
AN INTRO TO

Medical Malpractice



An introductory guide to medical malpractice
and understanding your case.

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- Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick &
Winograd, L.L.P.-



A Publication of



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CHAPTER

1

INTRODUCTION

Helping People Achieve Justice

Serving Victims in the New Jersey and New York Metro Area

After suffering an injury in New York or New Jersey, you are likely facing many questions that concern your family's future. How will I pay my medical bills? Why should I suffer financially, because someone else was negligent? How will my family make ends meet, paying for groceries, bills, cellphones, rent, mortgage, etc.?

The personal injury attorneys at Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., understand your concerns, because we help people just like you. We realize the devastating effect an injury has on your life, ailing you physically, psychologically and financially.

With over 150 years of combined experience, our attorneys at Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., represent clients throughout the New York and New Jersey metro area with offices conveniently located in Manhattan, Queens, Newark, Union City, Elizabeth, Clifton and Perth Amboy. Our team of 30 attorneys concentrates on a variety of legal matters, including personal injury, construction accidents, workers' compensation, car accidents, truck accidents, premises cases, medical malpractice and Social Security Disability. With this wide skill-set, and years of experience backing us, we are equipped to provide you with the knowledgeable and professional legal advice you need.



Helping People Achieve Justice

In addition to our skilled attorneys, Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., also has a 100-plus person support staff. Our attorneys and staff are available at seven convenient offices, so no matter where you are in the New York or New Jersey metro area, we have a location near you. We offer free consultations at all of our offices, so you can come in, and speak to a legal professional about how we can help you. Unable to come to one of our offices? We will come to you, whether at your home, or in the hospital.

At Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., our New York and New Jersey lawyers have a long history of helping clients navigate the legal system to achieve justice and secure the compensation they deserve. Our cases often result in headlines and seven-figure awards for injured plaintiffs. However, we handle more than just big personal injury cases.

We provide the personalized service you expect and deserve from a premier law firm. We promise to treat you as we would want to be treated—like family. We believe you deserve compensation for your injuries, especially if they were caused by the negligence of another. Our commitment to service, and knowledgeable representation is what has allowed our firm to grow while others downsize, shrink and fade away.



CHAPTER

2

ABOUT JOSEPH A. GINARTE, ESQ.

Joseph A. Ginarte, Esq.

In life, a person's experiences can shape their values, attitude, and often, their profession.

This has been the case for firm founder Joseph A. Ginarte. To Ginarte, the success of his firm is directly attributable to a philosophy of hard work and commitment that was instilled in him by his parents when he was a boy growing up in Newark. Both his mother and father worked in factories, and when Ginarte was a college student at Kean University in Union, he too worked in a factory—as a full-time forklift operator—while completing his studies and earning summa cum laude honors. It was that working-class background that drove him to seek a law degree, which he went on to earn at Rutgers School of Law, so that he could represent workers.

“I grew up seeing workers getting hurt and not getting the benefits they deserved,” he says. “My father was a factory worker and I remember seeing him get injured and how it affected our family, especially since he was unable to return to work due to his injuries. I was drawn to the field.”

Joseph Ginarte launched his legal career in 1982, and in the ensuing years, has seen his practice expand into a full service trial law firm with a steadily growing staff of lawyers and support personnel. While many firms have downsized or laid off employees, Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has continued to grow.



Joseph A. Ginarte, Esq.

Workplace injury cases, especially construction accidents, premises and car accident cases, have always been a big part of Ginarte's—and the firm's—practice.

In 1995, he handled a case that settled for \$9.5 million involving a young worker who fell at a construction site and broke his back, and was rendered quadriplegic. Contending that the defendant owner and general contractor failed to provide proper safety restraints, Ginarte was ready to go to trial when the settlement offer was made.

The firm has also achieved numerous other seven-figure outcomes for injured plaintiffs and in a variety of areas, including defective equipment, trucking accidents and medical malpractice. “I think what makes our firm distinct is the years of experience that we have, and the personal attention we give our clients,” he says. “We're committed to doing this work.”

“While a lot of firms have downsized or laid-off employees, our firm continues to grow and hire people. I think it's because people know we'll fight for them and that we'll spend whatever it takes to take a case to trial.”

Joseph A. Ginarte, Esq.

Ginarte's work record and his commitment to his clients have also gained him recognition from within the legal profession. He has been an appointee to the New Jersey Supreme Court's Civil Practice Committee and is also a former president of the Top 100 National Trial Lawyer by the National Trial Lawyers Association. Ginarte is admitted to practice law in New York, New Jersey and Washington, D.C.

His outside interests involve charitable work and donations to nonprofit organizations, particularly in New York / New Jersey. He also enjoys golfing and rooting for the New York Yankees, New York Rangers and the New York Knicks.



CHAPTER

3

Practice Area – Medical Malpractice

Practice Area

Medical Malpractice

Do you suspect that an error made by a physician, hospital, or other health care provider caused serious medical complications, or resulted in the death of a loved one? If so, you may have been the victim of medical malpractice.

While a lawsuit cannot turn back the clock and undo the error and the damage it caused, a medical malpractice claim can hold the negligent party responsible and provide compensation for the resulting loss or injuries.

Doctors and other medical professionals are not perfect. The legal definition of medical malpractice varies slightly from one jurisdiction to another, but it typically involves a deviation from the normally accepted standard of care for a medical professional that results in injury or harm to the patient. In other words, a doctor who followed all of the proper procedures, yet lost a patient on the operating table may not be found negligent. However, a doctor who did something that another doctor would not have done, or failed to do something that other doctors would have done, could be found negligent.

Conservative estimates are that as many as 100,000 people die each year as a result of medical malpractice, and hundreds of thousands more are injured or fail to heal properly. Some experts believe that there are many more cases of medical errors that go unreported.

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Medical Malpractice

According to a Journal of the American Medical Association study, approximately 34 percent of inpatient errors are surgical in nature, while the most common outpatient claim was “diagnosis error,” representing 46 percent of all outpatient claims.

Common forms of medical malpractice include:

- Anesthesia Errors
- Birth defects and injuries – Errors made by medical professionals during pregnancy and birth can cause injuries that require a lifetime of treatment, and some mistakes result in irreparable damage or even death.
- Defective medications – Medicines can be lifesavers for many people, however, some medications produce dangerous side effects or complications. Even relatively safe drugs can cause problems if improperly prescribed or administered.
- Defective medical devices – Insufficient testing, faulty design, and other defects can cause medical devices to do more harm than good, making patients sick or injuring them. Some examples include defective hip implants, pacemakers, heart monitors, and mesh implants.
- Failure to diagnose injury or illness – Recognizing and correctly diagnosing an illness can make a critical difference in a patient’s chances for recovery. However, some health care providers fail to diagnose patients with conditions such as cancer and heart disease, often with tragic results.

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Medical Malpractice

- Foreign objects – Studies show that surgeons leave objects inside patients thousands of times a year. Tools including sponges, instruments, and gauze can lead to infection and serious injuries.
- Hospital errors – Many different medical professionals and staff members must work together in a hospital to ensure that patients get proper treatment. Communication errors and other mistakes can injure patients, or prevent them from getting the treatment they deserve.
- Improper use of medical equipment or implants – Doctors and other health care providers have a duty to learn how to correctly use tools, equipment, and other medical devices. Inexperience or improper training can lead to patient injuries.
- Nursing home abuse – Nursing homes should be a safe place for the vulnerable adults who live there. Unfortunately, many nursing home residents face physical abuse or neglect at the hands of the people who are supposed to care for them.
- Surgical errors – All surgeries carry a certain degree of risk, but mistakes made by surgeons, nurses and other medical providers can cause injuries to patients beyond the scope of acceptable risk. Sometimes a procedure takes place without the patient's informed consent, and some surgeries are even performed on the wrong patient or the wrong part of the body.

Practice Area

Medical Malpractice

Medical malpractice is a complicated and complex area of the law. Determining whether a medical professional committed malpractice generally takes a lengthy and in-depth investigation of the patient's medical records by a qualified and experienced medical malpractice attorney.

Anesthesia Errors

The purpose of anesthesia is to prevent patients from feeling pain or discomfort during surgery or other invasive medical procedures. The two types of anesthesia are local and general. Local anesthesia is used to numb a particular area of the body, while general anesthesia makes the patient temporarily unconscious and unaware.

General anesthesia poses significant risks to the patient if the wrong dose is administered, if the patient is under the anesthesia for too long or if the patient is not monitored carefully.

Anesthesiologists and nurse anesthetists are trained medical professionals who administer the potentially life-threatening drugs to patients. Like other medical professionals, they sometimes make mistakes.

When anesthesia errors happen, the consequences can be devastating. Those who are affected could suffer permanent brain damage or even death



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Medical Malpractice

Causes of Anesthesia Errors

Anesthesiologists have an enormous responsibility to patients. They must talk to patients and their treating physicians to learn about a patient's medical conditions, allergies and current medications in order to avoid a dangerous drug reaction or a dangerous reaction to the anesthesia.

They must administer the right medication in the right dosage to the right patient. They must carefully monitor the patient while he or she is under the influence of anesthesia and respond promptly to any signs of complications or distress.

Many things can go wrong when a patient is under anesthesia. Some of the common reasons for anesthesia errors include:

- Failure to communicate with patients or attending physicians.
- Overwork and fatigue that cause careless errors.
- Failure to read the patient's medical chart before administering anesthesia.
- Defective or poorly maintained medical equipment.
- Insufficient training of anesthesiologists or anesthesiologists.
- Failure to examine the patient thoroughly before anesthesia is administered.
- Failure to get the patient's informed consent.
- Operating room distractions.

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Distractions are very common in operating rooms, and they have a profound impact on the ability of anesthesiologists to do their jobs correctly. Distractions and other common causes of anesthesia errors are just some of the many things that can go wrong with anesthesia.

Types of Anesthesia Errors

Some of the most common anesthesia errors include:

- Administering too much anesthesia (overdose).
- Administering too little anesthesia, resulting in anesthesia awareness (a patient being awake and alert but unable to move or speak during a surgical procedure).
- Airway obstruction.
- Intubation mistakes.
- Allergic reaction to the anesthesia medications.
- Nerve damage due to improper patient positioning.
- Failure to use an electrocardiogram, blood pressure cuff and other devices to carefully monitor the patient.
- Problems with IV lines.
- Poor post-operative care.
- Failure to resuscitate after the surgical procedure.

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Medical Malpractice

The type of anesthesia error will determine the consequences to the patient. Some of the most common outcomes of anesthesia mistakes include:

- Asphyxia (oxygen deprivation).
- Damage to the trachea from intubation problems.
- Birth injury.
- Stroke.
- Heart attack.
- Other cardiovascular injury.
- Loss of bodily function.
- Brain damage.
- Spinal cord damage.
- Paralysis.
- Coma.
- Death.

Anesthesia errors are sometimes fatal. Even when a patient survives, the resulting injuries may be permanent and can cause a dramatic decline in function and diminished quality of life.

Medical malpractice involving anesthesia negligence is a complicated and complex area of the law.

Practice Area

Medical Malpractice

Determining whether an anesthesiologist or nurse anesthetist committed malpractice usually requires a detailed investigation of the patient's medical records by a qualified and experienced medical malpractice attorney.

If you believe that you have been the victim of an anesthesia error, or if you have lost a family member as a result of an anesthesiologist's mistakes, now is the time to get legal help. Time is of the essence in a medical malpractice claim. Not only is there a statute of limitations that must be considered, but evidence can be lost and witnesses can disappear over time.

Birth Defects and Injuries

Many instances of cerebral palsy, Erb's palsy, or other disabilities in infants and children may be attributed to an act of negligence, or medical malpractice, committed by a delivering doctor or receiving hospital at the time of birth of the child. A child may be injured throughout the course of the mother's pregnancy, at delivery, or in receiving pediatric medical care.

We have extensive experience evaluating and pursuing claims of children who have been injured by acts of medical malpractice and negligence. We work with pediatric and obstetric experts with a vast knowledge of neo-natal and post-natal development in determining the cause of injuries and disabilities in infants and children.



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Defective Medical Devices

As with other products, medical devices sometimes do not work as intended, or cause serious injury to persons using them. Such medical devices include heart monitors, pacemakers, or prosthetic body parts. Our team of attorneys has extensive experience in pursuing claims for persons, and families of persons, who have been seriously injured or even died due to defective medical devices. We work with renowned medical experts, and with engineering and mechanical products experts, to determine the cause of injury or death of a patient.

Defective Medications

Errors in prescribing appropriate medications to a sick or injured patient may occur due to incomplete patient information, error by the prescribing doctor, or untested medications. Claims for complications with medication and defective medication may also be brought for over-the-counter medication in cases where the warnings and side effects were not properly disclosed.

Such situations result in severe negative physical reactions to medication by the patient that may cause permanent disability, higher medical costs, painful corrective procedures, and even death.

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Failure to Diagnose Injury or Illness

Doctors and hospitals are held to a rigid standard of care in accurately and promptly diagnosing the disease or illness of an ailing patient in their care. In the course of seeing hundreds of patients everyday, a doctor may fail to accurately diagnose the injury or illness of a patient, which may result in a worsened physical condition or even death.

We have successfully represented patients who have been improperly diagnosed, resulting in a worsened physical condition and even death. We extensive experience working with renowned medical experts in every field to determine the extent of the liability of treating doctors and hospitals for failing to promptly diagnose the correct medical condition – from obstetrics to cardiology.

Foreign Objects

Surgery is a major medical procedure for which a person should receive the highest degree of care and caution on behalf of the surgeon and the surgical staff. Unfortunately, a surgeon or his surgical team may leave a foreign object inside of the patient receiving the surgery. Such foreign objects include medical tools such as: sponges, gauze, surgical instruments, needles, and bandages inside of the patient.

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Such negligence on behalf of the surgeon, the surgical team, or the hospital may lead to a worsened medical condition in the form of infections, severe damage to organs or physiological systems, pain, and even death.

Hospital Errors

Hospital doctors and staff are held to a very high standard in caring for patients regardless of the length of the patient's stay, injury or disease.

Patients coming in for medical care are shuffled through the hospital and put into the care of many – doctors, nurses, X-ray technicians, anestheticians, and number of other agents of the hospital come into constant and daily contact with a patient. In many instances, hospital errors occur that may trigger major injuries or worsen an already-existing condition. This could lead to extended medical care, costly and painful corrective procedures, temporary or even permanently diminished quality of life, and even death.

Improper use of Medical Equipment or Implants

A doctor or hospital is held to a very high standard of care in protecting the health and welfare of its patients, regardless of the medical issue.

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Unfortunately, under certain circumstances a hospital or doctor may overlook proper procedures in using specialized medical equipment that may cause burns, scars, or further injury. Implants such as prosthetics or cosmetic implants may also cause deformities, severe pain, or loss of function to certain body parts. In the worst case, death may occur as a result of the improper use of medical equipment or implants.

Surgery Errors

Anytime a person goes to a hospital or clinic for surgery, there is a chance that something will go wrong. Every surgical procedure — even a supposedly minor one — comes with a degree of risk.

All too often a patient goes in for an operation and something goes terribly wrong because of a mistake by a doctor, nurse, anesthesiologist or other medical professional.

When that happens, the patient can suffer severe, permanent and disabling injuries — even death. Families are left to cope with grief, loss, and often crushing financial pressure.

Practice Area

Medical Malpractice

What is Medical Surgery Malpractice?

All medical professionals — doctors, surgeons, operating room nurses, hospitals, and pharmacists — are required to use reasonable care when treating patients. Sometimes, though, they fall short of this standard. They do something — or fail to do something — that causes harm to the patient.

In legal terms, this is called “medical negligence” or “medical malpractice.” Nearly half of all malpractice lawsuits are filed against surgeons, according to Bureau of Justice Statistics figures. When a preventable error occurs in surgery, the responsible parties should be held accountable. Damages can include hospital bills, physician bills, corrective surgery expenses, lost income, pain and suffering, and more.

Mistakes can occur before, during or after surgery.

Here’s how:

- A doctor performs surgery on the wrong patient.
- A sponge, scalpel or other surgical instrument is left inside the body.
- Organs, blood vessels or nerves are damaged during surgery.
- A patient gets an infection because surgical tools were not properly sterilized or because proper antiseptic practices were not followed.

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- The surgical or post-operative team fails to promptly detect or treat a patient's internal bleeding.
- An inadequate pre-operative examination was done.
- Important lab tests are not ordered or read properly.
- A patient does not receive adequate post-operative follow-up care.
- A patient is given the wrong anesthesia or an overdose of anesthesia.
- A patient is given a harmful medication before or after surgery.
- The surgical team fails to properly monitor a patient's vital signs or fails to respond properly to signs of distress.
- A doctor operates on the wrong limb or the wrong part of a patient's body.

Lack of Informed Consent for Surgery

Before deciding on surgery, a patient should be given enough information to make an intelligent decision. They should be informed about the nature of the proposed operation and told why the doctor is recommending it. They should be advised about the benefits and risks of surgery. Alternative forms of treatment should be discussed.

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If these things aren't done, the patient may have grounds for a medical malpractice lawsuit based on lack of informed consent.

Sometimes, though, it is difficult to determine whether informed consent was obtained. That's where the Ginarte law firm comes in. We know what medical records to examine. We know what questions to ask. We know when a patient was adequately informed and what to do if they weren't.

Infections at the site of surgery is another common type of post-operative malpractice. A variety of infections — mostly staph and strep infections — are rampant in hospitals. Some infections occur despite reasonable care. But others happen because the surgical team did not closely monitor the patient after surgery or failed to take prompt action at the first sign of infection.

CHAPTER

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Our Offices

Our Offices

Newark

Newark NJ Hospitals and Medical Centers

If you have been hurt in a personal injury situation or a motor vehicle accident, hospitals and medical centers serving Newark, NJ, residents include:

- The University Hospital, 150 Bergen Street, C- 431, Newark, New Jersey 07103. Phone: (973) 972-4300
- Newark Beth Israel Medical Center, 201 Lyons Avenue at Osborne Terrace, Newark, NJ 07112. Phone: 1-800-843-2384
- Saint Michael's Medical Center, 111 Central Avenue, Newark, NJ 07102. Phone: (973) 877-5000

Our Newark, New Jersey, Location

The law firm of Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has an office conveniently located at the Ginarte Professional Building at 400 Market St. in Newark. Call our Newark office at (973) 854-8400 to put our New Jersey personal injury law firm to work for you.



Our Offices

New York

New York City, New York Hospitals and Medical Centers

If you have been hurt in a construction site accident, seek medical care immediately. There are 184 hospitals and medical centers in the New York metropolitan area, which includes Long Island, Westchester County, and northern New Jersey. Area hospitals and medical centers include:

- Lenox Hill Hospital, 100 East 77th Street, New York, NY 10075. Phone: (212) 434-2000
- NYU Langone Medical Center and School of Medicine, 550 First Avenue, New York, NY 10016. Phone: (212) 263-7300
- New York-Presbyterian University Hospital of Columbia, 622 West 168th Street, New York, NY 10032. Phone: (212) 305-2500
- New York-Presbyterian University Hospital at Cornell, 525 East 68th Street, New York, NY 10065-4870. Phone: (212) 746-5454

Our NYC, New York Location

The law firm of Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has an office conveniently located at 225 Broadway in New York City.

Our Offices

Queens

Jackson Heights, NY, Hospitals and Medical Centers

If you are the victim of a personal injury or a serious Jackson Heights vehicle accident, it is vital to seek medical care immediately after the incident. There are many hospitals and emergency medical facilities that serve Jackson Heights accident victims, including:

- Elmhurst Hospital Center, 79-01 Broadway, Elmhurst, NY 11373. Phone: (718) 334-4000
- Jackson Heights Family Health Center, 7315 Northern Blvd., Jackson Heights, NY 11372. Phone: (718) 424-2788
- Queens Medical Office, 9033 Elmhurst Ave., Jackson Heights, NY 11372. Phone: (718) 457-7000
- The New York Hospital Medical Center of Queens, 7315 Northern Blvd., Jackson Heights, NY 11372. Phone: (718) 925-6029

Our Offices

Union City

Union City, NJ, Hospitals and Medical Centers

If you have been hurt in a vehicle accident or received some sort of personal injury in Union City, it is important to seek medical care immediately. Hospitals and medical centers serving Union City, NJ, residents include:

- Palisades Medical Center, 7600 River Road, North Bergen, NJ, 07047. Phone: (201) 854-5000
- Jersey City Medical Center, 355 Grand Street, Jersey City, NJ 07302, Phone: 201-915-2000
- Meadowlands Hospital Medical Center, 55 Meadowlands Parkway, Secaucus, New Jersey 07096, Phone: 201-392-3100
- Christ Hospital, 176 Palisade Avenue, Jersey City, NJ 07306. Phone: (201) 795-8200

Our Union City, New Jersey, Location

The law firm of Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has an office conveniently located at 4430 Bergenline Avenue in Union City. Call our Union City office at (201) 809-1100.



Our Offices

Elizabeth

Elizabeth, NJ, Hospitals and Medical Centers

If you have been hurt in a motor vehicle accident, or any other type of personal injury accident, it is important to seek medical care immediately to assess the damage that has been done. Hospitals and medical centers serving Elizabeth, NJ, residents include:

- Trinitas Regional Medical Center, 225 Williamson St., Elizabeth, NJ 07202. Phone: (908) 994-5000
- The University Hospital, 150 Bergen Street, C- 431, Newark, New Jersey 07103. Phone: (973) 972-4300

If you or a loved one has been harmed in an Elizabeth, NJ, personal injury accident, please call our personal injury lawyers for immediate attention at 1-888-GINARTE.

Our Elizabeth, New Jersey Location

The law firm of Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has an office conveniently located at 948 Elizabeth Avenue in Elizabeth. Call our Elizabeth office at (908) 372-1700 for help with your New Jersey personal injury or accident claim.



Our Offices

Clifton

Clifton, NJ, Hospitals and Medical Centers

If you have become the victim of a serious personal injury or accident in Clifton, it is important to seek medical care immediately. Hospitals and medical centers serving residents of Clifton, NJ, include:

- Advanced Surgery Center, 1200 US Highway 46, Clifton, NJ 07013. Phone: (973) 773-5600
- Bergen Passaic Ambulatory Surgery, 1084 Main Avenue, Clifton, NJ 07011. Phone: (973) 473-4040
- St. Mary's Hospital, 350 Boulevard, Passaic, NJ 07055. Phone: (973) 365-4300

Our Clifton, New Jersey, Location

The law firm of Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has an office conveniently located at 1137 Main Avenue in Clifton. Call our Clifton office at (973) 859-5500 to get us started on your New Jersey personal injury or accident case.

Our Offices

Perth Amboy

Perth Amboy, NJ, Hospitals and Medical Centers

If you have been hurt in a personal injury accident, seek medical care immediately. Hospitals and medical centers serving Perth Amboy, NJ, residents include:

- Raritan Bay Medical Center, 530 New Brunswick Avenue, Perth Amboy, New Jersey 08861. Phone: (732) 442-3700
- St. Peter's University Hospital, 254 Easton Avenue, New Brunswick, NJ 08901. Phone: (732) 745-8600

Our Perth Amboy, New Jersey, Location

The law firm of Ginarte, O'Dwyer, Gonzalez, Gallardo, Verchick & Winograd, L. L. P., has an office conveniently located at 352 New Brunswick Ave, in Perth Amboy. Call our Perth Amboy, New Jersey office at (732) 376-1911 for help with your Garden State personal injury or accident claim.