

Halloween  
Edition!

New York Medical Malpractice Attorney Gerry Oginski presents

# NY INJURY TIMES

OCTOBER 2012

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## KNEE REPLACEMENT GOES HORRIBLY WRONG

She was a sweet 62-year-old woman. Her orthopedist told her she needed a knee replacement. She was getting on in age and the cartilage in her knee had given way and it was painful for her to walk. Her doctor told her it was time.

She agreed to have knee surgery that would insert a prosthetic knee and allow her the ability to walk without pain.

She went into the hospital confident that her doctor would take good care of her. She knew the reputation of this hospital in New York City. She had no hesitation in agreeing to schedule her knee surgery at this well-known hospital in Manhattan.

**Her surgery went remarkably well. There were no complications.** Very little bleeding.

As the doctor was finishing the surgery, he inserted a drain into the knee compartment in order to allow fluid to seep out as she healed. Nothing unusual about that. In fact, that's often routine. *continued p. 3*

- MED MAL-WHAT'S IN THE NEWS?
- 3 PHRASES TO DESTROY YOUR CASE
- KNEE REPLACEMENT HORROR
- PHOTO GALLERY
- NEW WORD SEARCH

### 3 Phrases That Will Destroy Your Chances of Successfully Negotiating Your Accident Case

Defense attorney: "**How much do you need to settle this case?**" defense attorney with finality.

What just happened?

Plaintiff's attorney: "I need \$5 million dollars."

#### MISTAKE #1

"That's not going to happen," says the defense attorney authoritatively. "What do you really need?"

What just happened is that ***the plaintiff's attorney lost all credibility*** and any negotiating advantage he had. He equated the word "need" with what he expected his client to receive and the insurance company to willingly pay. That was mistake number one.

"I really need \$2.5 million."

"That's not going to happen either," says the

*continued on page 2*

## 3 Phrases That Will Destroy Your Chances of Successfully Negotiating Your Accident Case

continued from page 1

### MISTAKE #2

Mistake number two was answering the question **“What do you really need?”**

That presumes that the answer to the last question was totally inflated and false. The plaintiff's attorney misinterprets that question again by thinking that the word **“need”** is what the defense and their insurance company is willing to accept and pay.

Now the defense attorney has been able to reduce the amount of money being demanded not once, but twice. In addition, simply by uttering the word **“No,”** he has already lowered the bar and the possibility that this matter could be settled for a substantial sum of money. Plaintiff's attorney has lost all negotiating advantage and now

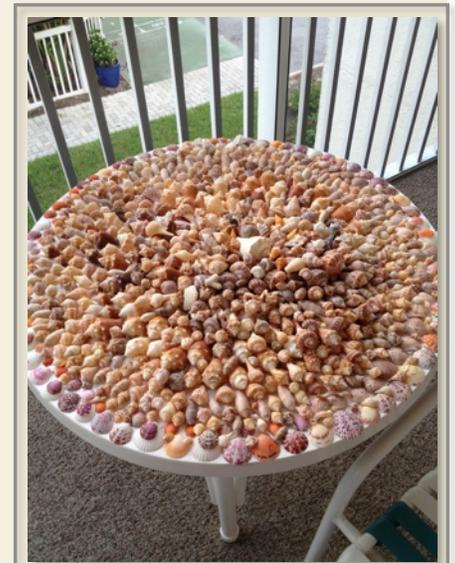
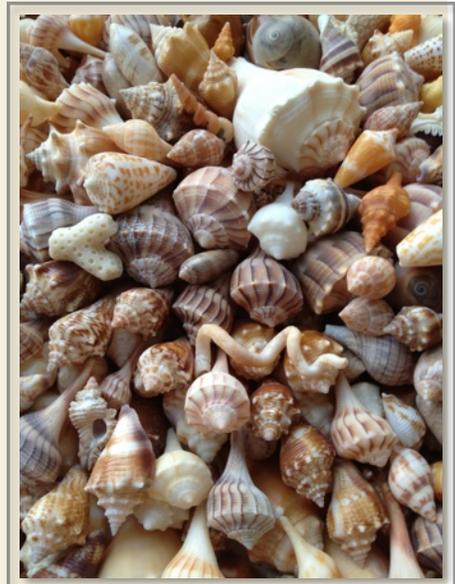
must wait for the defense lawyer to offer a lowball settlement amount.

### MISTAKE #3

*“Okay, what do you think this case is worth and what is the insurance company willing to pay to settle this matter?”*

The plaintiff's attorney has now subconsciously transferred all negotiating power to the defense lawyer to set the value of this case and to control whether or not the case is able to be negotiated. No matter what number the defense lawyer throws out, the plaintiff's attorney will then have to either accept or reject the offer.

It is unlikely he will now be in a position to obtain substantially more money for his client.



### THE BACK STORY ABOUT ALL THESE SEA SHELLS...

My family and I love Sanibel Island in Florida. It's known as the sea shell picking capital of the world. Needless to say, it's one of my wife's favorite hobbies. She spends her days on vacation picking sea shells and these are what she collected in just one trip. I honestly need a separate suitcase just to transport all these shells back to NY.

## KNEE REPLACEMENT GOES HORRIBLY WRONG

*continued from p. 1*

The orthopedic surgeon left specific instructions for the recovery room staff that **the drain was to be attached to a suction device to help remove any fluid buildup in the knee.**

The patient was brought into the recovery room and over the next 15-20 minutes she started to feel really uncomfortable. She noticed that her belly was getting larger and larger by the minute. Her belly was getting tighter. She cannot understand why. The doctors did not touch her belly during surgery. The nurses were called over and they too were puzzled. By the time a doctor came to her bedside, **the patient's belly was the size of a watermelon.**

No one had any explanation why this was happening. She was not pregnant. She had no prior surgical history to her belly. The only thing that happened was she went in for knee replacement surgery and now was in recovery room and something very wrong is happening very quickly.

One of the surgeons called to evaluate this immediate problem made a decision that the patient needs to return back to the operating room immediately. She

was given emergency anesthesia and the doctor immediately cut into the patient's belly to find out what's going on. The moment the doctor cut into the woman's belly **there was an immediate gush of air** that rushed out of the incision.

The surgeon then spent the next 45 minutes exploring the patient's bowel and intestines to see if there was some hole or perforation or tear that may have caused air to



Bike riding in Sanibel, Florida

build up in her belly. The surgeon could find no answer and nothing abnormal with this woman's belly. The only unusual finding was the massive amount of air that was released as soon as he cut into the patient's abdomen.

After rushing the patient into surgery, and then returning her back to the recovery room, **there was still no answer** why this patient developed an acute emergency in

her abdomen. It was confusing. It was perplexing. It made no sense. When the patient was returned back to the recovery room, the surgeon decided to do some investigating. He took the head nurse and began talking to the people who were caring for this patient while in the recovery room after her initial knee surgery.

**The surgeon finally learned the answer.** Remember when the orthopedic surgeon gave specific instructions that the patient's drain was to be attached to a suction device? Well, the nurse who was assigned to the patient in the recovery room attached tubing from the drain in the patient's knee to an outlet on the wall and then turned on the valve.

*The nurse who attached drainage tubing to the wall outlet did not realize that instead of attaching it to the suction device where it would suck fluid out of the wound, she had instead attached it to an oxygen device.*

This meant that instead of fluid and air coming out of the wound, oxygen was being pumped into an entirely closed compartment in the patient's knee. Since there was no place for the oxygen to go, it found the path of least resistance under the patient's skin, moved up her legs and up to her belly. *Continued p.4*

*continued from p. 3*

This explains the slowly inflating abdomen together with increasing pain along with the immediate release of air when cutting open this woman's belly.

The remarkable thing about this horrific scenario was that it was totally preventable. Had the nurse checked where the tubing was going before attaching it and confirming that it was in fact a suction device and not an oxygen device, this would have been totally averted.

Instead, this nice, sweet 62-year-old woman having just come out of surgery was now subjected to a massive amount of oxygen being pumped into her body, up her legs, up to her abdomen and she was literally inflating like a balloon. She needed to have emergency surgery where doctors spent an extended amount of time searching for the cause of the air within her belly.

By the time this woman left the hospital, not only did she have a new knee but she also had stitches and a huge incision that ran from the bottom of her rib cage all the way down to her groin plus she needed to reuperate from her major abdominal surgery.

**HOSPITAL REFUSES TO ACCEPT RESPONSIBILITY UNTIL...**

It was fascinating that the hospital refused to accept responsibility for this woman's injuries until we got close to trial. The defense knew that they had absolutely no defense

and that her injuries were significant and never should have happened.

*So why do I share this story with you?*

I share it with you to give you an idea and an insight into what happens in a case like this. Chances are you have questions and concerns about your own surgery and whether or not the treatment you received was appropriate. If you have legal questions about your surgical or orthopedic matter, I encourage you to pick up the

phone and call me at **516-487-8207** or by e-mail at [lawmed10@yahoo.com](mailto:lawmed10@yahoo.com). I welcome your call.



N Y C apartment building celebrating halloween



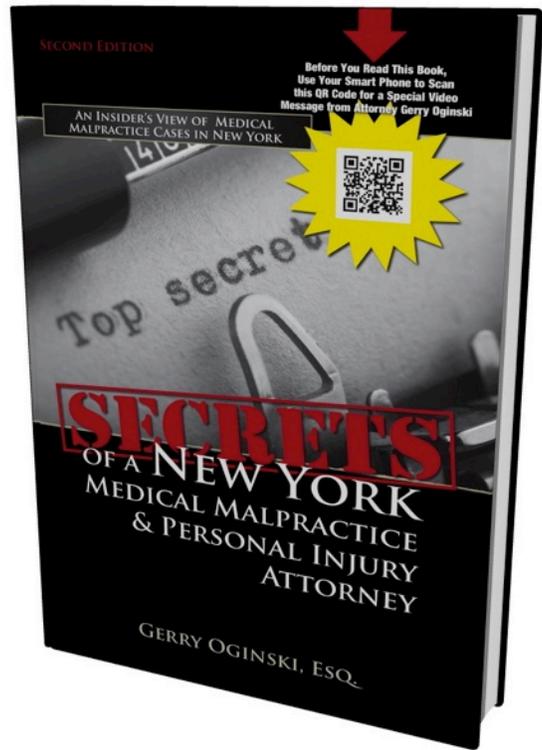
Sanibel sea shells



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Mia playing JV Soccer



David playing Little League Baseball



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## THE HALLOWEEN BACKSTORY...

Halloween is not that big of a deal in our house. Sure, the kids either make a costume or pick out one from Party City, which by the way is an absolute zoo if you have the misfortune of going within two or three weeks of Halloween. David is 10 years old now and he decided he wanted something gory this year. Lovely. I couldn't wait. The two pictures on the left are mask costumes that didn't make the cutoff, though I thought the top left one was really cute for a 10 year old.

Which costume do you think my son decided to get? Yes, you guessed right. The ultra gory one right above. Can't wait to hear what my wife thinks!

# Gerry's Trivia Game

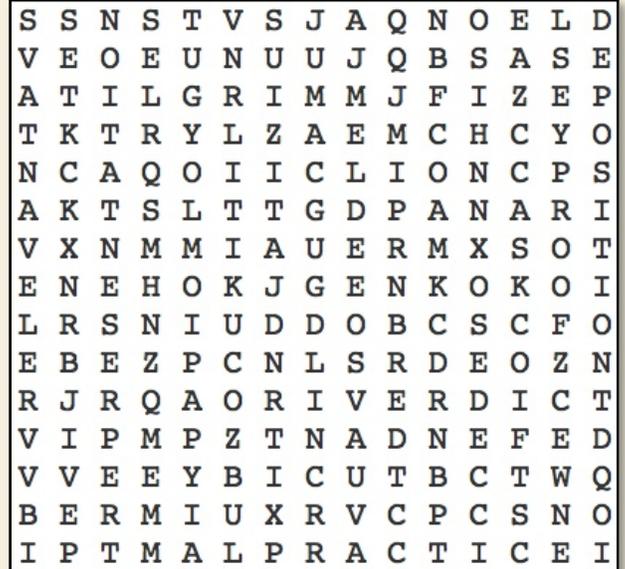
# New Word Search!

TEST YOUR KNOWLEDGE OF NY LAW

FIND ALL WORDS AND WIN A GIFT CARD!

## TRUE OR FALSE?

1. An attorney in New York can give a gift to someone who refers him a good case.
2. "Objection sustained" means that the witness is not to answer the question.
3. A 'motion in limine' is a request from the court for a box of genetically engineered lemons and limes.
4. A 'motion to withdraw' is a request by the attorney to no longer represent his client.
5. 'Hearsay' is what a drunk person says after being arrested.
6. The 'chain of custody' is a direct link showing who touched certain evidence.
7. An X-ray or CAT scan being introduced into evidence must have identifying information such as the patient's name & date of exam.
8. A lawyer who is only admitted to practice in a state outside of NY who wants to try a case in NY must get first permission from the Court and affiliate himself with a NY attorney.
9. The 'statute of limitations' is a big monument that appears in front of most court houses in New York.
10. At a deposition, an attorney representing a non-party witness has the right to tell his client not to answer a particular question.



- FIND THESE 15 WORDS:**
- COMPLAINT
  - DEFENDANT
  - DEPOSITION
  - INTERROGATORIES
  - JUDICIAL
  - JURY
  - MALPRACTICE
  - NEGLIGENCE
  - OBJECTION
  - PREPONDERANCE
  - PROOF
  - RELEVANT
  - REPRESENTATION
  - SUMMONS
  - VERDICT

**Word search challenge: Find all 15 words correctly, and fax it in with your name & address filled out for a \$10 gift card to Dunkin Donuts. ONLY 15 GIFT CARDS AVAILABLE...so fax it in quickly!**

NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 CITY: \_\_\_\_\_ STATE: \_\_\_\_\_  
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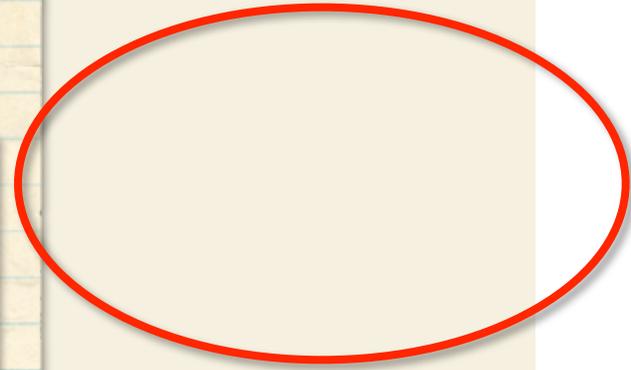
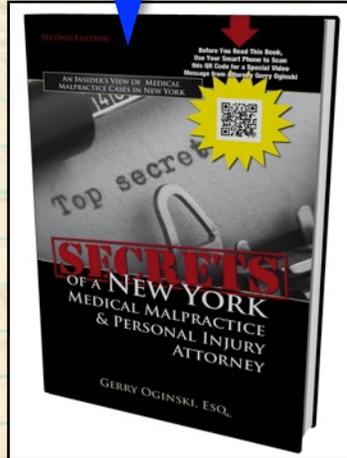
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[Lawmed10@Yahoo.com](mailto:Lawmed10@Yahoo.com)

I welcome your  
call.



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OCTOBER 2012

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

----- *Answers to Trivia Game* -----

1. False, 2. True, 3. False, 4. True, 5. False, 6. True, 7. True, 8. True, 9. False, 10. False

**Call me right now with any legal questions about injuries from any accident or medical care.  
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