

# NEW YORK INJURY TIMES

## 4 FREQUENTLY ASKED QUESTIONS

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## A BOLD NEW LOOK!

Our newsletter has transformed from it's bare-boned beginnings only two years ago, to a more vivid one.



## 4 FAQ'S (Also known as frequently asked questions)

### WHAT IS THE VALUE OF YOUR CASE?

**Q: Does a judge decide how much my case is worth?**

A: No. If your case goes to a jury verdict, a jury (made up of six men and women) will determine how much to award you as compensation for pain and suffering in the past and future. You will also be able to claim lost earnings and lost future earning potential if your injuries have affected your ability to work. If your case is being settled prior to trial, your attorney, together with you will determine the value of your case, and make every effort to obtain that amount for you.

**Q: I've heard the phrase 'loss of enjoyment of life'  
- what does it mean?**



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A: That is a concept that lawyers use to explain that your injuries caused you pain, suffering, and literally the loss of enjoyment of your daily life. This allegation of loss of enjoyment of life is included within any claim for pain and suffering you may have.

We would point out to a jury how your injuries have affected your daily lifestyle, how you are physically disabled from doing those daily tasks that were once simple and easy, and how you no longer enjoy your life- as you once did, because of your debilitating injuries.

### **Q: Medical error or malpractice?**

A: Some people think they're the same thing. They're not. "Some people make mistakes, as all of us do," is a common theme argued by defense lawyers in malpractice cases in New York. Defense attorneys like to say that their client, Dr. Jones was using his best medical judgment at the time he treated the patient.

This is a nice argument to make, if true. But where the doctor's judgment fell below the standard of care and such sub-standard care caused the patient harm, then he will be held responsible for his actions.

Malpractice is a departure from good and accepted medical care in the community in which the doctor practices. That community has been held to be a national community, especially when there are so many board certified physicians.

Jurors often times think that it's ok if a doctor makes a mistake- because "We're all human." Again, this argument has a nice

feel to it, but just doesn't sit well, because we don't say the doctor made a mistake. We say that on a particular day, at a particular time, the doctor failed to treat/recognize/take action, which caused injury, and that those failures were not mistakes, but either omissions (something that should



have been done but was not), or commissions (something that was done, but improperly).

### **Q: Five Reasons Why Your Malpractice Case Won't Be Accepted By A New York Malpractice Lawyer**

A: 1. We can't prove the doctor did something wrong.

What do I mean? In order to prove a malpractice case in New York, your lawyer must prove that your doctor or hospital departed from good medical care. Well, how do you prove that? By having a medical expert review your records and determine that there were departures from good care.

2. We can't prove that the wrongdoing caused injury.

In New York, we must show not only that there was wrongdoing (departures from good care) but also that the wrongdoing caused injury. Again, this must be

proven by a medical expert who has reviewed all of your medical records. If this element is missing, we cannot successfully prove your case.

3. We can't prove that you suffered significant and permanent injury as a result of wrongdoing by a doctor or hospital.

What constitutes significant and permanent injury? An injury that disables you from doing your daily activities. Something that is permanent and is expected to last for a long time, like a scar. A fracture is considered significant. There are many other significant injuries and obviously injuries affect different people different ways. Your lawyer needs to see how your injuries have affected you and what the future holds for you.

4. You have lied about important facts in your case or your past.

If you lie to your attorney, and he finds out about it, in all likelihood, he will not accept your case. Honesty is the utmost of importance. If you feel you have certain information you don't want to disclose to him that's one thing. But to actively lie about past lawsuits or events that happened is a big no-no. Your attorney is obligated to keep your information confidential. Hold him to that obligation.

5. You insist on running the show and tying the attorneys hands by insisting what he can and cannot do.

This is the 'kiss of death' for a case. Where the client believes they know more than the attorney and knows best how to

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### GERRY'S FICTIONAL STORY

Continued...

"What do you mean their cancer's cured? Didn't you tell me that most of those patients have incurable cancer?" asked Jimmy.

"I did. I also found out that the day after you came with me, every one of those patients no longer had any evidence of cancer, anywhere in their entire living body!" Jimmy still didn't get it. "How is that possible?" asked Jimmy.

"You, my friend. Because of you," said Vinny. "What are you talking about?" asked Jimmy naively.

"When you held their hands, something about the physical act of holding their hand caused their cancer to disappear."

"That's ridiculous," said Jimmy. "Cancer can't be cured by someone holding another's hand. Show me some literature to support this theory of yours," prompted Jimmy.

"I can't. I've never heard of it. Never seen it before, and didn't believe it until the day after our experiment," said Dr. Basta.

By now, both men were pedaling hard on a stretch of open road with a steep incline. Their breathing was fast, and their efforts were determined to get them both to the top of the hill without slowing down.

"I...want...to run...a...few more...experiments...scientific ones...that will confirm...once and for...all...that you...are...a miracle...man," said Vinny.

He finally got it. "Holy shoot! Are you saying I can cure cancer?" asked Jimmy. "Yes." With that comment, the two were silent for the next 15 miles as they rode back to their starting point.

As they were putting their bikes into Jimmy's car, Jimmy turned to Vinny and asked, "How is this possible? How can

anyone have the power to reverse a deadly disease simply by holding hands? Am I the only one?"

"I don't know the answer to any of your questions Jimmy, but I do know that we have work to do. Do you have any idea what this could mean for you? For cancer patients? For the world?" asked Vinny. He patted Jimmy on the shoulder to shake him out of his stupor. His head was in another place. "Huh? OK let's get going," responded Jimmy Changa, soon to be miracle worker of the world.

One month later, Dr. Basta had developed a scientific plan to test his theory that Jimmy Changa was *the man*. He identified 20 cancer patients throughout Gold Coast Hospital. Ten of those would be control patients- patients who had no contact with Jimmy. The other ten would meet with Jimmy. All of these patients had consented to be part of this ground-breaking experiment. When Vinny wrote up the proposal to submit to the President of the Hospital it was a one-sentence document.

"I give permission for Jimmy Changa to hold my hand."

"What is this ca-ca?" asked Dr. Alex Alexander, also known in Gold Coast Hospital as "El Presidente." He was the Chief Executive Officer of Gold Coast Hospital. If something important was going on, 'El Presidente' wanted to know about it. In ten minutes, Vinny had explained what had happened with Jimmy as part of their initial experiment. No sooner had Vinny finished explaining what had happened, did Dr. Alexander sign the necessary paperwork to immediately implement this scientific experiment. "May God help our patients," said Dr. Alexander. "May Jimmy's talents turn out to be true," remarked Vinny Basta as he walked out the door.

Dr. Basta had two of his resident doctors take the permission slip to each of the ten patients on his list. In 30 minutes, each patient had signed the permission form. Vinny picked up the phone and called Jimmy. "O.K. Jimmy, we're ready. Can you be here in 10 minutes?" asked Dr. Basta.

"No problem. I'm on my way." Jimmy ran out the door, forgetting his keys and jacket. Two seconds later he turned around, got his keys and jacket and ran to his car to begin something that would soon change his life.

For each of the ten cancer patients, Jimmy spent two to three minutes talking with them about how they felt, their families, their wishes and what they would do if they had more time on this Earth. Jimmy wished each one well, and walked back with Vinny to his office. "What now?" asked Jimmy.

"Now we run batteries of tests, CAT scans, MRI scans, X-rays, blood work to see what's going on. You know, it might not be a bad idea to put you through a couple of scans to see what's going on with you... you know? Maybe some alien deposited a uranium shell into your brain while you were sleeping, or maybe you're radioactive and you're giving these patients massive doses of radiation, or maybe..."

"Would you stop it," joked Jimmy. You're spooking me out. I'm not a freak. At least not that I know of.

"OK Jimmy. Go enjoy your day. I'll let you know what happens," said Dr. Basta.

As Dr. Basta expected, each of the ten cancer patients were cured. Imagine the looks on their faces when Dr. Basta told them that they no longer had cancer, and there was a good chance the cancer would never come back. "But are we going to die?" they each asked. "Not from cancer," Dr. Basta replied. "But how is this possible?" "I don't know," he answered honestly. "Don't look a gift-horse in the mouth," he added. "Go, goodbye, get out of this awful place...and don't come back, unless you need to," he urged them.

Dr. Basta made sure to document every single patient's prior history and the 'cure'. The remaining ten patients who never saw Jimmy Changa, still had their advanced cancer. Dr. Basta's theory was taking hold. There was no need to prevent these good people from being cured, so he called Jimmy in again, and made the rounds with each patient. Needless to say, the remaining ten patients were 'cured' and were sent home with good wishes from Dr. Basta.

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Dr. Alexander, the president of Gold Coast Hospital called Dr. Basta in to discuss the results. "John, this is the most incredible thing I've ever seen in my medical career! Cancer patients being totally cured. We still need to monitor them every few months to see if there's a recurrence. So far, none," stated Dr. Basta with absolute authority.

"Vinny, if this lawyer (said with total disdain for such a professional) can cure cancer, it means we lose tons of money and revenue for this hospital. No more cancer research, no more money to pay your salary, or for chemotherapy or radiation therapy, or for cancer surgery. Insurance companies will get huge monetary windfalls by not having to pay for medical treatments relating to hospitalization, medications, cancer treatments, scanning and imaging equipment and films. Do you realize what this could mean?" asked Dr. Alexander.

"Alex, you're forgetting the most important part of the equation...THE PATIENT!" screamed Dr. Basta. "We're supposed to be looking out for the best interests of our patients, NOT the bottom line for the hospital. So what if cancer treatments are out, simply raise your rates for

something else like dietary foods, or bedpans, or medications. Whatever. But you cannot look at the bottom line here, especially when many people's lives are at risk. Secondly, I strongly suggest we continue to keep a lid on our research and findings until we have verified that there is no recurrence of cancer in these 'cured' patients. At that time, we can let the medical community know what's going on," commented Dr. Basta. "In the meantime, I'm going to clue in Jack Daniels at New York Cancer Center, and David Dunlop at 2<sup>nd</sup> Opinion Hospital," said Dr. Basta.

"O.K., fine. Just keep me advised," sighed 'El Presidente'.

Over the next two years, Jimmy had eagerly gone to the hospital twice a week to continue participating in Dr. Basta's ongoing cancer experiments. He never took Dr. Basta's advice to get tested himself. He didn't want to jinx anything he had going for him. He was pleased that he could provide a cure to the incurable. At least this way he was actually helping people with their lives. As a medical malpractice lawyer, the only thing he could do for an injured victim was to get them money. He could never make them feel better, or make them whole again. He still couldn't

fathom how he could do this, or even when this ability would disappear. How long did he have this power? How long would he continue to have this ability? Does anybody else have this power? His kids? His family? Nobody knew.

One day in late May, when Jimmy was at the hospital holding hands with cancer patients, Dr. Basta introduced him to Jack Daniels, and David Dunlop. They had both come over to Gold Coast Hospital that day to meet Jimmy for themselves. The moment Jimmy saw David Dunlop, he froze for a 1/2 second. His right hand was in mid-air to shake Dunlop's hand, but stopped short of making contact. Dunlop initially didn't register the face, but seconds later it hit him. They looked at each other, and Jimmy put his hand down, quickly realizing what a mistake he had made to offer his hand to this man. Dr. Basta didn't know what just happened, but could tell it wasn't good.

*Find out what happens to Jimmy next month! Stay tuned.*



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