

# NEW YORK INJURY TIMES



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*New York Medical Malpractice  
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## IN THIS MONTH'S EDITION:

**MY SON SAVES A LIFE**

**AN OPEN LETTER TO  
 PRESIDENT OBAMA**

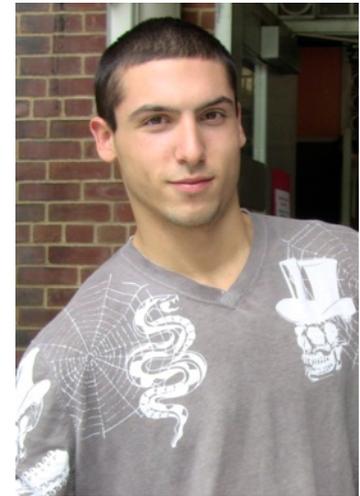
**GERRY'S TRIVIA GAME**

**A RETURN OF GERRY'S  
 NEVER-ENDING  
 (FICTIONAL) STORY**

*Photos of New York  
 City and the beach  
 in Naples, Florida.*

## Great Neck Firefighter Saves Cardiac Arrest Victim

At 7 PM on July 4, in Fort Myers airport, Florida my family and I were walking toward the boarding gate of our JetBlue flight 138 heading back home to New York. As we approached the boarding gate, we saw a gate attendant kneeling on the floor next to an elderly man who was clearly unresponsive. The gate attendant had his finger on the man's carotid artery, checking for a pulse. My son immediately dropped his laptop ran over to the man on the floor, announced that he was a first responder and a firefighter and also checked for a pulse. Having found no pulse and that he was not breathing, my son directed that they immediately begin CPR and advised the gate attendant to begin chest compressions.



Joseph Oginski

A few moments later, a Port Authority policeman arrived and my son requested a mask to ventilate his lungs.

Together, the gate attendant and my son worked as a team to perform CPR on this cardiac arrest victim. If you've ever performed CPR it is physically taxing. Your adrenaline is pumping and you're focused on reviving the patient.

Chest compressions and ventilation continued for minutes until the pilot of our plane and another Port Authority police officer arrived with an automatic external defibrillator. Two large electrodes strips were placed on this man's body and the defibrillator was activated.

If you've never seen an automatic defibrillator in action, it's fascinating to watch and to hear. It announces that it is evaluating the patient's heart rate and once it has finished assessing heart rate, it immediately recommends action and whether or not to shock the patient in an attempt to restore the normal heart rhythm.

After the first assessment was made by the automatic defibrillator, it recommended that the patient be shocked immediately. Once you press the button to administer the shock, the automatic defibrillator advises that everyone should stand back away from the patient. If you've ever seen someone shocked using defibrillator paddles on TV, it is the same as watching it in real life. A tremendous jolt of electricity is sent throughout the patient's body to try and restore the heart rhythm or to get the heart rhythm reverted back to normal.

In this case, after the shock had been administered, my son and the gate attendant continued CPR until the automatic defibrillator advised to momentarily stop so it could check for a heart rate. At this point, there was still no heart rate or respirations. The defibrillator again recommended shocking the patient, and after the patient was shocked for the second time, the patient regained a pulse and respirations. My son together with an EMS attendant and the gate attendant turned the patient onto his side in order to prevent him from inhaling any fluids into his lungs (known as aspiration), now that he was breathing again. By this time, two other emergency medical crews arrived and took over where my son had left off.

My son is 17 years old and is a volunteer firefighter with the Vigilant Fire Department here in Great Neck. Watching my son take control of this medical emergency and selflessly run to help this man in distress gave me the greatest feeling I could ever have as a parent. All of his training with the fire department effortlessly kicked into gear and I'm proud to say that my son helped save a life on July 4, 2009, Independence Day.

On the plane ride home to New York, my son told me this was his 5th time performing CPR. Looking at him, I could see the sparkle in his eye knowing that he did something good for someone else. Even though we were unaware of this man's fate, I couldn't help but think what a great person my son turned out to be.

### **An Open Letter to President Obama**

Dear Mr. President,

The New York Times reported ([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 represented 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. 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 him 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. In addition, this patient suffered kidney damage because his kidneys could no longer filter fluids traveling through his body.

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 oxygen throughout his bloodstream. This

man could barely walk 10 feet without needing to stop and rest for a few minutes. He needed a heart transplant. However, this patient was not a candidate for a heart transplant

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.

Each medical expert 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 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.

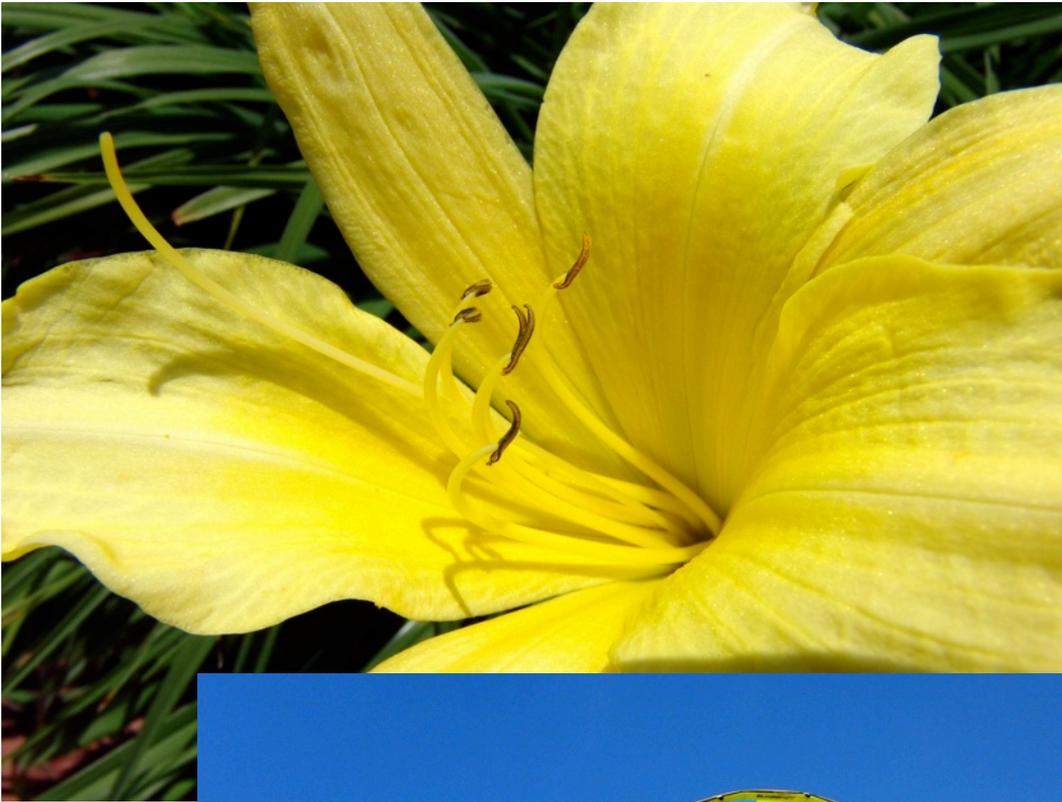
Rather than focus on the attorneys and their injured victims who bring cases in their respective states or on the standards of care that have been created to protect physicians in courtrooms throughout the United States, let us look closely at the insurance companies and call them to task for their investment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





### **THE STORY BEHIND THE PHOTOS**

I have always loved taking photographs. Since I bought my first digital camera in 2000, I currently have over 15,000 pictures stored (and backed up) on my computer. I love candid photos; pictures of my kids, my family and places we've been. I really enjoy taking unusual photos. Close-up photos, known as macro shots are always fun. Capturing that perfect moment when everyone is smiling just right takes lots of practice, and for every 100 pictures, I will get maybe two or three that are really worth printing. My wife says I don't print all my pictures, and she never sees them on the computer. She's right. It's impossible to print them all. Only the best ones get printed. (The walls in my house are lined with framed photographs I've taken over the years. I am always looking for more wall space for my pictures).

The pictures in this month's newsletter include scenes from a trip into New York City while looking for an apartment for my son; photos from a beach vacation; moments captured at my son's graduation; and shared moments between my oldest and youngest sons. With photos, these moments will never be forgotten. I hope you enjoy them.

# Great Neck





Naples, Florida



## R E F E R R A L S - S E N D A B O O K !

If you know someone who would benefit from learning how medical malpractice lawsuits in New York work, just send me an email and I'll gladly email my book **DOCTORS GONE WILD** to them or mail them a hard copy with a note letting them know that you were thinking of them. You can reach me by email at [lawmed10@yahoo.com](mailto:lawmed10@yahoo.com). They'll thank you for your thoughtfulness and so will I.

# GERRY'S TRIVIA GAME

TEST YOUR LEGAL KNOWLEDGE

1. A trial judge determines what evidence is admissible at trial. TRUE OR FALSE?
2. A health insurance company that pays your medical bills has a right to participate in your lawsuit to get back money that they paid for your doctor bills. TRUE OR FALSE?
3. An "Executor" is someone who kills people for a living. TRUE OR FALSE?
4. A "Plaintiff" is the legal name of someone who brings a lawsuit. TRUE OR FALSE?
5. In a civil case, a jury is kept overnight if they do not reach a decision by the end of the day. TRUE OR FALSE?
6. In order for a New York lawyer to be admitted to practice law, he must pass the character and fitness committee interview. TRUE OR FALSE?
7. An alternate juror is able to participate in jury deliberations when deciding a civil trial. TRUE OR FALSE?
8. The majority of medical malpractice cases in NY are won by doctors and hospitals. TRUE OR FALSE?
9. Law school takes five years to complete. TRUE OR FALSE?
10. "Negligence" is equivalent to "Carelessness." TRUE OR FALSE?

**BONUS:** In New York, you can be called for jury duty every two years.

### GERRY'S NEVER-ENDING FICTIONAL STORY MAKES A COMEBACK!

One year ago Jimmy was on a secret mission for the Israeli Secret Service. His job was to talk to each Arab leader to find out when they would die. 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.

Jimmy's answer was simple. He would be working as a men's room attendant at

the party and made sure to turn the heat up in the bathroom to 100 degrees. This way they'd be so hot they'd have to take off their mask in the bathroom. The problem though was how he could shake hands with each one without arousing suspicion.

His idea was simple. He congratulated each one on their costume and then handed them a towel to dry their hands.

By the end of the night, Jimmy knew when each of these Arab leaders would die.

*CONTINUED ON NEXT  
PAGE*



Who said you couldn't walk on water?

**GERRY'S NEVER-ENDING FICTIONAL STORY...continued**

By the end of the night Jimmy was so hot and thirsty that he had stripped down to his t-shirt and boxers while he talked to his mens room guests. He had never perspired so much and couldn't wait to get outside into the cold air.

When his contact came into the bathroom to take him home, he was shocked to see

Jimmy lounging in the men's room, with a tall, cold iced tea in one hand. The image of a stocking-clad, boxer-wearing, guinea t-shirt on the most important person the Israeli Secret Service had ever used brought hysterical laughter to the man who was to take Jimmy home.

Despite the heat, his mission was extremely successful.

***To be continued!***



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

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

# NEW YORK INJURY TIMES

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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**