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Stakes  
Edition

New York Medical Malpractice Attorney Gerry Oginski presents

# NY INJURY TIMES

JUNE 2012

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- ✓ **MED MAL-WHAT'S IN THE NEWS?**
- ✓ **BIZARRE LEGAL DECISION**
- ✓ **100 LAWYERS, ONLY 2 REPLIED**
- ✓ **PHOTO GALLERY**
- ✓ **NEW! WORD SEARCH GAME**

## More Care For Privately-Insured Kids in EDs; Study Says-Journal of Pediatrics

A recent study shows the effects different insurance has on treatment disparities among children in emergency departments (ED).

Children with private insurance are 22% more likely to receive testing and procedures than are children with public (Medicaid or CHIP) or no insurance, despite the fact that everyone has equal access to ED treatment. Just over half of children are on private insurance.

Children without insurance are less likely to receive any medication than are other children, regardless of insurance

type. These differences were not seen among children with significant illnesses.

The study, published in the Journal of Pediatrics by researchers from Children's Hospital Boston, combed through data from 1999 to 2008 in the National Hospital Ambulatory Medical Care Survey, which collects data on about 33,000 yearly ED visits.

The study did not explain whether uninsured and publicly-insured children are getting less-than-optimal care or whether privately-insured kids are being overtreated.





**Man Dies While Engaged in Threesome; Family Sues Cardiologist and Wins \$3 Million For Failure to Warn!**

\$3 million was awarded to a Georgia man's family for the negligence of a cardiologist prior to the man's extramarital threesome, which ended in his death.

William Martinez, 31, of Gwinnett County, died on March 12, 2009. Just a week earlier, he visited the CardioVascular Group in Lawrenceville, GA, with chest pains shooting up his arm. He was already suffering from high blood pressure and his heart was at risk of clogged arteries. He met with cardiologist Dr. Sreeni Gangasani, who scheduled an appointment eight days later for testing.

But his fatal threesome took place the day before the test.

Martinez's estate sued the doctor for negligently failing to warn him not to engage in physical activity, including sexual activity, prior to the test.

The trial began last Monday, with the estate seeking \$5 million in damages. The jury sided with

Martinez's family, but found Martinez 40% liable, and awarded the estate \$3 million.

Martinez's threesome was with a friend and a woman other than his wife. It is not clear to what extent his family -- his wife and two sons -- will benefit from the award.

The defense is determined to appeal the verdict.

**COMMENTARY**

Judging by the news reports, this decision would appear to make absolutely no sense. The family claimed that the cardiologist failed to warn the patient that he should not engage in risky strenuous activities. Obviously, we do not have all the details.

However, the next argument to consider is: Even if the patient was warned that he should not engage in strenuous activities, there is no way to know whether he would have abided by the doctor's advice and recommendation.

The fact that he was cheating on his spouse and engaged in an extramarital affair is not fully explained in the news reports. Nor do we know what type of arguments the attorneys made to the jury based upon his cheating.

Let's see if I understand this scenario. 31-year-old male patient with cardiac symptoms goes to his cardiologist. Cardiologist decides to send him for diagnostic tests. Patient schedules those tests for one week later. During that week, patient decides to get it on with another couple. During the course of sex with this other couple patient has a heart attack and dies.

What is not discussed in the news reports is whether there was an autopsy report showing the precise cause of death. In a wrongful death case having an autopsy can be beneficial since it allows us to know precisely why the victim died. We can then work backwards to determine for how long the patient had that condition. Then we can have a medical

*continued on page 3*

## Man Dies While Engaged in Threesome; Family Sues Cardiologist and Wins \$3 Million

*Continued from page 2...*

...expert comment on what would have happened if the condition was diagnosed and treated earlier.

More importantly, and not addressed in any of the news reports, is how the family knew that the doctor failed to warn the patient not to engage in strenuous activity like an extramarital affair.

There are very few ways they would have known. I imagine that after the philanderer returned back from his doctor's visit, he must have had a conversation with family or friends describing the visit. If those people were in court and tried to tell the jury what the dead patient said, in New York, we would not be able to get that testimony into evidence. Why not? Because that's hearsay.

Hearsay is when a witness at trial tries to tell the jury about something that was told to them by someone else. That someone else is usually unavailable and not in the courtroom.

If you think about it, that makes perfect sense. Why? Because the defense attorney is unable to question the person who actually made the statement and is unable to question that person's credibility.

A trial has often been described as a search for the truth. If someone makes a statement or claim, the other side has an opportunity to question the veracity or truth of that matter. That happens during cross-examination. If a witness is unavailable, a jury in New York would not be allowed to consider statements made by people who are not in court. Also if the defense lawyers did not have an opportunity to question that witness prior to trial, a judge in NY would likely not permit the jury to hear those comments.

That's one of the missing ingredients in these news reports that perplexes me. It is totally unclear from the sensationalistic news reports about this case how the family or jury was able to come to the conclusion that the patient was never warned that he should not engage in risky and strenuous behavior since he was at risk for heart injury or death.

What a bizarre case.



Dear Mr. Oginski,

Although a lot of time has passed since you handled my case, I wanted to leave this testimonial, which I hope you will use in your advertising out of my appreciation:

"I am a former client of Mr. Oginski.

I would recommend him and his entire firm to anyone who is in need of a personal injury lawyer. Several years ago, I was facing a situation wherein a certain oral surgeon in Queens had painfully removed most of my teeth and never replacing them with implants and caps as promised. He simply closed shop and went into hiding. Being from Massachusetts, with the damage taking place in New York I was faced with the dilemma of finding a competent lawyer four hundred miles away.

After many calls I came to find literally no lawyers willing to take on a lawsuit against an oral surgeon. At this point, I had lived two years unable to chew the foods I liked. The only time I smiled was when I was alone. Finally out of desperation, **I put my story into an email and sent it to exactly 100 lawyers** whose ads I had read on the internet. Of all of these, only ten contacted me. Two of these took the time to explain to me why no lawyers had contacted me, which basically was because that in cases against oral surgeons and dentists, a jury almost always takes the side of the doctor. To them, I was a "losing-proposition."

With the exception of Mr. Oginski, of the other 98 lawyers I was more a statistic than a suffering human in need of expertise. Of all of the replies I did receive, **only Mr. Oginski seemed to show any compassion** for the pain I had suffered and was at the time suffering.

Upon deciding to choose Mr. Oginski to represent me, throughout the entire process, Mr. Oginski was extremely professional and especially understanding to me and my wife's aggravation and irritation at the slowness of the court system and always spoke in terms of a positive future outcome. Mr. Oginski won a very substantial settlement on my behalf and ultimately my mouth and teeth were repaired, with enough left over to pay-off all of our debts including our mortgage.

## My story continues...

Because of all of the stress our family had suffered, we decided to go on a well-deserved vacation.

Upon getting home, I suffered a stroke which has left me half-paralyzed and am now confined to a wheel chair and collecting disability, but can now always cherish the last vacation together as a family.

I can only imagine how bad-off me and my family would be now, had it not been for Mr. Oginski.

I sincerely recommend to anyone seeking a compassionate and extremely professional and knowledgeable personal injury lawyer to contact Mr. Oginski's firm first and immediately, saving yourself the aggravation of speaking to the other 98%.

Thank you once again Mr. Oginski. **Thanks to your efforts and knowledge of the law our situation turned from a tragedy to a miracle** - wherein now, despite my disability, my wife can afford to take care of me at home rather than my being confined in a nursing home at the age of 53.

For many years I wondered to myself how, if ever possible, could God explain to me why I was being allowed me to suffer as I had under that dentist's care. Now, thanks to the money settlement you negotiated, I now feel I understand why things went the way they did being that now I am comforted knowing that should anything happen to me, my wife could financially manage to maintain her current lifestyle, with no debts or mortgage and in the mean time I am at home versus wasting away in a nursing home.

I am serious and sincere in telling you that you have been part of a "grand miracle" which has not only helped restore my mouth but in some ways restored my faith in the Lord.

I hope you are doing well and would be happy to talk to you anytime, (but have trouble typing) if I could be of any help creating a testimonial for your newsletter."

Sincerely,  
Arthur Lawler from Massachusetts

The Law Office of **Gerald M. Oginski, LLC** “NY Medical Malpractice & Accident Trial Lawyer”

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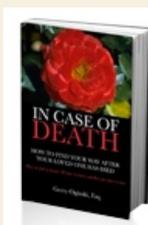
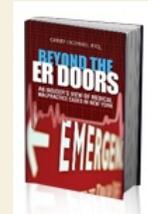
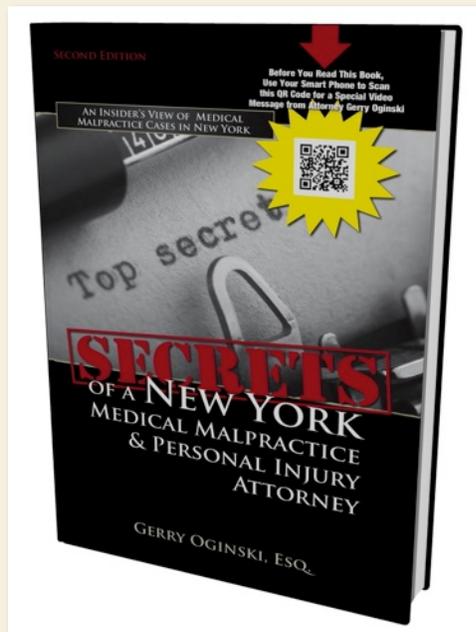
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SEE ALL VIDEOS



This ‘badge’ was issued by an independent company after their own investigation. Unlike some companies who issue ‘badges’ this one does not require an attorney to buy a plaque, participate in an advertising program or in any way make a donation to the group who issues the award.

I was humbled to learn of this really cool distinction.



4 FREE books for you to choose from. Learn how lawsuits work in the State of New York. Immediate download. Did I mention they're free?



Max speed: 31mph while biking in Great Neck



David hanging out on the sailboat



Sailing with friends in Oyster Bay



Shooting video in Sanibel



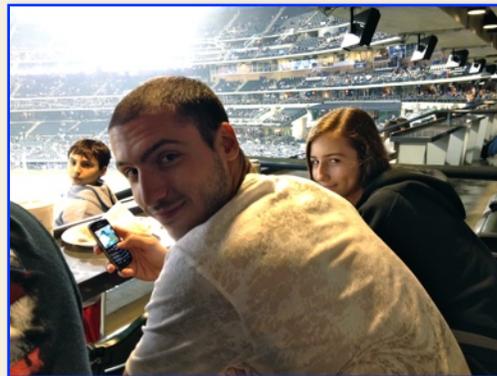
On bike path, waiting for bicyclist to stroll by



Mia playing Lacrosse, waiting for whistle



Brief break during 35 mile bike ride.



At the Mets game v. Braves. Braves won big time.



40.27 mile bike ride in Sanibel, Florida

# Gerry's Trivia Game

## TEST YOUR KNOWLEDGE OF NY LAW

### TRUE OR FALSE?

1. Law school takes 4 years to complete.
2. Law schools guarantee law students can get a job upon graduation.
3. Definition of causation: The wrongdoing was a substantial factor in bringing about your injury.
4. If you are partially at fault in causing your accident, you cannot get compensated for your injuries in NY.
5. A deposition is a Q & A session under oath.
6. An 'authoritative textbook' is one that a medical expert recognizes is 'authoritative' on a particular topic.
7. If your religion prohibits you from swearing or taking an oath at trial, you can affirm to tell the truth.
8. A lawyer who refers your accident case to another lawyer to handle it assumes responsibility for the case even though he may not have any day to day involvement in the your case.
9. A lawyer who co-mingles your settlement check with his personal law firm funds will lose his license to practice.
10. Disbursements are expenses that are paid by the law firm and are repaid to the law firm if you win your case.

### NY Injury Times Word Search

G	N	C	J	F	Z	K	M	D	W	L	L	E	L	L
W	O	A	W	A	R	D	A	E	A	F	C	O	Z	A
X	I	I	U	R	Y	M	F	I	D	I	J	R	Y	W
K	T	M	F	X	A	E	R	S	T	I	K	Y	H	S
N	A	P	P	G	T	T	E	C	Y	B	C	E	R	U
R	S	B	E	Z	X	H	A	C	J	M	Y	A	Z	I
E	N	S	A	G	M	R	F	B	B	U	L	E	L	T
Y	E	O	M	O	P	A	Z	U	F	K	R	B	G	D
W	P	I	E	L	A	T	T	O	R	N	E	Y	M	J
A	M	U	A	C	K	N	X	L	V	D	O	G	H	E
L	O	M	T	C	I	D	R	E	V	H	Q	Q	Y	U
X	C	Y	Z	C	E	T	Y	Y	P	M	M	B	I	H
L	N	G	X	T	H	B	S	O	U	C	B	O	Y	R
O	M	H	L	A	A	Y	A	U	C	U	D	K	H	K
Y	F	I	A	B	E	P	V	X	J	Y	U	C	W	A

COMPENSATION  
JUSTICE  
MALPRACTICE  
VERDICT

AWARD  
JURY  
LAWYER  
TRIAL

ATTORNEY  
DAMAGES  
LAWSUIT  
MEDICAL

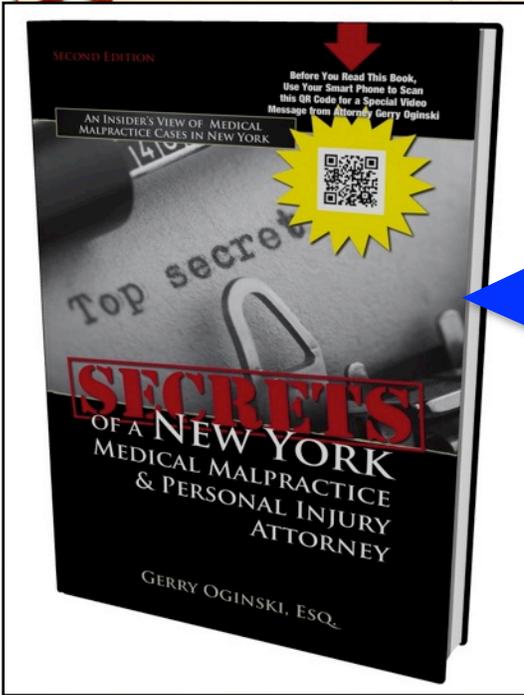
**Word search challenge: Find all 12 words correctly, and fax it in with your name & address filled out for a \$10 gift card to Dunkin Donuts. ONLY 15 GIFT CARDS AVAILABLE...so send it in quickly!**

NAME: \_\_\_\_\_  
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 CITY: \_\_\_\_\_ STATE: \_\_\_\_\_  
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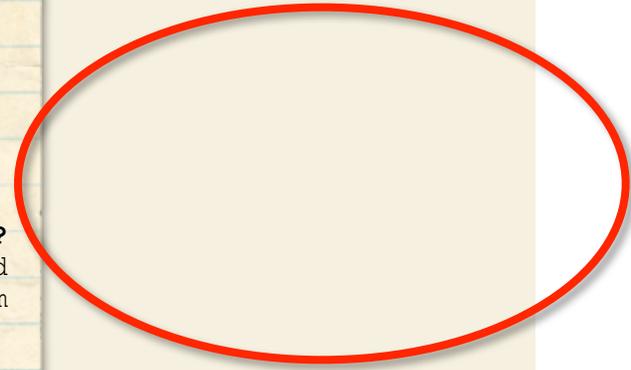
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I welcome your call.

# NEW YORK INJURY TIMES

JUNE 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. True, 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.

**516-487-8207**