

MEDICAL MALPRACTICE – ACCIDENTS  
Let us guide you through the legal minefields...

516-487-8207  
SUMMER 2004

## WELCOME TO OUR 2<sup>nd</sup> ISSUE!

“**D**ID YOU KNOW THAT THE ATTORNEY’S FEE IN A MEDICAL MALPRACTICE CASE IS LESS THAN IN AN ORDINARY NEGLIGENCE CASE?” see the reason why on page 3

“**D**O I NEED AN ATTORNEY?” see the answer on page 2

“**D**O I HAVE A VALID MALPRACTICE CASE?” see page 2

“**C**HAPTER 2 OF MR. OGINSKI’S BOOK” see page 4

### Recent settlements for our clients

\$775,000.00	A man lost eyesight in one eye because an eye doctor failed to recognize that the optic nerve was cut during surgery.
\$750,000.00	A woman died because her doctor failed to recognize massive infection following gynecologic surgery.
\$220,000.00	A woman suffered permanent bone loss because her dentist failed to recognize the extent of her dental decay.
\$300,000.00	A man bled to death from a ruptured gastric ulcer from orthopedic pain medication.

## STAND UP FOR YOUR RIGHTS!

Have you ever had your dry cleaner tell you that you didn’t bring in the shirts you claim to have left with him for cleaning? Have you ever given the pizza guy a \$20 dollar bill for a \$2.50 pizza and drink and have him give you change as if you gave him a \$10 dollar bill; and then he argues with you about what you really gave him? Have you ever gotten a parking ticket only seconds after the meter ran out? Have you ever hired a contractor to do repair work and the result was substandard?

All of these events are everyday occurrences. They happen to all of us. Fortunately, they do not rise to the level of seriousness that requires legal action. Importantly, you must stand up for yourself. That doesn’t mean yelling and screaming, but rather asserting your position and standing firm...if you’ve been wronged. Your rights have been violated. Let that person know exactly what happened and why, and state firmly that this needs to be resolved now. Most people will politely listen. Some won’t care. The important thing is that you will have asserted your rights and not ignored them!

# Congratulations!

*To Anthony Gonzalez and Stewart Ward for referring victims of medical negligence to this office. They have both received certificates recognizing their outstanding civic duty and profound thanks for their referrals.*

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**"IF I BROKE MY LEG WHEN A CAR HIT ME WHILE CROSSING THE STREET, WHY DO I NEED AN ATTORNEY?" "CAN'T I HANDLE MY CLAIM ON MY OWN AND DEAL DIRECTLY WITH THE DRIVER'S INSURANCE COMPANY?"**

Of course you could handle the claim on your own. In fact, the insurance company would absolutely love it if you did! They'd probably tell you that you're saving a fortune by not having to pay an attorney's fee...then they'd tell you the ultimate insult: "This is the best deal we can offer you...your injuries are not worth what you think. Believe me, we handle these cases all the time, and we know the value of injuries." Chances are very good that you're going to be taken advantage of by an insurance adjustor who knows that you have no legal background and are not represented by an attorney. The insurance adjustor is employed to SAVE his company money; NOT GIVE IT AWAY! Sometimes, these adjustors get company bonuses depending upon how much money they saved the company.

So how do you stand up to the insurance company when they offer you their low-ball, final offer? You hire an attorney who handles these cases every day. An experienced attorney will be able to tell you the true value of your injuries and disability after a thorough evaluation of your case, your medical records and consultation with your treating physicians. An attorney can also access specialized journals and publications that report what similar cases have settled for, and use those reports to support your claim for compensation (lost wages and medical bills) and for pain and suffering.

To answer the original question, "Do you need an attorney?" No. But in my opinion, after handling accident and medical malpractice cases for almost 16 years, you'd do a lot better financially with an experienced attorney even after the attorney's fee is paid. Don't let the insurance company fool you. **THEY ARE NOT PROTECTING YOUR INTERESTS, ONLY THEIR OWN.** If you hire an attorney, he or she is obligated to protect and look out for your interests only.

### **"Do I have a valid malpractice case?"**

In order to answer this question, I need many answers. First, I need to know what happened to you. Second, I need to review the medical records and then have a medical expert review those records. Only after a medical expert confirms evidence of malpractice and injuries resulting from the malpractice, can I confirm that you have a valid case.

In order to show you have a valid case, I must be able to prove the following three points:

1. A doctor, hospital or health care worker failed to treat you in accordance with good medical practice.
2. That failure to properly treat you had to have caused injury, and
3. The injury must be significant and permanent.

An expert who has reviewed all of your records MUST confirm all of these three points in order to confirm you have a valid case.

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## “What is a contingency fee?”

It means that the attorney only receives a fee if he obtains money for you. If he is not successful in obtaining compensation for you, then he receives no fee. The more money that the attorney can recover for you, the more he ultimately receives as a fee.

In New York, the attorney's fee in a “Negligence” lawsuit is typically 1/3 after the litigation expenses are repaid to the law firm. “Negligence” cases involve car accidents, injuries caused by defective products, slip and falls and similar types of cases.

## “How is the attorney's fee in a medical malpractice case different from a regular negligence case?”

In 1985, the New York State Legislature determined after much debate that there was a ‘medical malpractice’ crisis. As a result of this ‘crisis’ (aimed primarily at trial attorneys), it was felt that lawyers were obtaining a significant amount of the victims’ recovery. Accordingly, the law was changed from a 1/3 fee (after litigation expenses) to a sliding scale. This meant that the attorney's fee only started at 30% if he was able to obtain anywhere from 1\$ up to \$250,000. If more money were recovered, then the attorney fee would drop 5% for the next \$250,000 up to \$500,000. As the amount recovered increases, the attorney's fee DECREASES by 5% for each increment of \$250,000. Any money recovered above \$1,250,000, the attorney's fee is only 10%. The bottom line is that the more money we recover for you, the more you get to keep.

Incidentally, this ‘crisis’ that convinced the legislature to change this law turned out to be nothing more than medical malpractice insurance companies crying ‘wolf’. Historically, the insurance companies have invested their premiums into the stock market. When the economy is doing poorly, their investments do poorly, and it is during these ‘downturns’ in the economy when we hear most about how the trial lawyers are the root of all evil. At the same time, they encourage the physicians to get on the band-wagon and proclaim that the lawyers and their clients’ frivolous lawsuits are to blame for the ‘malpractice crisis’. It is important to know that the majority of credible studies and statistics have shown that there is *no* ‘malpractice crisis’. The insurance companies keep raising their rates despite the fact that the overall number of lawsuits have dropped. You never hear an insurance company lauding how much they paid to the family of a tragically injured victim from medical malpractice to compensate them for their valid claim. Even more interesting is why the physicians don't go to another insurance company (what ever happened to competition?) or form another malpractice insurance company to achieve better rates for their malpractice insurance premiums? Nobody ever reports on that overlooked fact.

In any event, despite all the debate about medical malpractice, it is the only current way that injured victims can obtain compensation. I should point out that statistically, about 95% of lawsuits are settled prior to trial. Many critics of our judicial system forget, or are unaware that of the remaining 5% of malpractice cases that go to verdict, the *majority* of those cases (approximately 67-70%) are won by the physicians and hospitals.

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Now, for something totally unrelated to law...here's our second installment of Mr. Oginski's new hilarious thriller that he's in the process of finishing...

## CHAPTER 2

Back in physics class, Jacob was distracted by the vision in front of him. He couldn't get this vision out of his head. It had bothered him since the first day of physics class. She sat in front of him each day. Her hair was fiery gold, and shoulder length. Her skin had a warm glow, and her smile was contagious. Her laugh was so sweet it made him think of honey, each time he heard it. Her name was Julie Schwartz. She was 5'2", thin, and well toned. Her breasts were bouncy and perky. Her butt was beautifully sculpted, and looked as if they would fit his hands perfectly. There was only one problem. He had never said more than 'hello' to her, and smiled at her when she smiled. He didn't know where she lived, and didn't know any of her friends. What bothered him most was not that he couldn't concentrate on his physics class, or that he hadn't yet gotten to know her, but that he knew when she was going to die.

After class that day, Jacob walked up behind her.

"Excuse me Julie..."

"Yes?" she replied.

"I don't know if you know who I am, but I sit right behind you in class, and I was wondering..."

"Oh, don't flatter yourself Jacob. I know who you are. You've been eyeing me all semester. My friends in the back of the room told me about your ogling."

"Well, I didn't mean to... that's not true. I did mean to... I mean..."

"What I mean is that I think you're gorgeous, and I couldn't help staring at you," he said.

"Why, thank you, Jacob. That's very kind of you to say that. Look, I have to run to my next class. I'll see you around."

"But wait," Jacob yelled. "I'd like to talk to you."

"Not now. Next week," she added, and walked away.

"Bye." He said.

Jacob walked back to his dorm room deep in thought. What should he do? Should he tell her? What would that accomplish? She'd think he was a freak. He knew he was confused, and didn't know where to turn. He thought of calling Dean Green, but decided against that. Dean Green would merely want more information on the stock market, so he could get richer than Jacob had already made him.

He was still unsure of what to do about Julie, when his mom called him later that night.

“Jacob, are you eating well?” his mother Anna asked him.

“Mommm. Would you leave me alone? I’m not eating well. I’m starving. This is a third world school, in a third world country, and we barely have running water here. How do you expect me to eat well, when I have you looking over my shoulder asking me every other day whether I’m eating well. Of course I’m eating well. I’m a growing boy.” “With raging hormones...” he almost blurted out.

“I’m so glad to hear that, Jacob. You know how your father and I worry that you don’t eat.” His mother said.

“Yes, ma. I’m eating. I’m going to the bathroom too. Do you want the details?” he asked sarcastically.

“Don’t be silly, Jacob. Of course you go to the bathroom. If you didn’t, I’d tell you to see Dr. Schmendrick, what’s his name? Hey Herb, what’s that doctor’s name, the schmendrick you saw last month?” she yelled to her husband.”

“Dr. Goldstein,” her husband yelled.

“That’s the one. The one who charged me \$200 for saying hello, how are you. Nice to see you. He’s the one who...”

“Mom, are you trying to make a point, or just rambling?” Jacob asked.

“Now don’t you take that tone of voice with me young man. I gave birth to you, I raised you, and I sent you to college.”

“Mom, you didn’t send me to college. I have a full scholarship. Remember?”

“Yes, my big boy. I remember.” She added.

“Listen mom, I need some advice.” “What is it?” she asked. “Money problems, school, friends, girls, sex, what, what, what is it Tattella?”

(Tattella was a common Jewish expression used by a parent to remind a child they are still the child, and the parent is still the parent.)

“Do you remember many years ago when Aunt Sadie was sick, and I was pretty young?”

“Yes,” she answered.

“Do you remember how I told you that I knew she was going to die on a certain date? And she did die on that date. Do you remember?” he asked.

“Yes, Jacob. I remember. It was one of the stranger events in our lives. I never told your father about it, because I didn’t want him to think you were weird.”

“That was kind of you ma, but the reason I need advice is since that time, I’ve gotten those feelings about when people are going to die, all the time. I never told anyone about them, and now here’s my problem.”

“You see, there’s this girl...”

“Stop right there,” she said. “I want you to go down to the school office and make an appointment with the school psychologist, or psychiatrist immediately. This is not normal. I have a normal son. I want my son back. Jacob, tell me you’ll go to the office first thing in the morning.”

“Mom, you’re not listening to me. Stop thinking about your own psychoses, and pay attention to what I’m about to tell you...”

Anna was hysterical inside. She wanted to yell, and scream. O.K., she thought. I’ll listen to him, then I’m packing a suitcase, and my Herb and I are coming down to that fancy college and taking him right home. It must be those drugs they have in those schools. That’s it! He must be on drugs.

“Well mom, there’s this girl in my physics class, named Julie. She’s the most gorgeous girl I’ve ever seen, besides you of course. Today, while sitting in class, I got one of those strange feelings again, and all of a sudden, in the middle of class, I knew when she was going to die.”

“She has only two months to live, and I want to tell her, and I want to get to know her, but I don’t know what to do.”

Now was the right moment for Anna to interrupt, and make her proclamation.

“Jacob, your father and I are coming down to visit you this weekend. We feel that this school is not for you. We feel that you’re on drugs, and we want you to come home. We...”

“Oh mom. Stop being hysterical. Get a grip. I’m twenty years old. I’m not on any drugs, and I’m no freak. The only reason I told you about this is because I don’t know what to do, and I need some help.” Jacob told her.

Anna couldn’t believe that her son had just told her to shut-up and listen, in a sarcastic way, of course. But what he said made sense. He didn’t sound drunk, or on drugs. He was just telling her something, which had already happened years ago, with Aunt Sadie’s proclamation of when she would die. At that time, he was too young to know what it meant. Now, it could only mean danger. She decided at that moment what he should do.

“You should do nothing,” she said. “If she really will die in two months, what good will it do you to get to know her, knowing that nothing could ever come of it?” She thought this made good common sense. But Jacob knew better. He knew his mother was never one to take risks. She was always cautious, always worried that her possessions would be taken from her, worried that the government

would one day forcibly remove her and her family from their small home and property. That's what they did in Poland in the 30's and 40's. Why wouldn't they do it here too, she always said. She always squirreled away money in some savings account, or some super safe mutual fund, because she never could force herself to take a risk with her only worldly possessions. "Who knew when we would need the money," she would say. "How can I trust a bank with my money. Once I give it to them, they have ways of making it disappear." Her ways sounded irrational to an outsider, but if you got to know of his parents' background and where they came from, their fears were totally justified- as long as you were still living in Poland in the 1930's.

"Thanks for your help, ma," Jacob answered wryly. "But I still don't know what the hell to do."

"Listen Bubelleh (another Yiddish expression, also used as a term of endearment)," she said, "Do you remember what your Uncle Schmeckle used to tell you? He'd say, do what your heart tells you. That's what you should do."

"OK Ma. But it's not my heart that's telling me what to do, its..."

"Shush, quiet! I don't want to hear about sex talk. Ptooeey. Pue! Oy, Herb, how did we ever teach this boy any manners?" She asked her husband with her hand held over the telephone mouthpiece.

"Mom, I've got to go and do some work. I'll call you in a few days."

"A few days! What are you talking about? You'll call me tomorrow, Bubelleh. Goodbye!"

"Bye, ma," and hung up.

Jacob didn't sleep well that night. It was a cool, spring night, the birds were quiet, and the moon was peeking out from some clouds. The window was open, and from his second floor room, he was able to see the lake, which adjoined the main highway leading to the college. He got up in the middle of the night, and again began to think about what he and Julie could do to pleasure each other. A cool breeze brushed through his room, shaking him out of his sex-filled, pleasurable thoughts. He had to speak to her. Now. Not waste another minute.

He called campus information and was told that Julie did not live on campus. Jacob promptly hung up, and redialed information for outside the campus. He was given her number, and for an extra 35 cents, had the phone company dial the number for her. It was now 2:30 a.m.

"Hello?" she answered groggily.

"Hi Julie, this is Jacob, from physics class, remember me?"

"What time is it? It's 2:30 a.m! What are you doing calling me at this hour?" she asked, still in a stupor.

"I need to talk to you. It's very important, and couldn't wait another minute!"

“Couldn’t you have called earlier? If it’s so important now, it must have been just as important earlier.”

“Well, yes, that’s true,” he said. “But what I have to say is a matter of life and death.”

Julie was now wide awake, and getting angrier by the second. “Listen buster, I don’t like being woken up in the middle of the night, to be asked out by anyone for a date...”

“Hold on. That’s not why I’m calling,” he said.

“It’s not? Then what do you want? My body?”

“Well, yes, but not yet,” he answered as honestly as he could.

“Could I come over and talk to you?”

“What? I don’t even know you. You’re not coming over here, and if you do, I’ll call the police. Now let me get back to sleep. I have classes tomorrow.”

“Julie... I know when you’re going to die...”

Silence.

“Hello? Julie? Are you still there? Hello?” he asked.

“What kind of freakin’ joke are you pulling on me?” she yelled.

“It’s no joke. I don’t know how it’ll happen, but I know when.”

More silence. Deadly silence.

Julie didn’t know what to make of this guy. Who was he to be telling her something so horrible? What did he know, that she didn’t? She felt fine. She saw her gynecologist last month and had a clean bill of health. What the hell was he talking about?

Finally, she broke the silence.

“I don’t know who you are, or why you called me...”

Jacob interrupted. “Julie, you have only two months to live...”

Julie started screaming. Screaming so loud that her roommates all woke up to run into her room. They heard her yelling at the phone saying, “Get lost, you son of a bitch, you asshole. Go to hell, and die!” and quickly hung up. Her roommates watched as she trembled, then began to shake, then cried hysterically for the next two hours.

Jacob was astonished. He couldn’t believe that she reacted that way. She basically told him to drop dead. But, hey, that’s exactly what’s going to happen to her in two months. His warning two months from now would be useless. He was unable to sleep, and stayed up till the sun rose the next morning.

He walked into physics class later that day, and took one step into the room. She immediately found her prey, and fixed her stare at him like he was a target in a hunter's scope. He felt sweat build up on his forehead and shoulders, and he began to perspire heavily. Two more steps forward. His breathing sped up, and his heart began to beat heavily. Three steps to the left now. His legs felt like rocks. He began to feel himself getting excited, and thinking, oh God! Not now! Not like this! Five steps more to the back. But first I have to pass her directly. Her death beam felt like a hot laser piercing into his skull. His breath was being swept away by her intensity. He started to daydream. Her breasts felt wonderfully full with her nipples straining at her shirt. Her moans cried out for his manhood. He took one step past her desk, she stood up, and threw the fastest right hook he had ever seen. The sound it made with his jaw was similar to the sound of a baseball bat connecting with a solid pitch. Right out of the ballpark! Holy shit!

He was thrown halfway across the room. His hand touched his jaw, and he could almost feel her fist still sitting in his jaw. Damn! This was one tough woman! But he was determined not to let her take advantage. He picked himself up off the floor, and calmly walked over to his desk and sat down. Class started 5 minutes later, and lasted for two hours. He didn't hear a single thing his professor said that day.

At the end of class, he casually dropped a note on her desk, which had taken two hours to write. Julie opened the note. It said: "I'm sorry. But it's also true." She looked up, and watched Jacob walk out the door.

We hope you've enjoyed our Second Issue, and would greatly appreciate any comments or feedback about our newsletter. Just as important, we'd love to hear what you think about Mr. Oginski's book that he's currently finishing.

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We'd really like to hear what you have to say. Thanks again!

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