

# NEW YORK INJURY TIMES



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## Medical Malpractice

# WHAT IS YOUR LIFE WORTH?

### MEDICAL MALPRACTICE

# WHAT IS YOUR LIFE WORTH?

**If you asked someone what their life was worth, what would they say?**

If you asked someone what the value of a wife's household duties were, what would they say?

If you asked someone what the value was of a mother who stayed home to take care of her two small children, what would they say?

What if you asked someone what the value was of a father, in the prime of his life, to his three children in grade school, what would they say?

If someone was earning \$75,000 per year and was unable to work for two months, you could easily calculate how much income they lost. But are you able

to calculate the lost benefits that man would have received had he continued to work? If he was at work during those two months he would have given that big presentation he was working on for the past year. He'd have done so well that he would have gotten that promotion he was working so hard to get. With that promotion came a larger salary, increased pension benefits, his own parking space, and more importantly, the opportunity to hob-nob with the big-wigs in his company. But since this man was out on disability because he was hit by a car, he was unable to achieve these goals he had set for himself.

What is the value of what this man has lost? The lost opportunity to move up the ladder, the lost opportunity for promotion, the lost chance for more benefits and increased recognition within the company? Can you place a dollar value on these losses?

Let me ask you this- if you own a Picasso painting that is valued at \$5 million dollars, and that painting is destroyed in a fire, is there any doubt how much your insurance company should reimburse you for your destroyed property? They must reimburse you \$5 million dollars.

Now, using that same argument, if a man earns \$75,000 per year and is hit by a car, and he is unable to return to work for two months, the insurance company should have no problem reimbursing him for his lost earnings- 2 months worth. But wait! What if this man, who suffered a broken left leg and right arm is no longer able to do the same type of work he did before his accident? What if his ability to work is now limited? Do you think the insurance company is responsible to pay for this man's lost future earnings compared to what he is earning now? If



they're responsible for his lost earnings in the past, shouldn't they also be responsible for his inability to work in the future? What about his limited ability to work? Should they also be responsible for the limited work he can now perform and make up the difference from what he was earning before? The answer is yes.

What if this man was a professional basketball player who earned \$5 million dollars a year- not an unreasonable sum of money today for a pro basketball player. Is the driver of the car that hit him responsible if this man can no longer play basketball and his career is over? That 5 year contract, worth a total of \$30 million dollars is worthless if this man can't play ball. Who do you think should be responsible for that life-altering accident?

What I've been discussing here are key elements of compensation that an injured victim is entitled to receive in the State of New York. Importantly, we haven't even touched on a victims' pain and the suffering that an accident can have- not only on the injured victim, but on his spouse and family as well.

## **It is important to remember that compensation is a duty to repay a debt that is owed.**

When a person causes an accident or an injury, regardless of whether it was a careless driver, a homeowner who didn't shovel their sidewalk, or a doctor who failed to diagnose cancer, they have now created harm where there was none before. They now owe a debt to the injured victim. Compensation in New York is repayment of that debt. Often that repayment is expensive. The injured victim often requires corrective medical care, the possibility of surgery and extensive physical therapy for rehabilitation. Shouldn't the injured victim be able to pay for the best medical care money can buy? Or do you

think it's OK for an injured victim to go to any old city clinic and get whoever is on duty that day to correct a problem that someone else caused?

The compensation I've been talking about here is what is known as "economic damages." These can be calculated. The cost of a housekeeper to do a wife's household duties can be calculated by an economist. The value of a stay-at-home mom can, on some level, be calculated. Lost income and lost future earnings can be calculated. The cost for future medical expenses can be calculated. I don't think many people would argue that these expenses should not be repaid to the injured victim, especially since this is part of a debt that is owed and must be repaid.



What about the "non-economic damages," also known as "pain and suffering." Shouldn't this be compensable too? Remember, we haven't even touched on this subject yet. I've only been discussing the actual



economic loss that someone has suffered from an accident or medical malpractice. However, the suffering that an accident causes is often a very large part of any claim. Why? Just think about how an injury affects an accident victim:

Before the accident, Tim used to play catch with his seven-year-old son in their backyard. Because Tim is now in a wheelchair, he can no longer run and play baseball with his son. He can't drive- not the way he used to. Getting into and out of a car is a time-consuming chore that was previously effortless. He has a basement and a second floor in his modest home. Tim can't go into his basement and play ping-pong with his 12 year old daughter. Nor can he walk upstairs to go to bed with his wife anymore. He's had to convert his living room into a modified hospital room. Those front steps to their home have now been converted to a ramp since he couldn't get his wheelchair up those steps. The dinner table had to be cut down to allow Tim to sit at the table with his family, because his wheelchair wasn't high enough to reach the table top.

Did I mention that Tim loved to ski and hike in the Vermont mountains? For the rest of Tim's life, he'll never be able to ski or hike again. Tim lives in his wheelchair that has become his home for 18 hours each day. Did you know that because Tim can't feel anything below his waist, he'll get sores on his butt and infections that he won't even know about until it is festering? The doctors tell Tim that he'll need a new wheelchair every five years. "What does a wheelchair cost?" Tim asks.



Tim must face his friends and family every day and explain his new-found limitations in life. Have you considered what will be of Tim's relationship with his wife? Do you think his wife is going to be able to take care of Tim's daily medical needs at home without help? Can she cook, clean, take care of the house and kids and take care of her husband's daily cleaning rituals? How do you take a shower if you can't walk? How do you dress yourself if you can't get to the closet and reach those high shelves with your clothes? What if, God forbid, there is a fire in his home? How does he get out quickly if nobody else is home?

With every accident or malpractice injury there is usually a physical injury that can be devastating. Have you also considered the psychological impact of an injury? Our minds are vigorous and active. An injured victim is often trapped within their body. The emotional toll an injury causes and the psychological after-effects are equally devastating. Yet with all that we know about repaying a debt that is owed, how is a wrongdoer or their insurance company going to repay a debt that cannot easily be quantified?

Well, let's go back to the \$5 million dollar Picasso painting. If the value of that painting can be calculated and replaced then why can't the value of human suffering and the indignity it causes? All arise from the same accident or medical wrongdoing. Isn't

there some way we can repay that debt too? There is. Unfortunately, since there are no exact numbers for our pain and suffering and every person who is injured is different and experiences a different level of injury, no two cases are exactly alike. Yet pain and suffering is a very real part of a victims' life. There is a way to compensate such a injured man...use the economic damages as a starting point and go from there. The only downside to this is

if the injured victim is not working or is very young or very old. In those cases you will not have all of those economic damages to look to when starting your journey in awarding compensation for human suffering. For those cases you must use your common sense and understanding of the human condition in order to reach a full and fair number to compensate a victim for their pain and the suffering they've endured and will endure for the remainder of their life.

Here's an example of a story used in closing argument to explain one way to evaluate pain and suffering:

### " \$ 1 0      M I L L I O N D O L L A R S   F R E E ! "   T H E C L A S S I F I E D   A D   S A I D

If you thought the ad was true, wouldn't you race out the door to be the first one in line asking for the promised money? What if the ad said that before you could get your "Free \$10 Million Dollars" you first had to be involved in a head-on car crash? How many people do you think would still wait in line for that free money? I'll bet you there would be some desperate people waiting for that money, regardless of what it took to get it.

What if there were more conditions that you had to meet before you could get that money?

Let's say in addition to getting hit by a car head-on, you had to have been ejected from your car, airlifted by helicopter to the nearest trauma center where you fractured your pelvis, both your legs, were on a respirator for 20 days, you needed surgery to put the broken bones back together with hardware, pins and screws, and were hospitalized for 4 weeks. How many people to you think would still be on line asking for that "Free \$10 Million Dollars?" Not many. Yet I'm sure you'd still find a few very desperate souls willing to do most anything for that kind of money.

But wait! Suppose there were even more conditions before you could get your hands on that \$10 Million Dollars. Suppose that in addition to the horrendous trauma, lengthy surgery, complications from surgery, being in a medically-induced coma and hospitalized for an entire month, you needed three weeks of rehabilitation therapy where you learned to walk again. Suppose you also couldn't return to your job earning \$60,000 per year, and you couldn't play with your children because you could barely walk. Your six-year-old wonders why you can't play soccer and baseball with him,



and your 11 year-old asks why you're home during the day instead of being at work. You spend your days watching ridiculous daytime soap operas thinking how you'll support your family since you can't work. Suppose your doctor tells you that you'll never be able to play sports again, and you'll be lucky to walk without a limp. Your job at the loading dock required heavy lifting and there's no way you can lift more than ten pounds now. You doctor says that if you go back to the type of work you were doing before, there's a good chance you'll never walk again.

How many people, given those conditions do you think would stick around asking for that "Free \$10 Million Dollars?" I don't think anyone would.

In certain cases, we use this argument in summation to explain to a jury how significant a victims' injuries are and how the money that we're asking for is justified. If a lawyer simply asks a jury to award \$10 Million Dollars without providing a background or evidence to support the award, a jury is unlikely to give away such a large sum of money. However, when presented with a reasonable explanation such as the one above, it becomes much easier to understand how such an award can be appropriate.

Importantly, a good attorney will usually understate the value of their case, and once the extent of the injuries become apparent, the jury will (hopefully) recognize that the amount

asked for is not sufficient to cover all of the medical expenses, lost wages and pain and suffering that the injured victim has suffered.

You think you want \$10 million dollars? Sure, who doesn't. But if an injured victim asks for that compensation look to see what injuries they've suffered. Only by looking carefully do we see that this certainly isn't a 'windfall' or a 'winning lottery ticket'. Instead it is full and fair compensation. ☆

## TRY OUR TRIVIA GAME!

**Test your knowledge of New York medical malpractice and personal injury law. Answers appear at the end of this newsletter.**

1. In a malpractice case, if the person bringing the lawsuit (a plaintiff) proves that their version of the events are more likely true than not true, then they have met their burden of proof.

TRUE OR FALSE?

2. Economic damages include damages for pain and suffering.

TRUE OR FALSE?

3. The spouse of an injured victim is permitted to bring a claim within their injured spouse's case, which is also known as a loss of services claim.

TRUE OR FALSE?

4. A jury is not to consider sympathy when rendering a verdict.

TRUE OR FALSE?

5. There is no cap (limit) on pain & suffering awards in New York State.

TRUE OR FALSE?

6. The Court of Appeals in NY has the ability to throw out a verdict in your favor.

TRUE OR FALSE?

7. A lawyer that has obtained favorable compensation for one client means they can guarantee a similar result for you and your malpractice case.

TRUE OR FALSE?

8. Anyone who causes harm to another person should be held accountable for their actions, regardless of whether the wrongdoer was a driver, a physician or a homeowner.

TRUE OR FALSE?

9. In New York, if you receive a settlement for your pain and suffering, that money is not taxable.

TRUE OR FALSE?



10. You have only 90 days from the date of the malpractice within which to file a claim against a municipal hospital in the five boroughs of New York.

TRUE OR FALSE?

11. To become a lawyer in New York takes 4 years of full-time study.

TRUE OR FALSE?

12. A lawyer who has a full-page ad in the yellow pages is a better lawyer than a lawyer who has a half-page ad.



TRUE OR FALSE?

**BONUS QUESTIONS:**

**1. In a medical malpractice case, there is no need to bring in medical experts to help prove your case.**

TRUE OR FALSE?

**2. “Falsus in uno” means that “The document speaks for itself.”**

TRUE OR FALSE?

Answers appear at the end of this newsletter. ☆

## **VIDEO UPDATE!**



In the last six months I've created and produced almost 70 video tips to help educate consumers about personal injury and medical malpractice in New York. Amazingly, my videos have been viewed over 15,000 times in the last six months. That's not a misprint! (By the way, I have not watched them 15,000 times. 14,995 times maybe, but definitely not 15,000 :-). In case you'd like to view these informative videos, you can find them on Google Video, YouTube, Blip.tv [[medicalmalpractice.blip.tv](http://medicalmalpractice.blip.tv)]

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## **Legal News:**

- Staten Island jury holds Ford liable in fatal crash, awards \$6.5 Million
- After lawsuit, doc OK'd to work
- 6-Year-Old Dies Following Tragic Pool Accident
- \$21 Million Awarded in Queens for Car Crash Death
- \$19 Million Awarded in Brain Damaged Baby Case
- San Diego Woman Awarded \$82.6 million award by Appeals Court
- Jury awards \$325K after funeral home lost remains
- Jury finds surgeon negligent, awards \$14.5 in malpractice case

To read the full stories and more cases just like these, go to my website, [www.oginski-law.com](http://www.oginski-law.com) and see for yourself why people keep coming back to visit. Read my free reports, hundreds of FAQ's, informative articles, actual deposition testimony of doctors in real cases, free video tips on personal injury and medical malpractice cases and much more. One woman even called me to say that my website was the “Best public service she had seen by any attorney on the internet.”

## **REFERRALS & WHY THEY MAKE YOU FEEL GOOD**

Have you ever been with a friend who was in agony because of a toothache and they didn't know what to do? Lucky for them you told them about your wonderful dentist who treats you without causing pain. What about your best friend who asks you for the name of a good restaurant in the City since she wants to take her husband to a nice restaurant for her anniversary? Maybe you've been asked by your neighbor who you use to cut your lawn or shovel your driveway.

Doesn't it feel good when you can help a friend, a neighbor, or a relative with information you have that they don't? It really does make you feel good- especially when that person you referred them to does a good job. If you think about it, you refer people all the time. You're having lunch with a co-worker who needs a mortgage for

his home...guess what? You have a really good mortgage broker to recommend. How about your good friend with her one year old who continues to get ear infections. "You have to go to my pediatrician," you tell her.

The same holds true for any professional such as a lawyer, an architect, and even an accountant. "You should call my accountant...he saved me so much in taxes." "My architect designed this incredible extension...you have to come look at it." "My lawyer was so helpful...he explained everything and got me the compensation I was entitled to."

Why does it make you feel good when you refer someone to another person in need of their service? Simple. You're doing a good deed by helping your friend, co-worker or relative. You are giving your **personal stamp of approval** (which is better than the Good Housekeeping stamp of approval) on a product or service that is needed right now. The person who you are talking to most likely trusts your opinion and judgment. A good referral from a trusted source is thousands of times more powerful than the best advertisement any business or service can produce.

Did you know that lawyers thrive on referrals? It's true. When a call comes in and the new prospective client says "My best friend just recommended that I call you to get your opinion," not only does it make us feel good about ourselves and what we do, but it's something that an attorney will remember for a long time. In law, a lawyer's reputation and the results of the last few cases he's handled are what give rise to the next referral. There's no better way to show an attorney, or any professional, that you valued his services.

I want to tell you quickly about a medical malpractice case I handled for a woman in Brooklyn. I was able to successfully settle her case shortly before jury selection. She was very pleased with the result and the work I had done for her. A few months later she called me to chat, and I learned she had been involved in a car accident and suffered a broken arm. I began asking her pointed questions about how the accident happened, and whether she filed a claim against the driver of the other car. "Oh yes. I hired an attorney to handle my car accident case and he did all that." I said "Did you know that I handle all types of accident cases in addition to medical malpractice cases?" She replied that "I had no idea. I thought you only did malpractice work." Never mind the

fact that she had been receiving my monthly newsletters that describe all types of accident and malpractice work, but what most surprised me was her comment "If I had known you did accident cases, I would have definitely called you to handle it too."

***In case you didn't know, I handle these types of cases:***

- ***Medical malpractice***
  - ***Car accidents***
  - ***Slip & fall***
  - ***Surgery errors***
  - ***Misdiagnosis***
  - ***Failure to diagnose cancer***
  - ***Perforation during colonoscopy***
  - ***Snow & ice accidents***
  - ***Orthopedic errors***
  - ***Children born with arm injuries***
  - ***Children with developmental delays***
  - ***Emergency room & hospital errors***
  - ***Medication errors***
  - ***Pharmacy mistakes***
  - ***Injuries from a store***
  - ***Injuries from a poorly made product***
  - ***Bicycle accidents (take a look at my video clip titled "My Bicycle Accident")***
  - ***Pedestrian injuries while walking***
  - ***Construction accidents***
  - ***Dental malpractice***
  - ***Improperly inserted dental implants***
  - ***Podiatry malpractice (foot doctor errors)***
  - ***Motorcycle accidents***
- and many cases just like these***

***These cases are known as "Negligence" cases or "Medical Malpractice" cases.*** What this really means is that they involve injuries from accidents or from a doctor or hospital.

Also, many people think that if their case was in Brooklyn, their attorney would not be able to handle a case in Queens or Manhattan. This is not true. In fact, most attorneys who practice in the New York Metropolitan area, regardless of where their office is located, practice in the five boroughs including New

York City, Queens, Bronx, Brooklyn, Staten Island, as well as Nassau & Suffolk counties.

*So the next time a good friend asks you for the name of an attorney, hopefully you'll strongly consider giving them your personal stamp of approval and give them my name and phone number. I will thank you for it, and so will your friend.*



## Gerry's (Never Ending) Fictional Story Continued...

Jimmy was on a special mission for the Israeli Secret Service. He was to provide information about specific Arab leaders. This information would be used to shape the Israeli foreign policy for many years to come.

On April 7 Jimmy was taken by taxi to a house used by Egyptian diplomat Hamid al-Fazzy Bear. The house was a two story brick building with an underground garage. The Israeli and Egyptian secret service agreed that all parties to this evening's event would converge at Hamid's modest home, located one mile from downtown Jerusalem. The guest list included the Prime Minister of the Palestinian territories, the Syrian President, the Jordanian President, a representative of Iraq's ruling party, and a representative of Hamas, which currently controls the Gaza strip housing many Arabs. On the home court advantage would be the Prime Minister of Israel, the Secretary of State of the United States, Condoleezza Rice, and three up-and-coming politicians on the American scene; Barak Obama, Hilary Clinton & John McCain.

There was to be absolutely no publicity surrounding this event. Each "guest" was to be disguised, so as not to draw attention to who they really were and their true intent in the Country. This was an unprecedented event. The President of Syria, and the representative of Iraq's ruling party had never set foot in Israel before. The stakes were very high. Security was problematic, with each potentate's security chief making unrealistic demands on the Israeli Secret Service. Tensions among the minions were high. Israel's security apparatus was placed on a secret alert with additional fighter jet patrols flying formations and running 'war-game' scenarios.

Jimmy's only concern was to mingle with guests and gain as much information as possible about each one. The problem that no one had foreseen was how to correlate who Jimmy met with, and which person he was actually talking to. Since everyone would be in disguise, it would prove difficult to coordinate each person's identity with their medical condition. According to the Secret Service memo showing what disguises the players would be using that evening, this is what each of the people looked like:



Jimmy



Israeli Prime Minister



John McCain



Condi Rice



Hilary Clinton



Barak Obama



Dont' know who this guy is

Join me in my next newsletter when we find out whether Jimmy was able to keep track of who he spoke to and what he learned. Find out whether Jimmy learned where weapons of mass destruction were hidden; find out what the presidential candidates had to say; learn the true purpose of the April 7 meeting behind closed doors. Do these invited guests find out who Jimmy really is and why here's there? Find out the answers to these pressing questions...AND MORE! See you next time!

Give this newsletter to your best friend.  
They'll thank you for it, and so will I.

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*Answers to Trivia Game: 1. True, 2. False, 3. True, 4. True, 5. True, 6. True, 7. False, 8. True, 9. True, 10. True, 11. False, 12. False, BONUS QUESTIONS: 1. False, 2. False.*

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SEND TO:

**Call me right now with any legal questions about injuries from any accident or medical care.  
I promise to give you a straightforward and honest answer. That's my guarantee.**

**Call me today with your questions at 516-487-8207**