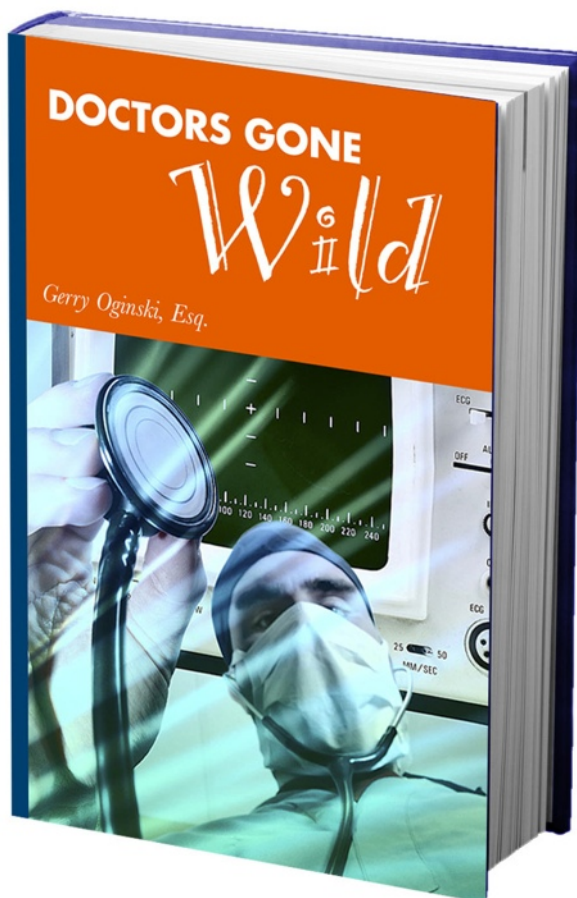


NEW YORK INJURY TIMES



Gerry Oginski
NY Medical Malpractice & Accident

Gerry's
new book
available
now on his
website
Oginski-
law.com



DOCTORS GONE WILD

is a new book I just wrote about medical malpractice here in the State of New York. It gives an 'insiders view' of how medical malpractice cases work, what an attorney looks for when evaluating a medical negligence case, and gives specific examples of botched surgery, medical nightmares and improper treatment that will have you wanting more.

This book is designed to educate and inform injured victims and their families who have suffered injury as a result of medical wrongdoing.

Some highlights in the book include:

- 10 Reasons You Shouldn't Sue Your Doctor
- A Urology Disaster
- Breast Implants Gone Bad
- He Perforated My Colon, Do I Have a Case?
- A Dental Implant Nightmare
- Failure to diagnose Ectopic Pregnancy
- Emergency Room Mistakes, and much, much more.

For New York residents, you'll be able to get the book **FREE!** You'll be able to immediately download it from my website. New clients get the actual hard-copy book mailed to them. For anyone out-of-state who wants the book, they'll be able to buy it online at Amazon.com.

In my next newsletter I'm going to tell you about another book I just finished called "In Case of Death..."

This new book is important for families whose loved one died because of wrongdoing from an accident or improper medical care.



A Lawsuit For Every Calamity



You can't avoid reading about different lawsuits every day. Open Newsday, The New York Times, The Post, the Daily News and you'll see many stories about people suing Cities, hospitals, negligent drivers, incompetent police, employers for sexual harassment and the list goes on and on.

Break a finger opening a jelly jar; sue the manufacturer for a defective product.

A lawn mower blade slips and slices off your leg. Sue the manufacturer.

A doctor perforates your colon and you need emergency surgery; sue the doctor and hospital.

A radiologist misreads your chest x-ray and fails to diagnose your lung cancer for two years; start the lawsuit.

You have a fender bender in a parking lot and bring a lawsuit for soft tissue injuries; start a case and watch it get thrown out of court.

Is every injury worthy of money compensation?

The answer is no.

Our system of justice requires that a wrongdoer who causes injury pay money compensation to the injured victim. The wrongdoer is supposed to make their victim "whole" again. This is impossible when the injured victim suffered significant physical injury.

When a wrongdoer causes physical harm, he incurs a debt that must be repaid. The only way our justice system in New York allows that debt to be repaid is with money. Money to pay the victims' medical bills in the past; the future, money to pay for lost earnings and for future lost earnings, and money to pay for the victims' pain and the suffering he caused.



Medicare Can Ruin Your Accident Lawsuit- Find Out How



Did you know that if Medicare pays for medical care that you received because of someone else's wrongdoing, and you then bring a lawsuit seeking compensation for your injuries, Medicare has a legal obligation to make you repay them?

Let me repeat that and explain. Let's say you're in an accident caused when a driver crossed over the double yellow line and hit you. You're in the hospital for weeks and Medicare pays your bills. If you now sue the driver of the car that caused your accident, Medicare will come to you and your lawyer and say "Pay Up."

The government wants their money back if you get money from the person who caused your injuries. Depending on how much money you get and how much money Medicare paid, we can, in some cases negotiate with Medicare to reduce the amount that they must be repaid. ☆

Emergency Room Doctor in California Compliments Gerry



Emergency room physician Chuck Pilcher offers this nice comment about my videos and an article I wrote about questioning doctors at their deposition:

"Questions to ask. Questions you might be asked. Depends on which side you're on.

Most plaintiff attorneys know how to ask questions. Most defense attorneys know how to prepare their clients to answer them. New York plaintiff attorney Gerry Oginski's refreshingly rational blog posts include one with several examples here. I also recommend his surprisingly objective video tutorials directed at patients who feel they may have been the victim of malpractice. They strike this viewer as doing more to discourage frivolous lawsuits than the AMA."

-A thank you to Dr. Pilcher for his kind comments.



Twitter, Facebook & Internet Lead to Mistrials

twitter

facebook

Well it finally happened. A lengthy federal criminal trial in Florida resulted in a mistrial after a juror admitted to doing Internet research, despite the judge's instructions not to.

Eight weeks worth of trial were wasted because of one juror's failure to follow the court's instructions. There's a shocker.

John Schwartz, a writer for the New York Times, also noted that an Arkansas court is being asked to overturn a \$12.6 million judgment claiming that a juror used twitter to send updates during the civil trial.

Also, in Pennsylvania, defense lawyers in a federal corruption trial requested a mistrial because a juror

posted updates in the case both on Twitter and Facebook.

In today's day and age of social networking sites and the ability of people to communicate via iPhone, Blackberry, and text messages, it has never been easier for jurors to do their own independent research about the issues involved in a trial. Not only that, but today's communication devices allow anyone to immediately do a Google search on anyone involved in the trial including the lawyers and the judge.

Pretrial instructions by the trial judge in New York routinely advise potential jurors that they are not to do any independent research outside of the court. The reason is simple: we don't want jurors basing their decisions on any outside influences that have not been subject to the scrutiny of the court and the attorneys.

When jurors obtain information outside of the courtroom, the attorneys and the judge no longer have an ability to know what information the juror has obtained and how it could possibly influence them when reaching a decision.

In civil cases in New York, where jurors are never sequestered, no one really ever knows whether jurors talk to friends or family members or do their own research. It's only when someone has observed them investigating on their own can this breach of a juror's duty come to light.

Just last week I posted an informative and educational video about this exact topic. The title? "[Twitter and Facebook jury instructions in New York](#)." in the video I posed the question: "Should judges be required to give jurors warnings that they are not to use twitter, Facebook, my space and other social networking sites to blog about the case?" Watch the video to find out the answer.

Interestingly, in the cases discussed in the New York Times article, jurors were warned not to do online research. Despite these explicit warnings jurors disregarded them to investigate on their own.

Ah, what's a Twitterer supposed to do while serving jury duty?



ATTENTION ALL TRIAL LAWYERS

For medical malpractice trial attorneys like myself who wonder what jurors are thinking and what they're doing before entering the jury room, here are exact twitter messages from one twitterer waiting to be picked as a juror in New York:

"Heading to jury duty - limited blogging."

8:00 AM Apr 23rd from web

"Can you be exempt from jury duty by twittering court proceedings? Stark editor Matt, explores this option today."

11:21 AM Apr 23rd from web

"In the midst of a grueling selection process for jury duty. Live twittering capabilities limited. Medical malpractice case. Juicy. Hopin ..."

12:12 PM Apr 23rd from web

"One lawyer put me directly asleep. The other lawyer - seasoned, charismatic - I'm voting for his client. Thanks for the support folks."

12:15 PM Apr 23rd from web

"Here come the big boys with the judge. Signing off."

12:20 PM Apr 23rd from web

"Back from lunch, escaped being picked for the medical malpractice. Feeling I won't be so lucky again. Hearing rumors of Lykke Li on idol? wtf"

3:34 PM Apr 23rd from web

"@nisianista yeah so illegal. Now I have medical malpractice lawyers following my twitter. Not kidding."

5:33 PM Apr 23rd from web in reply to nisianista

"Still jurying... nothing funny happening today."

about 10 hours ago from web

These tweets come from @StarkNY.

These tweets are both eye-opening and somewhat disturbing. Why? It's eye-opening because after 20 years of practicing law, I finally get to look into the thought process of someone waiting to be picked as a juror in a medical malpractice case.

Typically, lawyers have no way to look into the minds of jurors, other than to ask them specific questions about their feelings, biases, and prejudices.

These tweets are somewhat disturbing though because in the last few months there have been a

number of jury trials, both criminal and civil whose verdicts may be in jeopardy because of jurors who were twittering about the trial or doing their own research online. Those jurors totally disregarded the court's instructions not to do their own research and not to discuss the case with anyone outside of court.

When someone is chosen as a juror, they are admonished by the court not to discuss the case with their friends or family. They are repeatedly told not to do their own independent research. Despite these warnings, there are still some renegade jurors who disregard the instructions of the court and put the civil justice system and the case they are deciding, at risk.

Jurors who choose to do their own online research, or twitter their thoughts during a trial risk exposing biases, prejudices, and leanings before hearing all the evidence and importantly, before hearing the judge's legal instructions that applies specifically to their case.

This twitter user, @StarkNY clearly has no issue or problem with publicizing his thoughts during the jury selection process. While

admirable in the sense that he wants to convey information to his twitter followers, if I were the plaintiffs attorney on the case, and learned he were twittering, I could theoretically follow him on Twitter solely to learn about his thoughts about the testimony and evidence during the course of the trial.



This would clearly give me an unfair advantage over my adversary as I would have an

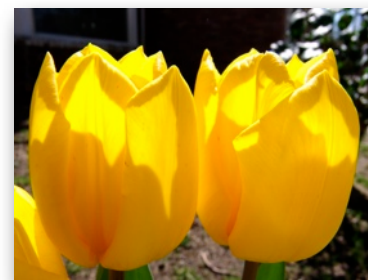
inside view into at least one juror's thinking as the trial progressed. Interestingly, I recently posted two educational videos addressing this exact issue: "[Does an attorney who learns that a juror is twittering during trial have an ethical obligation to inform his adversary and the court of this fact?](#)" Click on the titles to watch the video, [Twitter & Facebook Jury Instructions in NY](#), and [Twitter Communication with jurors in New York](#)."

In my opinion, an attorney has an ethical obligation to disclose this information immediately to both the judge and to the defense attorney.

Who needs a news reporter in the courtroom, when jurors can simply twitter their thoughts as the trial

progresses? Both sides and the judge could see in real time what the jury is thinking as each piece of evidence and witness is presented. This way the playing field is leveled, and all attorneys can tailor their case based upon what the jurors are saying in their twitter messages. If this were to occur, this would be truly revolutionary in the civil justice system here in the state of New York.

The twitterer who wrote these messages replied to my blog post as follows:



Blog Post Reply

"As the said twitter writer, never did I once disclose the actual parties involved in the case, nor the actual details of the case. All twitter comments were made after I had not been selected for the jury. The other observations were made while I was waiting in "the pool." SO, none of my comments had any actual bearing on the outcome of any case, nor did my comments affect the other members of the pool who had

been selected. In reality, none of my said posts had any bearing whatsoever on the opinions of the jurors selected for the trial. Take a deep breath, I'm not out to undermine the judicial system. I'm actually a huge fan. Thanks for the follow."

Gerry Oginski said...

Hi StarkNY-I assume that's who you are, as you identify yourself as the 'said twitter writer' but show up on this comment as "Anonymous."

In any event I appreciate that you did not disclose details/names while twittering, and while you were in the jury pool.

However, in one tweet you said "One lawyer put me directly asleep. The other lawyer - seasoned, charismatic - I'm voting for his client."

That's what we trial attorneys call pre-judging a case based upon an attorney's appearance. Whether or not your ultimate jury vote would be consistent with your original thought about who you believed should win the case, the point is that you are already leaning in favor of one side before the trial even began.

That's what experienced trial

lawyers strive to avoid. Of course it's inevitable that a juror will start to lean one way and then back as the testimony is presented.

By twittering your thoughts, you provided insight into what a juror is thinking during jury selection- in real time. Both a scary and exciting proposition at the same time.

Lawyers never are truly able to know what a juror is thinking. Only after the verdict is rendered can a trial lawyer ask a juror what went into their decision making process.

BTW, I was very careful to point out that you were not doing anything improper as you had not yet been selected as a juror on a case.

Thanks for your reply.



Should Your Lawyer Pay \$500 to Impress You?

Just today I received mail from a company called Elite Lawyers of America asking me to join their organization to promote my success stories. How did they propose to do that? By joining an organization that supposedly

restricts its membership to attorneys who have had awards, settlements or verdicts of at least two million dollars. "Acceptance in this organization represents an incredible accomplishment by the civil trial attorney."

You may ask, "What do I get for joining this Elite group?"

Well my friends, I get a lucite object to put on my desk which is etched with the name of the (previously never heard of) organization and a statement that says "Membership limited to civil trial lawyers who have obtained a verdict or settlement of at least 2 Million dollars." Then there is a place for your name, and the accompanying photo says "Your name here."

How nice. And the cost to have this company pay a few dollars to put my name on a generic lucite obelisk and for a fancy certificate I can impress you with? Only \$500. Payment of this fee guarantees lifetime



membership. Ooh, I feel so lucky.

Guess what? I personally don't need to spend \$500 to show my clients that I have obtained settlements in excess of \$2 million dollars. All they need to do is read my website and realize some of my accomplishments include settling a failure to diagnose heart attack case for \$6 million dollars.

Why do I tell you about this? The next time you walk into an attorney's office and are impressed with their certificates and fancy objects on their desk, look closely at it and ask them how they got it. The answers may surprise you.



\$1 Million Settlement-New York Medical Malpractice-Permanent Nerve Injury



A nerve injury went unrecognized while a young man was in the emergency room in a busy hospital here in New York. The patient complained to nurses and the doctor in training that he had pain in his hand as well as tingling and numbness in his arm. Despite these complaints and observations by the emergency room nurse, the patient's condition was not treated until permanent nerve damage had occurred.

By the time this patient was taken into surgery, the damage to his nerve was permanent. He suffered extensive damage to his arm and hand. To make matters worse, his incisions became infected and he needed to additional surgeries to clean out the wound.

This case settled during the discovery phase of the lawsuit just as we were planning to take depositions of the next six doctors who were involved

in this patient's care and treatment.

Because of the confidential nature of the settlement, I am unfortunately not permitted to identify the parties or the hospital involved.



Uploaded New Educational Video-Optic Nerve Cut During Surgery-NY Medical Malpractice



Just uploaded a new video that explains how a man who went into surgery to correct fractures in his face wound up losing all of his vision in one eye. Watch the video to see what happened.

Listen in as Gerry Oginski, an experienced medical

malpractice trial lawyer practicing law in Manhattan, Brooklyn, Bronx, Queens, Staten Island, Nassau & Suffolk explains how a man lost his vision after undergoing corrective surgery to fix fractures around the socket of his eye.

Find out what the doctor told this patient about the procedure before he agreed to have surgery. Learn what happened

when the doctor took the patch off his eye the day after surgery. Watch the video to find out how I was able to help this injured victim solve his legal problem.



Mia and David in NYC hanging out with a friend. (I think he needs a doctor.)

TRY OUR TRIVIA GAME!

Test your knowledge of New York medical malpractice and personal injury law. Answers appear at the end of this newsletter.

1. If you have recently declared bankruptcy, you cannot start a lawsuit on your own behalf.

TRUE OR FALSE?

2. A motion for judgment non obstante verdicto means that the verdict cannot stand because it is against the weight of the evidence.

TRUE OR FALSE?

3. A motion to dismiss your case can be made at the beginning of the case shortly after a summons and complaint has been served.

TRUE OR FALSE?

4. A 'notice to admit' is used to get the people you have sued to admit they were wrong.

TRUE OR FALSE?

5. If your attorney is not present in Court at the calendar call, there is a chance your lawsuit will be dismissed.

TRUE OR FALSE?

6. A 30 second TV commercial of a lawyer screaming that you should come to him tells you more than a 3 minute educational video clip about how lawsuits work.

TRUE OR FALSE?

7. A person who uses Twitter, tweets.

TRUE OR FALSE?

8. If you suffer an injury or a bad outcome from a surgical procedure, that automatically means something was done wrong.

TRUE OR FALSE?

9. An attorney fee in a medical malpractice case only starts at 30% and continues to drop incrementally by 5% as the lawyer gets you more money.

TRUE OR FALSE?

10. The defense has a right to take surveillance video of you, without your knowledge.

TRUE OR FALSE?

BONUS QUESTIONS:

1. If you are unhappy with your current lawyer, you can always switch to a new lawyer.

TRUE OR FALSE?

2. Lawyers are required to complete a residency training program similar to doctors after completing law school.

TRUE OR FALSE?

Answers appear at the end of this newsletter. ☆

REFERRALS
How to make a referral...

You think you know the answer, don't you?

You've made referrals in the past. You know the drill. Just give your friend my name and phone number and you're done, right?

Almost. Here's the best way to do it.

When you refer someone to a lawyer you trust, here are the best three pieces of information you can ever give them:

1. My contact information; name/ address & phone number,
2. My website address and my video blog,
3. Your name, address and phone number- so they can give it to me when they come to my office. Why? So I can send you a "Thank You" note letting you know that your best friend came to my office and tell you how much I appreciate the referral.

One of the first things I will send a new client is a copy of my book "Doctors Gone Wild" My book educates and informs new clients how lawsuits in New York work. In my book they'll learn what an experienced lawyer looks for when evaluating their case, and much more.

Tell your friends about my free books and online video

tips. They'll truly appreciate the information.

Referrals: It's a win-win situation for both you and I. Remember, if your best friend has a legal problem involving an accident or an injury from a doctor or hospital, I can answer their legal questions. I encourage you to give them my phone number, **516-487-8207**. They will thank you for it, and so will I.



Anyone have the time?



A few shells from St. Maarten.
My wife loves to pick them.

ATTENTION Clients, Friends and Family Members-

In a very short time, you'll be getting a special invitation from me to join my exclusive

"Lost Keys Program."

"What is it?" It's an exclusive and free program that greatly increases the chances of recovering your keys if you ever lose them.

Keep a lookout for the special invitation. All you'll need to do is register on our secure website and place your key-tag on your keychain and you're good to go.

Excellent Blog Review by fellow NY Personal Injury Lawyer John Hochfelder

I am thrilled to post an excellent legal blog review (known as a blawg) by fellow New York personal injury lawyer John Hochfelder. Here is an excerpt of

his review where he graciously included [my blog](#) among three for New York medical malpractice attorneys he would have turned to had he needed our advice.

"It was in the 1970's that Mom got cancer. She was a free spirit, and after traditional medicine failed she sought alternative treatment (including a clinic in Germany with reggae star Bob

Marley) but ultimately the scourge that is cancer took her life in 1982. Was she treated properly by all of her physicians? Did they delay the diagnosis of cancer when they could have saved her? I don't think so and I hope not. Had I thought otherwise, I could have turned for advice either to the aforementioned [Eric Turkewitz](#) or other bloggers and top medical malpractice lawyers such as Andrew Barovick at [New York Medical Malpractice Law Blog](#) or Gerry Oginski at [NY Medical Malpractice Blog](#)."



In this month's Medical Economics, Dr. Segal, a neurosurgeon, offers refreshing advice for doctors. He gives important practice advice that all physicians should pay attention to. If only more New York doctors followed this advice, there would be many less disgruntled patients calling me asking if they have a valid medical malpractice case.

"Think twice before you send a patient's account to collections for a \$22 balance."

"Use your cell phone to return pages from your answering service."



"Now that you've called the patient back, document what was said."

TIME TO CHANGE ATTORNEYS? NOT SO FAST...

Not a day goes by without getting a call from a disgruntled client asking if I would be willing to take over their case from another attorney.

One of the first questions I ask this person is "Why do you want to switch attorneys?"

The response is usually one of two possible reasons:

1. The original lawyer has withdrawn from their case or
2. The client is unhappy with what the lawyer is doing, or in some cases, not doing.

When a lawyer withdraws from a case in New York, he must get permission from the Court to withdraw as the attorney. The Court will then give the client ample time in which to try and find another attorney to continue the case. Clients may not realize it, but when an attorney withdraws from a medical malpractice or a negligence case, the defense knows that there must be some problem either with the merits of the case, or a conflict between the attorney and client that cannot be resolved.

In either situation, it sheds a cloud over the case. A new attorney



Look carefully at the top of the St. Maarten Courthouse. It's a pineapple. How's that for sweet justice!

taking over the case has many intangible obstacles to overcome.

Just this week a potential client asked me to take over her case telling me that she had an "excellent case." Her attorney had withdrawn and now she had all the records to give to the next attorney.

When I asked why he withdrew, the response was "Well...he and I didn't get along."

"He didn't want to do what I asked him to do..."

"He wasn't really doing anything on my case..."

I informed this woman that it is my policy that I do not take over a case when another attorney has withdrawn. I do not need to inherit a whole host of someone else's problems. Her response was "There are no problems with my case. Only with my attorney."

What type of client do you think this person would be?

When the client is unhappy with what the lawyer is doing, it's usually because there is a lack of communication. I will always suggest that the client sit down with their attorney and have a straight-forward conversation about their concerns.

An open line of communication with the attorney is vital. Stay in the loop, keep informed, and ask your attorney for regular updates.

Are You The Perfect Client?

Every person who calls my office thinks that they are the perfect client.

Every person truly believes they have a valid case.

Every caller believes their injuries are worth more than the national treasury.

From an attorney's perspective, just who is the perfect client?

A perfect client is one **who is willing to listen.**

A perfect client is one **who is willing to learn.**

A perfect client is one **who is willing to go on a stressful journey with someone they trust as their legal guide.**

A perfect client is one **who communicates with me. and phone calls.**

A perfect client is one **who does not demand, yell, scream or give ultimatums.**

A perfect client is one who, **after listening to my lawyerly advice, makes an intelligent decision about how to proceed, regardless of whether they agree with my advice or not.**

A perfect client is one who **responds to my letters, emails and phone calls.**

A perfect client is one **who is helpful and assists me when I prosecute their case.**

A perfect client respects me, my time and my secretary.

Does every client have to be the perfect client? No. But having a perfect client makes the attorney-client relationship that much more enjoyable.



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

Answers to Trivia Game: 1. True, 2. True, 3. True, 4. False, 5. True, 6. False, 7. True, 8. False, 9. True, 10. True, BONUS: 1. True, 2. False.

“A Fun, Informative and Creative Newsletter”

by Gerry Oginski

NEW YORK INJURY TIMES

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Great Neck, N.Y. 11021



Gerry Oginski

SEND TO:

**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.**

Call me today with your questions at 516-487-8207