is filed, prepare the client for deposition.
- ✓ Prepare questions and take deposition of the defendant and any other relevant witnesses.
- ✓ Provide to the defendant all pertinent data and documents for the claim, such as medical bills, medical records, and tax returns.
- ✓ Go to Court for status conferences with the Judge handling this matter; go to Court to set discovery schedules and to set a trial date.
- ✓ Prepare for trial and/or settlement before trial.
- ✓ Prepare the client and witnesses for trial.
- ✓ Organize the preparation of medical exhibits for trial.
- ✓ Organize the preparation of demonstrative exhibits for trial.
- ✓ Prepare for mediation and/or arbitration.
- ✓ Prepare briefs and motions to file with the Court to eliminate surprises at trial.
- ✓ Take the case to trial with a jury.
- ✓ Analyze the jury's verdict to determine if either side has good grounds to appeal the verdict.
- ✓ Make recommendations to the client as to whether or not to appeal the case (our retainer agreement with you does not obligate us to participate in any appeal).

### **The Legal Process in Medical Malpractice Cases**

In most cases today, attempting to negotiate with the insurance company before filing suit is not a worthwhile endeavor. Insurance companies use pre-suit negotiation only to attempt to find out as much about you, your lawyer and your doctor as they can. It is my opinion that many lawyers waste precious time attempting to negotiate with the insurance company before filing suit. If I accept your case it is because we believe it is meritorious and you deserve a trial by jury. We will usually file your suit before negotiating so that if negotiations break down, we will proceed as if we have a trial date in place to head towards.

I believe that it is a dangerous practice to wait until the statute of limitations has almost expired to file suit. I have seen other attorneys do this only to find that the

defendant they sued is either not the correct defendant or is now blaming someone else. While there are legitimate reasons for delaying filing suit, there is no excuse for the practice that I sometimes see whereby some attorneys routinely wait until the last moment to see if the insurance company will settle your case.

Once the lawsuit is filed, both sides engage in the legal process called discovery. Each party is allowed to investigate what it is the other side is going to say at trial. The defendant will be permitted access to your medical and work history, including your income records (In some cases, where there is no loss of income, we can usually avoid having to provide your income records). You may have to give a deposition under oath and you may be required to submit to a medical examination by a physician of the defendant's choosing.

The defendant is also subject to discovery. He will answer oral questions about his own background and he will have to give sworn testimony about the incident at issue.

### **Why You Should Hire Me**



There are many attorneys who advertise for medical malpractice cases. Unfortunately, some of these attorneys have so many small cases in their office that no case gets their personal attention. Others have no real intention of trying your case themselves and if the case cannot be settled with the insurance company, they will refer the case out for trial. There are good experienced attorneys in this field, but it is very difficult for a consumer to separate the good from the bad. You need to ask your attorney all of these questions.

Our clients get personal attention because we are very selective in the cases that we take. We decline hundreds of cases a year in order to devote personal, careful attention to those that we accept. We do not make money by accepting many small cases hoping to get a small fee out of each. There are many attorneys who do mass advertising and accept small cases and we will be happy to refer you to several such attorneys. These firms are better staffed to handle many cases at one time, often with younger attorneys and more paralegals.

### **What Cases Do I Not Accept?**

Due to the high volume of calls and referrals from other attorneys that I receive, I have found that the only way to provide personal service is to decline those cases that do not meet my strict criteria. Therefore, I generally do not accept the following types of cases:

Cases with no clear objective evidence of injury.

I am sorry, but if you have a sprained neck or back, and the x-rays, MRI's, and CT scans do not indicate a very large disk bulge or herniation, then I will not accept your case. Insurance companies don't pay a lot for these cases because they know that local juries do not award significant sums of money without clear objective evidence of injury. There are plenty of lawyers who take these cases and we will be happy to give you the names of several of them.

Cases with less than \$15,000 of "hard damages."

Your case must have at least \$15,000 in past and future medical bills and/or past and future lost wages before I will consider accepting it. I would like to represent everyone who needs a good attorney, but we cannot.

Cases with significant pre-existing injury in the same body part.

If you have had three back surgeries before this incident, then the chances of a jury awarding you a substantial amount of money for your back injuries here is very low. Again, I feel that it is not worth the risk to the client to pursue these cases.

Cases where the statute of limitations will soon run.

I like to have at least four to six months to adequately investigate and evaluate your claim. Your delay is not going to become my crisis.

If your case has already been filed, I will not represent you.

I like to do things my way. If you or another attorney has already filed the case, that's fine, but I will not handle the matter. The same goes if your attorney has withdrawn from your case.

**Well, Are There Any Cases Left?**

Yes, there are, and that's just the point. We are a small firm and accept a limited number of cases each year.

***We Concentrate Our Efforts On Increasing the Value of Good Cases--Not filing and Chasing Frivolous Ones.***

I represent many clients with valid claims. When I devote my time and resources to representing only legitimate claimants with good claims, I am able to do my best work. I have found that getting "bogged down" in lots of little cases, each with a "special problem," is not good for my clients with legitimate claims.

## OUR CASES AND VERDICTS

Here is a sampling of cases that we have handled. There are others at our website at [www.oginski-law.com](http://www.oginski-law.com). Remember that each case is different. We've won cases we probably should have lost and we've lost cases that we expected to win. Once a case is in the hands of the jury, it is out of our control. We do believe, however, that significant trial experience one factor that people may use to choose one attorney over another. Many of our clients have told us that this is true. With these disclaimers in mind, here are some of our cases:

# Results Speak Louder Than Words...

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\$1,000,000	A woman lost eyesight in one eye because a hospital failed to tell her about her brain tumor.
\$775,000	A man lost eyesight in one eye because an eye doctor failed to recognize that the optic nerve was cut during surgery.
\$750,000	A woman died because her doctor failed to recognize massive infection following gynecologic surgery.
\$700,000	Baby suffered brain damage from botched delivery.
\$500,000	Failure to timely diagnose lung cancer resulting in death
\$550,000	Woman had to be emergently re-operated when knee surgery was botched.
\$415,000	Woman died from failure to diagnose bladder cancer.
\$350,000	4-year-old girl was misdiagnosed leading to double pneumonia, surgery and loss of part of her lung.
\$350,000	Woman lost her uterus after doctors failed to recognize an infection following a tubal pregnancy.

***CONTINUE TO THE NEXT PAGE FOR  
2 FREE BONUS REPORTS →***

# 1<sup>st</sup> FREE BONUS REPORT!

## **The Five Deadly Sins**

### *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**

If 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.

## **2<sup>nd</sup> Free Bonus Report!**

### ***10 Things You Absolutely Need To Know Before You 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 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. Defense attorneys often use this phrase 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 is contingent 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 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 car 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 them 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 getting a good result.

## **Our Services**

We are here to represent you at every step of the way in your claim. Sometimes the best advice is that you do not have claim that can be won. If that is true, we will tell you so. If your case meets our criteria for acceptance, you can be assured that you will receive my personal attention. I will keep you advised as to the status of the case and give you my advice as to whether your case should be settled or whether we should go to trial. If we go to trial, I will be the attorney trying your case. An initial consultation is free. We will fully explain all fees and costs to you before proceeding. Together, as a team, we will decide on the tactics best suited or your case.