

HOLIDAY
EDITION!

New York Medical Malpractice Attorney Gerry Oginski presents

NY INJURY TIMES

THE LAW OFFICE OF:
GERALD OGINSKI, LLC
25 Great Neck Rd., Suite 4
Great Neck, NY 11021
TELEPHONE 516-487-8207
FAX 516-487-8472

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JURY: BURNS FROM SURGICAL FIRE
DURING C-SECTION ISN'T MEDICAL
MALPRACTICE

A jury recently ruled against a medical malpractice suit that claimed a doctor's negligence was responsible for his patient's abdomen catching fire during surgery.

In March 2010, Kira Reed, 43, a professor of business at Syracuse University, entered Crouse Hospital in Syracuse to deliver her baby. Her obstetrician, made the C-section incision just before the patient caught fire and sustained a third-degree burn 7 by 5 inches on her side. A plastic surgeon considered the burn similar to that of napalm victims. Luckily, however, the patient's now-healthy baby girl was successfully delivered.

Central to the suit is DuraPrep, the alcohol-based antiseptic applied to the patient's skin in preparation for surgery. Its manufacturer, 3M Company, was ordered by the FDA to issue warnings the month before Reed's surgery, instructing users how to prevent surgical fires. The nurses testified they were not trained in preventing DuraPrep-caused fires. One nurse didn't even know DuraPrep was flammable.

The Onondaga County Supreme Court jury ruled for the physician, who contended he was not responsible for prepping the surgery. Reed had already settled with Crouse Hospital three to four months before the verdict.

- MED MAL-WHAT'S IN THE NEWS?
- 9 EMOTIONS FOLLOWING INJURY
- 6 LOGICAL REASONS TO HIRE AN ATTY
- PHOTO GALLERY
- NEW WORD SEARCH

NY Judge Rules that Dead Woman's Family Can Sue Doctor Even Though She Was Not His Patient!

This is a fascinating wrongful death legal case arising out of a horrible tragedy.

In June 2011 a pain-pill-addicted patient walked into a Medford pharmacy in Suffolk County, New York for the purposes of stealing thousands of pain pills. During the course of that botched burglary, David Laffer killed four people. He will now be spending the remainder of his life in jail.

One of the people he shot and killed in the

pharmacy was Jamie Taccetta.

Her family then brought a wrongful death lawsuit against the anesthesiologist, pain doctor Stan Li who continued to prescribe pain pills to Laffer. The family claimed that this doctor was prescribing pain medication to a patient with a known addiction and therefore he should be held responsible for Jamie's death.

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THE PROBLEM

The problem with this reasoning is that in order to bring a lawsuit for medical malpractice or wrongful death against a physician, **there must always be a doctor-patient relationship**. This is a basic concept of medical malpractice law here in New York. If the doctor did not undertake to treat a particular patient, how then can the injured victim claim that the doctor was responsible for the injury and harm that she suffered?

The decision on this case essentially turns these basic concepts of medical malpractice law upside down.

As someone who represents injured victims against doctors and hospitals, this decision is somewhat troubling.

It's troubling from the standpoint that the court has somehow eliminated the need to show a direct relationship between a patient and physician.

According to a recent article in Newsday, the judge determined that the anesthesiologist *could be held liable for the death of Jamie Taccetta even though she wasn't a patient!* Part of the judge's decision is quoted here:

"Under certain circumstances a doctor could be held liable if he does not stop supplying controlled substances to addicted patients who cause harm to others. A medical provider may have a duty to protect the public from the actions of a drug addict, and he may be found to have breached that duty if he creates or maintains the addiction through his own egregious conduct."

So here's what happened.

Jamie Taccetta's family brought a lawsuit seeking compensation for wrongful death against the anesthesiologist, a pain-medicine

doctor. The anesthesiologist was giving David Laffer pain medication that he became addicted to. The patient kept returning to the doctor for more prescription medication and the doctor continued to prescribe the medication. Then we see a vicious cycle repeated over and over again.

This addicted patient, Laffer, then goes to the pharmacy to steal more of these pills, and in the course of stealing these pills commits a horrendous crime and kills four people.

The doctor's lawyer asked the court to dismiss the wrongful death lawsuit claiming, among other things, that there is no doctor-patient relationship.

The court decided that the doctor **may** have an obligation to know that by continuing to give this addicted patient ongoing pain-pill medications, that it's foreseeable he will cause harm to others.

I HAVEN'T SEEN THE COURT'S DECISION

Although I have not had the benefit of reviewing the actual decision, I suspect that if this decision goes up on appeal, it will likely be reversed. Why? Because of a lack of physician-patient relationship.

BUT WAIT...THERE IS PRECEDENT

However, there is one case in New York that has precedent where the person who **did not** have a doctor-patient relationship was still allowed to proceed with a lawsuit against a physician.

Here's what happened.

DAD BRINGS SON TO PEDIATRICIAN FOR A VACCINE. DAD GETS DISEASE. DAD SUES PEDIATRICIAN.

Dad brought his son to the pediatrician to get a vaccine.

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9 POWERFUL EMOTIONS YOU WILL SUFFER FOLLOWING AN ACCIDENT OR INJURY FROM A DOCTOR OR HOSPITAL'S CARELESSNESS HERE IN NEW YORK

- 1. Anger**
- 2. Violated**
- 3. Helpless**
- 4. Powerless**
- 5. Hurt**
- 6. Betrayed**
- 7. Hostility**
- 8. Disregarded**
- 9. Unimportant**

Let me share with you how these arise following a devastating accident or injury arising from medical carelessness.

Following a traumatic event, you will experience **disbelief**. It will be difficult to accept what has happened. As you begin to play back in your own mind what occurred you will soon recognize feelings of **helplessness, betrayal** and that you are **powerless** to change what has happened.

These are powerful emotional triggers that are inevitable with any traumatic event. As you begin to delve into how and why these events happened and what might have been done to prevent this tragedy, you will soon begin experiencing feelings of **anger, hostility and betrayal** by those you trusted.

As you seek more answers into why this happened you'll also find yourself feeling as if your thoughts and opinions are disregarded, and that people are paying you lip service so they don't have to deal with your troubles. You will feel

unimportant and unfulfilled when seeking answers to your questions. That in turn leads to further **anger and resentment**.

3 THINGS YOU CAN IMMEDIATELY DO

When faced with these overwhelming emotional triggers following a catastrophic tragedy involving permanent injury or loss of life, there are three things you can do immediately that will help you cope and deal with what you need to do next.

First, you need to speak with your family members and gain support from them.

Second, it is often helpful to speak to a grief counselor. That could be a psychologist, a psychiatrist or your spiritual leader.

Third, it would help you greatly to speak to an experienced trial lawyer to evaluate what your options are and how to deal with the emotional trauma you are suffering from.

YOU ARE NOT ALONE

As you work your way through these emotions, keep in mind that you are never alone. You will however feel alone when you're sitting at home by yourself with the lights off or when go to sleep at night. Rest assured though, that there are others who have gone through what you have, and have come

out of it successfully with a fresh outlook on life.

YOU NEED A GUIDE

As an attorney who deals with these traumatic events on a daily basis, I cannot change what has happened. However, I can help guide you as you travel these well-worn paths that are well known to us.

Being in an unfamiliar setting is like going on a trip without a guide map or a trusted guide to get you from point A to point B. As an experienced New York accident and medical malpractice lawyer, it is my obligation to be your guide, to show you where the pitfalls are and to help you through to your destination.

It is my goal and obligation to get you through this horrific journey so when you arrive at your destination you've done so with confidence knowing you can continue on with what God has intended for you to accomplish in your lifetime.

Don't wait for these overwhelming emotions overtake you and lead you to feelings of despair and helplessness.

I am here to help and can guide you to other resources that will help you deal with these problems. This is what I do.

Go ahead and pick up the phone and call. That's what I'm here for. **516-487-8207**

6 LOGICAL REASONS TO HIRE THE RIGHT NY MEDICAL MALPRACTICE & ACCIDENT ATTORNEY FOR YOUR INJURY CASE

1. You obviously want someone who has obtained excellent results in the past.
2. You obviously want someone who has the most experience with your exact type of case.
3. You want an attorney who has handled many similar cases as yours.
4. You want a lawyer who makes you feel comfortable and special.
5. You want an attorney who teaches you.
6. You want a lawyer who gives you books, free information, videos, articles, DVD's, transcripts, CD's, webinars and continues to educate you about how your particular case works.

Those are a given.

Those are all logical and highly reasonable items to want in a lawyer to handle your accident case, your medical malpractice case or your wrongful death case here in New York.

But let me ask you this question...

If you're looking at 3 different lawyers or law firms and they all have the same basic level of experience and results (it's

certainly possible), how can you distinguish one law firm from the rest?

Does one law firm wow you with their gorgeous office furniture? Do they have Persian rugs and custom mahogany wood floors and cabinets?

Does another law firm have hundreds of thousands of dollars invested in artwork around their office?

Does yet another law firm have a massive musty old library that looks and smells like it's from the 17th century?

Importantly, when you hire a law firm, I'd suggest looking past most of those things.

Why?

Because you're looking to hire the attorney who will be **YOUR** lawyer. Then look at the support staff and the resources he has to support that lawyer.

But even before you ever meet the attorneys, let's look at just one way to see how each lawyer or law firm is different.

Take a look at their website.

What FREE information do they provide to you?

I assume they'll give you a bio about each attorney. I guarantee they'll have their great results and verdicts on their site...as they should. They'll probably have a blog up there with some articles

involving cases they handle. They should also have a frequently asked question site with lots and lots of FAQ's and answers.

When you read the content on the lawyer's website, ask yourself if they're teaching you about how cases like yours work, or are they shouting out how great they are? Maybe they do both.

I have found really smart attorneys don't need to shout out how great they are on their website. Instead, they teach and educate their viewers who come searching for useful information.

The more useful information for you, the reader, the better informed you're going to be, **BEFORE** you ever meet the attorney! I don't think enough lawyers do that.

WHAT I DO HERE...

My goal is to give you, the reader, tons of great information so you can learn about how cases like yours work here in NY. The more informed and educated you are about the legal process, the better decisions you can make as you choose to proceed forward.

Take the time to learn more and become educated about the legal process.

That will allow you to make the most informed decisions you can possibly make.

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Pediatrician gives son the vaccine. A short while later dad contracted the disease from the son's vaccine. Dad then sues the pediatrician claiming that the doctor failed to advise dad about the risks and benefits of giving the child the vaccine and the likelihood that dad could get sick because the child had received the vaccine.

THE COURT DECIDES...

In that limited case, the New York courts held that even though there was no direct doctor-patient relationship between dad and the pediatrician, *since the child was the actual patient*, they still held that the pediatrician had an obligation to disclose all the risks and benefits to the parent so that the parent could make an educated decision about whether the child should receive the vaccine. One of those important risks

included the possibility that the dad could suffer the disease for which the vaccine was destined to prevent.

WHAT'S THE BOTTOM LINE?

This is a fascinating decision that could have significant legal implications for the future on all areas of medical malpractice and wrongful death law in New York. At this point, there's only a decision by the trial judge. I look forward to learning whether the defense appeals this as well as reading the decision arising out of the appeal. If that happens, I will report back on this significant finding.

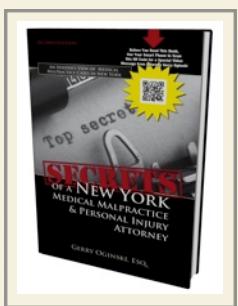


David, reading a good book in the kitchen



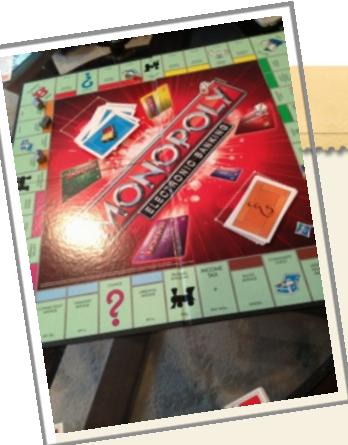
My ride into the office...

My most-popular consumer-oriented book about how lawsuits work here in NY

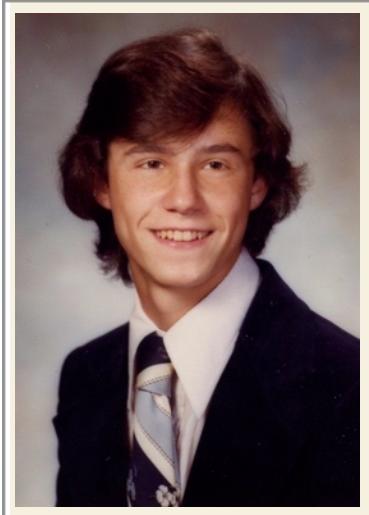


GERRY'S PHOTO GALLERY

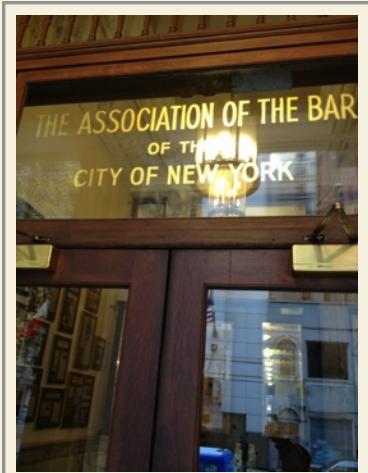
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This is what we played every night during Hurricane Sandy



My high school yearbook photo. My friends on Facebook challenged me to post it online. Oy vey, I can't believe how much hair I had back then! Freckles too. I look like I'm 12 years old here.



Giving a lecture to 60 attorneys at the NYC Bar Association about medical malpractice law in NY



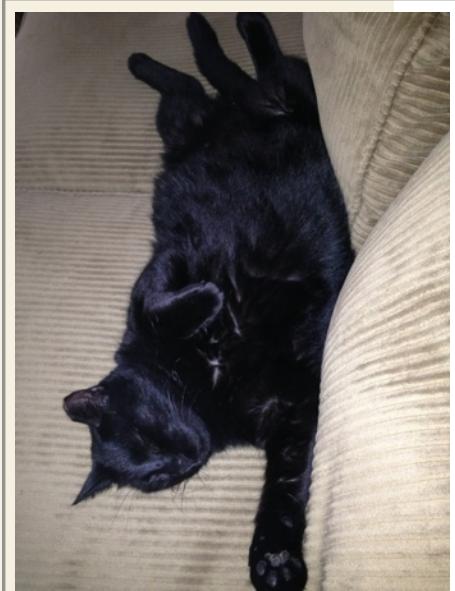
Shooting great educational video for my ideal clients.



David picking a pumpkin at the animal farm on Halloween.



At the animal farm on Halloween.



Billy the cat relaxing on our couch. He thinks it's his couch.

Gerry's Trivia Game

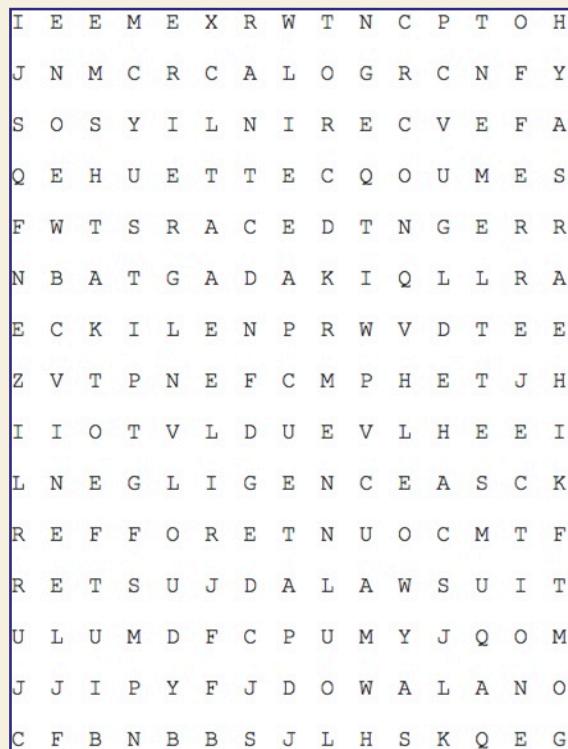
TEST YOUR KNOWLEDGE OF NY LAW

TRUE OR FALSE?

1. The insurance adjuster has final say on how much to offer you in a settlement.
2. An attorney can settle your case without your consent.
3. A lawyer is obligated to tell a client about the ability to use structured settlements at the time a settlement is agreed to.
4. An attorney can loan money to his client with the expectation that the client will win and repay the attorney.
5. If the defense attorney says "Do not talk to my claims adjuster, only talk to me," the attorney can ignore the defense lawyer's wishes.
6. The defense attorney is obligated to take our settlement demand to his insurance adjuster to discuss it.
7. If the insurance company or defense lawyer makes a settlement offer, I am ethically obligated to talk to you about it.
8. In a wrongful death case, if a settlement offer is agreed among the parties to the lawsuit, I must get court approval first.
9. If a case is settled during trial, the settlement should be made in open court and on the record.
10. A settlement means you can never re-open your case again.

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PRECEDENT
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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!

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25 Great Neck Rd., Suite 4
Great Neck, NY 11021



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

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.

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