

==New York State==
ACADEMY
OF TRIAL LAWYERS

**How to Litigate a Medical
Malpractice Case – Part 5:
Pre-Trial Preparation**

**Materials by:
Andrew J. Smiley, Esq.**

NEW YORK'S GRIEVING FAMILIES ACT

HOW YOU CAN HELP

The Academy worked tirelessly with our coalition partners, advocates, and Academy members to achieve passage of the Grieving Families Act by the Senate and Assembly last legislative session. While Gov. Hochul ultimately vetoed the bill, we have never been closer to updating NY's 175 year-old Wrongful Death Law. Act now to help us pass the Grieving Families Act this legislative session!

SPREAD THE WORD

Tell your friends & colleagues to join over 5,000 Academy members in amplifying our message to the Governor to take action to support Grieving Families.



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Visit [HopeForNYFamilies.org](https://www.HopeForNYFamilies.org) to email Gov. Hochul and voice your support for the GFA.



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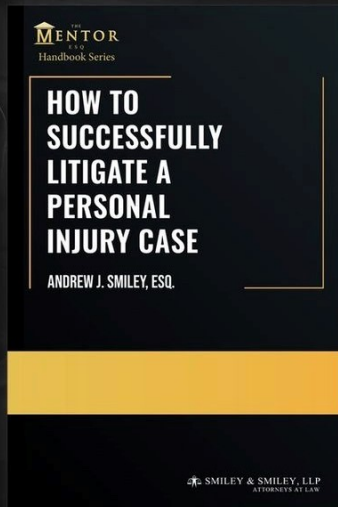


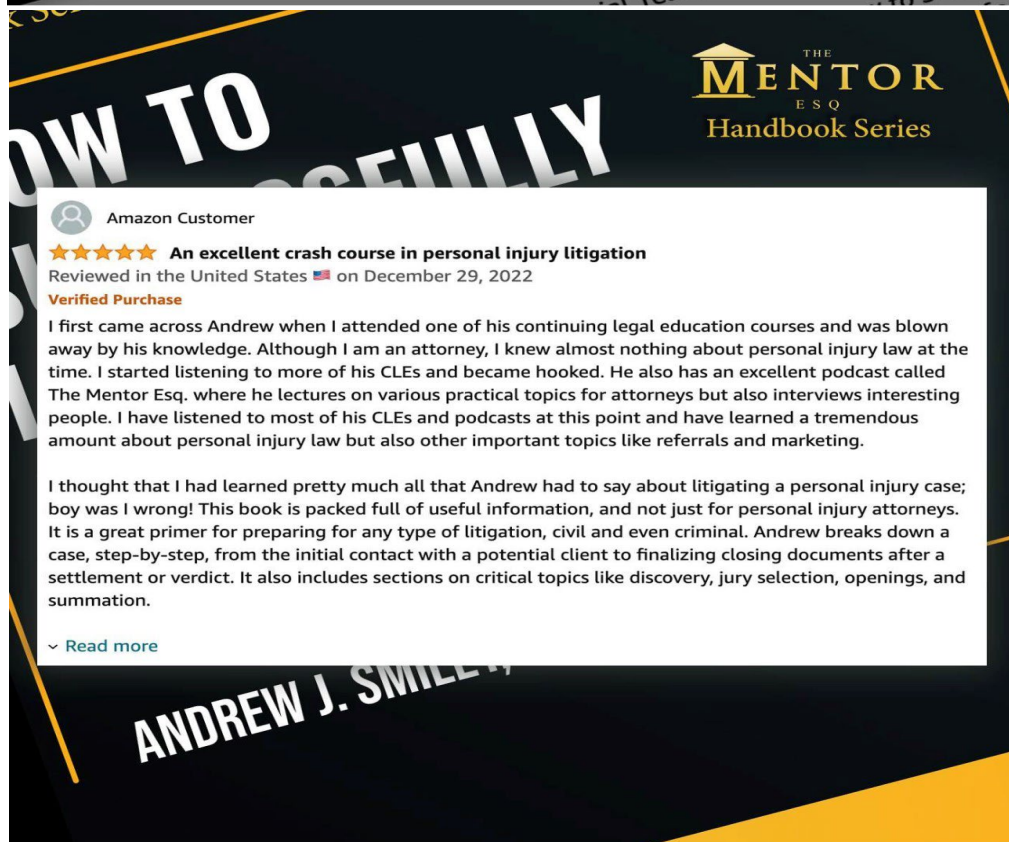


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www.thementoresq.com

CURRICULUM VITAE

Education:

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United State District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

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- Brooklyn Law School Alumni Association
- National Order of Barristers
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors

Publications

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide* (2022, The Mentor Esq. Handbook Series – Available on Amazon)

Continuing Legal Education (CLE) Presentations:

(62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023

(61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023

(60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023

(59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023

(58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022

(57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The NYS Attorney General, 2022 Legislature Program, December 6, 2022

(56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022

(55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022

(54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022

(53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022

(52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

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Continuing Legal Education (CLE) Presentations Continued:

(51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

(50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

(47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022

(46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022

(45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021

(44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021

(43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021

(42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021

(41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021

(40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021

(39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021

(38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021

(37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021

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Continuing Legal Education (CLE) Presentations Continued:

(36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

(35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

(34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

(33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

(32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

(31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

(30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

(29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

(28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

(27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

(26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

(25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

(24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

(23) *Presenter on Evidence, 2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

(22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

(21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

(20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

Andrew J. Smiley, Esq. Curriculum Vitae, Page 6

Continuing Legal Education (CLE) Presentations Continued:

- (19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015
- (18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014
- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014
- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011
- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Andrew J. Smiley, Esq. Curriculum Vitae, Page 7

Television Appearances – Legal Commentary:

Fox News Channel

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
- America's News Room
- Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

Porsche Club, High Performance Driving Events, Sim Racing, Tennis, Lego

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF XXXX

Index No.:

-----X
XXXXXXX, individually and as Executor of the
ESTATE OFXXXXXXXXX, Deceased,

Plaintiff,

-against-

Defendants.
-----X

**PLAINTIFF'S EXPERT
WITNESS EXCHANGE
PURSUANT TO
CPLR 3101(d)(1)**

PLEASE TAKE NOTICE, that the plaintiff, XXXXXXXX, individually and as Executor of the ESTATE OF XXXXXXXX, Deceased, by his attorneys, SMILEY & SMILEY, LLP, hereby submits the following as and for his Expert Witness Exchange pursuant to CPLR 3101(d)(1):

1. The expert witness received a M.D. degree from Cornell University Medical College. The expert completed an internship at Cornell Cooperating Hospitals, North Shore University Hospital, Manhasset, New York and Memorial Hospital in New York, New York. The expert completed a Residency with Cornell Cooperating Hospitals and a Cardiology Fellowship at North Shore University Hospital. The expert is licensed to practice medicine in the State of New York and is Board Certified by the American Board of Internal Medicine. The expert has privileges at a hospital in Westchester County, New York. The expert is a cardiologist, currently in private practice in New York. This expert will testify based upon a review of the decedent's medical records, upon the depositions and pleadings in the case, upon the appropriate medical literature/research and upon this expert's experience in the field of cardiology.

2. This expert will testify, to within a reasonable degree of medical certainty, that the medical care and treatment provided by XXXXXXXX, M.D. was substandard and not in accordance with the standard of care in the field of cardiology. More specifically, the expert will testify that Dr. XXXX

failed to timely diagnose that patient XXXXXXXX was suffering from an intracerebral hemorrhage (“ICH”); failed to timely recognize the signs and symptoms of an ICH; failed to advise XXXX, and/or her family members present at the relevant times herein, that she could be suffering from an ICH; and failed to properly act upon XXXXXX’s physical complaints including her complaint of a severe headache.

3. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXX departed from good and accepted practice in failing to order a diagnostic assessment, including but not limited to an MRI or CT–Scan of the brain to rule out an ICH.

4. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXX departed from good and accepted practice in failing to follow up with, or in any way monitor, XXXXX following his evaluation of her at approximately (1:00 P.M.) in response to complaints of a severe headache.

5. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXXX departed from good and accepted practice in failing to advise any hospital staff members, nurses or physicians at XXXXX Medical Center that XXXXXXXX could be suffering from an ICH and/or to monitor her for additional signs of ICH such as nausea and vomiting.

6. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXXX departed from good and accepted practice in failing to advise Dr. XXXXX, or any other physicians or medical personnel at XXXXX Medical Center that XXXXX could be suffering from an ICH and that she may be in need of immediate evaluation for ICH.

7. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXX departed from good and accepted practice in failing to advise Dr. XXXXX, or any other

physicians or medical personnel at XXXXXMedical Center, that it was his belief that XXXXX could be suffering from an ICH and that she should be assessed for an ICH upon her arrival.

8. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXXX departed from good and accepted practice in failing to order a STAT Ct-Scan or MRI of XXXXXX's brain; in failing to request a neurological/neurosurgical consult; in failing to discontinue the administration of anticoagulants; and in failing to commence appropriate reversal procedures which could have ultimately saved XXXXXXXX from suffering a massive ICH and which could have prevented her death.

9. This expert will testify, to within a reasonable degree of medical certainty, that Dr. XXXXX's departures from the standard of care as set forth herein, directly resulted in her suffering a massive ICH and a loss of chance of her survival. This expert will further testify, to within a reasonable degree of medical certainty, that Dr. XXXXX's departures from the standard of care as set forth herein were the proximate cause of XXXXXXXX suffering from a massive ICH and were the proximate cause of her death.

10. Finally, this expert will testify, to within a reasonable degree of medical certainty, that had the ICH been timely diagnosed, it could have been successfully treated andXXXXXXXXX would not have died as a result of a massive ICH.

PLEASE TAKE FURTHER NOTICE that the plaintiff reserves his right to amend and/or supplement this response up to and including the time of trial.

Dated: New York, New York
May 3, 2023

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: _____

ANDREW J. SMILEY
122 East 42nd Street – Suite 3900
New York, New York 10168
Tel: (212) 986-2022

TO:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [REDACTED]

-----x Index No.: [REDACTED]

[REDACTED] individually and as Executor of the
[REDACTED] Deceased,

Plaintiff,

SUBPOENA
DUCES TECUM

-against-

[REDACTED]
Defendants.
-----x

THE PEOPLE OF THE STATE OF NEW YORK

TO: Westchester Medical Center
100 Woods Road
Valhalla, New York 10595
Attention: Medical Records Dept.

WE COMMAND YOU, That all business and excuses being laid aside, and deliver to the Supreme Court, Westchester County, Subpoenaed Records Room, 9th Floor, 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601 on the 23rd day of November, 2016 CERTIFIED copies of any/all medical records of the following:

Name: [REDACTED]
Date of Birth: [REDACTED]
Soc. Sec. No.: [REDACTED]
Admission: 9/1 [REDACTED]
M.R.#: [REDACTED]

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Joan Lefkowitz, one of the Justices of said Court, at the Supreme Court, Westchester County, 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601 on the 7th day of November, 2016.

Dated: New York, New York
November 7, 2016

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: [Signature]

ANDREW J. SMILEY, ESQ.

122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [REDACTED]

-----X Index No.: [REDACTED]

[REDACTED] individually and as Executor of the
[REDACTED], Deceased,

Plaintiff,

SUBPOENA
DUCES TECUM

-against-

[REDACTED]
Defendants.
-----X

THE PEOPLE OF THE STATE OF NEW YORK

TO: Westchester Medical Center
100 Woods Road
Valhalla, New York 10595
Attention: Patient Billing Dept.

WE COMMAND YOU, That all business and excuses being laid aside, and deliver to the Supreme Court, Westchester County, Subpoenaed Records Room, 9th Floor, 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601 on the 23rd day of November, 2016 CERTIFIED copies of any/all medical records of the following:


Name: [REDACTED]
Date of Birth: [REDACTED]
Soc. Sec. No.: [REDACTED]
Admission: [REDACTED]
Account #: [REDACTED]

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WITNESS, Honorable Joan Lefkowitz, one of the Justices of said Court, at the Supreme Court, Westchester County, 111 Dr. Martin Luther King Jr. Boulevard, White Plains, New York, 10601 on the 7th day of November, 2016.

Dated: New York, New York
November 7, 2016

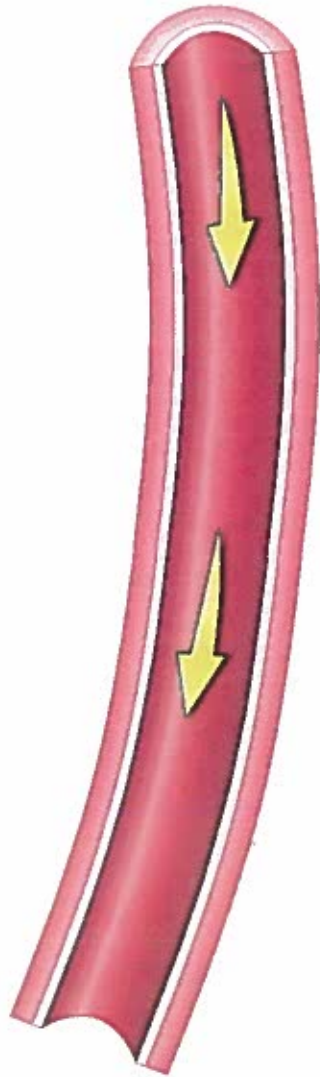
SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: 
ANDREW J. SMILEY, ESQ.
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022



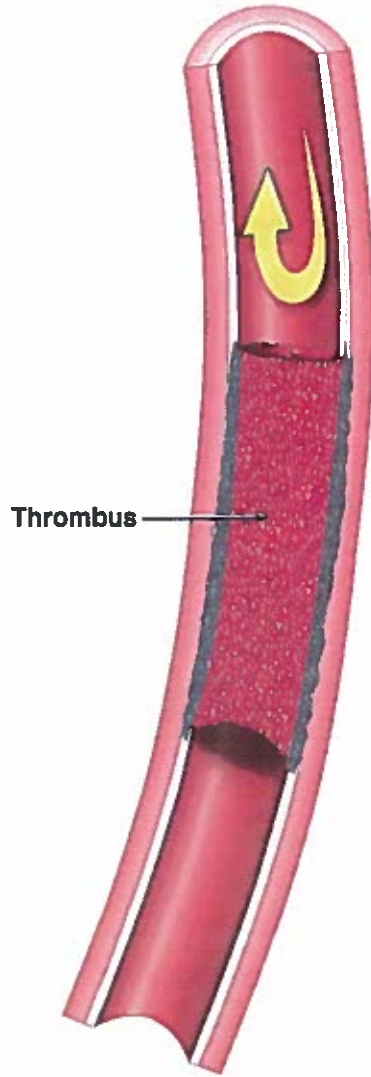
Thrombolytic Therapy

**Normal
Artery**



Blood flows
through the artery

**Blocked
Artery**



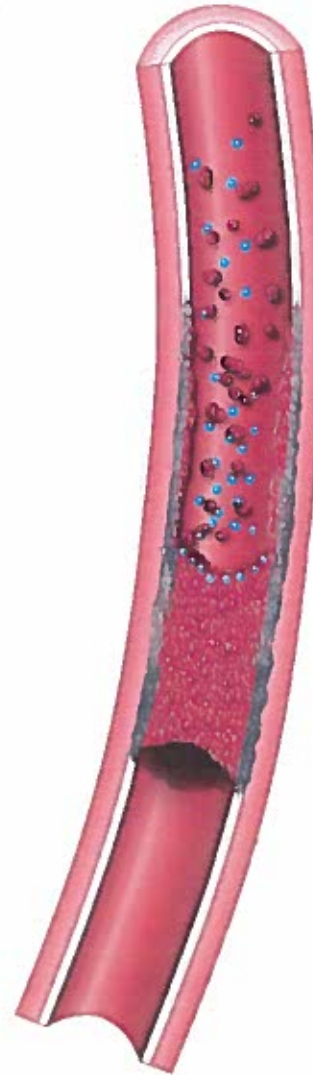
Blood flow blocked
by thrombus

**Thrombolytic
Medication
Introduction**



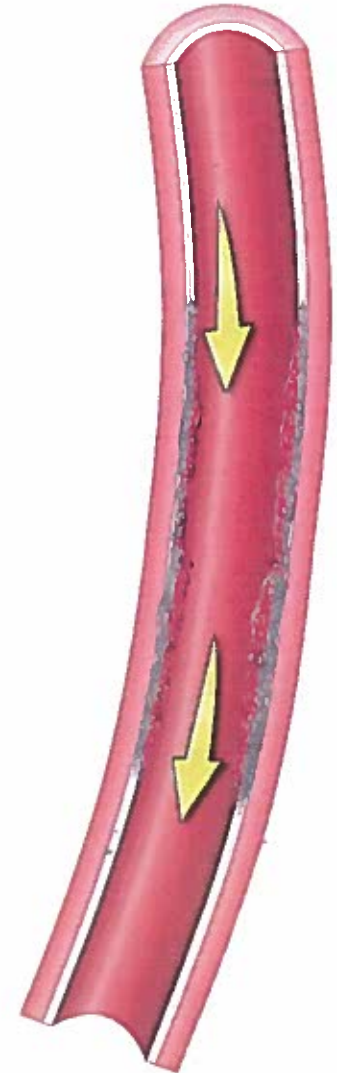
Thrombolytic medication
begins to dissolve thrombus

**Continued
Medication
Therapy**



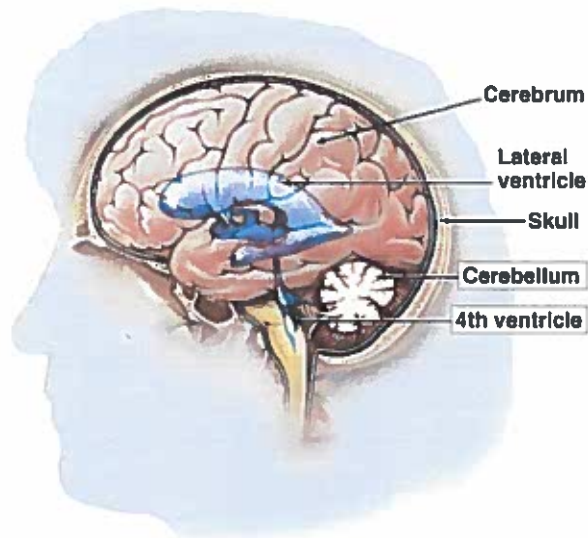
Thrombolytic medication
continues to dissolve thrombus

**Completed
Medication
Therapy**



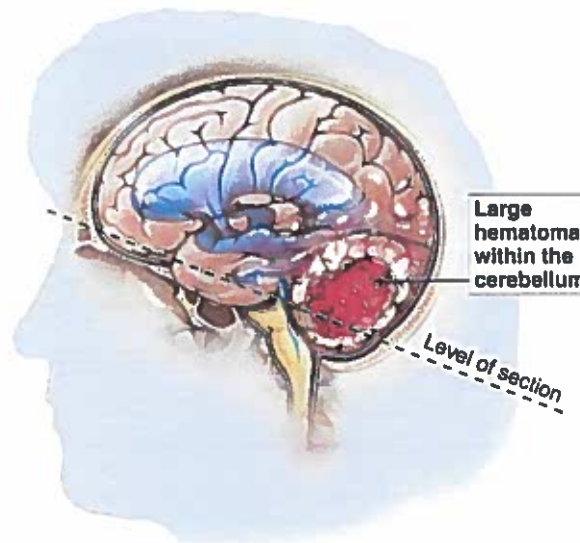
Blood flow
is restored

Normal Anatomy

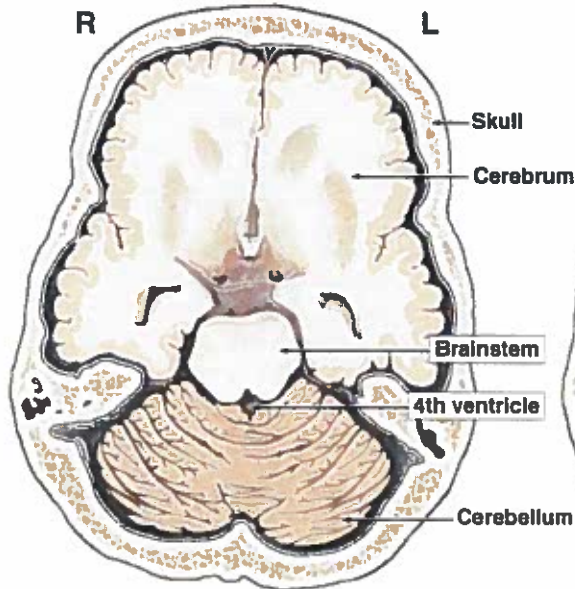


Lateral view

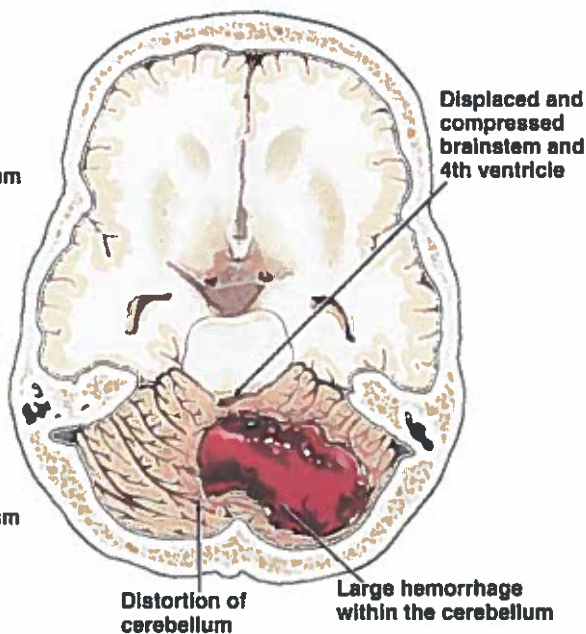
Cerebellar Hemorrhage



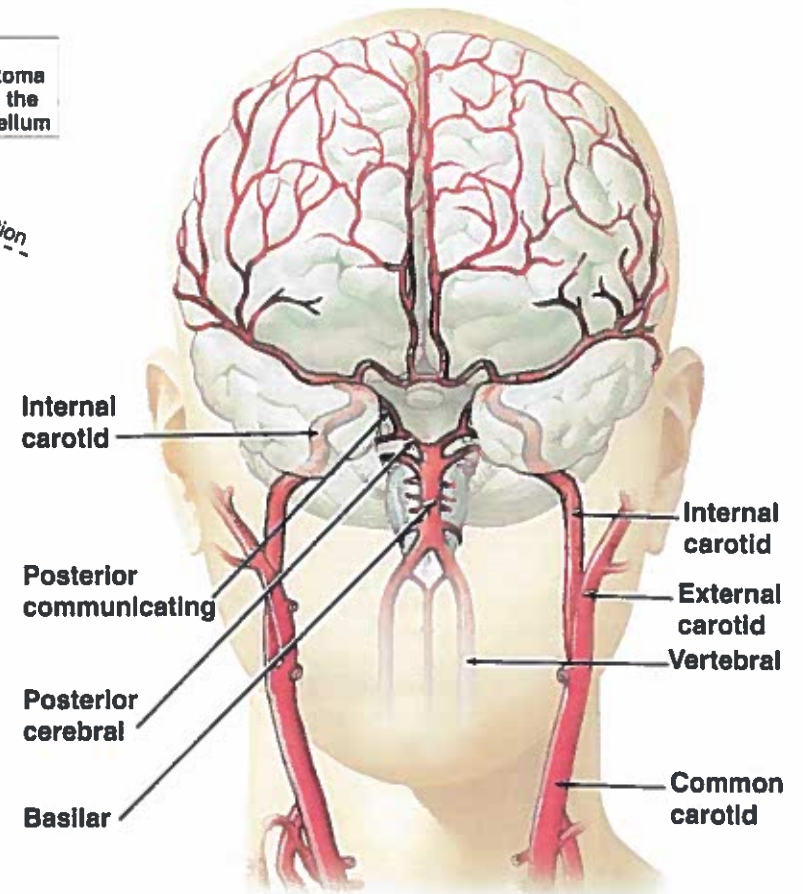
Normal Anatomy



Section through brain



Cerebral Arteries



Anterior view of Head

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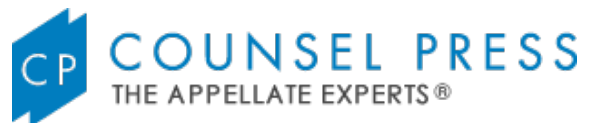
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