

# An Open Letter to President Obama

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From Gerry Oginski, Esq.

*A New York Medical Malpractice Trial Lawyer*

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Dear Mr. President,

The New York Times reported today ([Obama Open to Reining in Medical Suits, June 15, 2009](#)) that you were considering reining in medical malpractice lawsuits. Although you have expressed your opinion that you would not consider placing a cap on jury awards, I'd like you to read this letter before you give further thought to this potentially disastrous policy change.

A few years ago I had the privilege of representing a young man, aged 34, who worked as a mortgage broker. One day here in New York he suffered chest pain and went to a local hospital for evaluation. The physicians admitted him to the hospital for a few days to do a cardiac workup. Blood was drawn, a stress test was performed, and a physical examination was done. The patient was given a clean bill of health and told to follow up with a cardiologist after being discharged. Over the next three months this young and energetic young man continued to experience significant chest pain. On each visit to the cardiologist, the doctor performed a physical examination and shrugged off the patient's complaints of pain as being "stress related." Shortly after the third visit to the cardiologist, this young man experienced severe crushing pain which radiated down his arm.

He was taken by ambulance to his local emergency room where he was diagnosed as having a massive heart attack. His community Hospital was unable to care for this patient, and he was transferred to a tertiary care center in Manhattan. This young man learned that 70% of his heart had died as a result of the massive heart attack he suffered. Because this patient's heart no longer worked at the same capacity as it once did, all of the fluid would back up into his lungs and create a devastating condition known as severe pulmonary edema. His heart, which is essentially a never-ending pump was no longer able to pump its life-giving fluids throughout his body. In addition, this patient suffered kidney damage because his kidneys could no longer filter fluids traveling through his body.

He required 40 different pills to take each day in an attempt to maintain a fluid-electrolyte balance so that he would not go into renal failure and shock. He required pills to remove the excess fluid that had built up in his lungs. He became an insulin-dependent diabetic and was constantly fatigued because of his heart's inability to provide the life-giving oxygen throughout his bloodstream to all of the necessary organs.

A once vibrant, energetic and a top-earning mortgage broker was now nothing more than a crippled man trapped inside his body. He could barely walk 10 feet without needing to stop and rest for a few minutes. This young man was told by his physicians that in order for him to improve, he would require a heart transplant. However, because of his co-morbid conditions, this patient was not a candidate for a heart transplant and was told that he had a decreased life expectancy without a new heart.

The New York Times reported today that you recently met with the head of the American Medical Association and discussed the fact that physicians who stay within standard practice guidelines should be afforded some freedom from liability. As the American Association of Justice has clearly pointed out, these standard practice guidelines were created by unregulated medical societies to be used primarily in a court of law in an attempt to debunk a plaintiff's expert argument that there were departures from good and accepted care leading to permanent injury.

I had the privilege of representing this young man in his quest for compensation for the tragedy that befell him. Three independent medical experts who reviewed this patient's records confirmed that when this patient initially was

evaluated in his local hospital, the stress test records were not properly interpreted. The physician ignored the computer findings and the clinical presenting symptoms the patient had.

Significantly, each of the three independent medical experts who were consulted confirmed that if this patient's heart disease had been recognized at the time he presented with chest pain, he could have had an elective heart bypass procedure with an excellent chance of success. Had the blood flow to this patient's heart been timely restored before he suffered his massive heart attack, it would have prevented the unnecessary death of the majority of his patient's heart.

As you know, no amount of compensation can alter a life-changing permanent physical injury. However, our system of justice requires that the injured victim be compensated not only for their pain and the suffering they have been caused but also for the economic damage they have suffered as a result of someone else's wrongdoing.

Injured victims who are prohibited from recovering money to compensate them for their injuries would be unable to pay their medical bills, recoup their lost earnings, and earn a living because of their ongoing disability or death. To afford protections to physicians in an attempt to minimize lawsuits or payouts, fails to recognize the significant disparity between the learned professional and the patient, and also fails to take into account that the patient did nothing to cause or contribute to their devastating injuries.

Limiting an injured victim from seeking compensation fails to look at why we award compensation in the first place. If we have a Picasso painting that is valued at \$5 million dollars and someone destroys it, that person is obligated to pay the value of that painting. The same is true for an injured victim. The difficulty arises when a jury is asked to award money for a victims' pain and suffering. The bottom line is that a wrongdoer is still obligated to compensate the victim for their injuries.

Although we as attorneys recognize that there is much enmity between the doctor's arguments about the root cause of medical malpractice and the trial lawyers arguments as to who is responsible for medical malpractice lawsuits, the fact remains that our system of civil Justice must reign supreme in protecting the rights of injured victims whether they reside in New York, California, Florida, or anywhere else in this great country. I remain curious as to why more physicians do not question their own medical malpractice insurance companies about their investment practices and the cyclical nature of the financial markets and how they influence the premiums that these companies charge for their physician members.

Rather than focus on the attorneys and their injured victims who bring cases in their respective states or on the standards of care that have been created to protect physicians in courtrooms throughout the United States, let us look closely at the insurance companies and call them to task for their investment strategies and the need to recoup income in a down market.

I thank you for the opportunity to express my feelings in this letter and hope that these comments provide a steppingstone for understanding that changing the way injured victims are compensated for medical malpractice cases in the United States is not the solution.

Very truly yours,

Gerry Oginski