

# Best practices for attorneys representing patients

## COMMUNICATION, APOLOGY AND RESOLUTION (CARE)

- 1. Approach resolution as a comprehensive, collaborative process.** An adequate and fair resolution should be the goal in all cases, regardless of whether compensation is involved. The attorney should help the patient and providers obtain an appropriate resolution, which should include an explanation of the causes of the event and any safety improvements that the facility has implemented. It should also include provisions to help meet the medical, psychological, emotional and financial needs of the patient.
- 2. Gain experience representing patients in a resolution of medical injury, as well as knowledge of and practice with the CARE approach.** The attorney must have a clear sense of what the patient's needs are and what the patient should ask for. Knowledge of the true value of the loss is critical to representation. A strong understanding of medical liability law and the CARE approach will help facilitate a collaborative discussion and timely and fair resolution.
- 3. Help the patient access and interpret information from the health care facility.** The attorney should clarify medical and legal information for the patient. They may also assist in communicating with the health care facility or insurer, as the patient may be unable or unprepared to do so. Support by the attorney can help the patient avoid feeling overwhelmed and allow them to ask appropriate questions.
- 4. Facilitate the exchange of relevant medical records in a timely manner,** so that appropriate evaluations can be made to resolve the case as stated in Chapter 224, Section 221(f) of the Massachusetts General Laws.
- 5. Review the terms of any potential resolution and the substantive legal provisions of a resolution.** This review should include an assessment of whether the proposed resolution is adequate to meet the patient's financial and emotional needs. This also involves reviewing and explaining the written settlement agreement (e.g., release) and all appropriate documents, which impose legal obligations on the patient after settlement, and which the patient will be asked to sign upon receiving any compensation.
- 6. Ensure that the patient develops realistic expectations of fair compensation.** In cases where compensation is deemed appropriate, the discussions should include identification of both long-term and short-term financial needs to ensure that compensation is adequate and fair. The attorney should discuss the full implications of medical malpractice litigation with patients in helping them to decide whether to accept or reject pre-suit compensation. The attorney should also assist them in feeling comfortable accepting fair and appropriate compensation if the process achieves that result.
- 7. Help create an environment that is supportive and collaborative.** The CARE process is designed to achieve a resolution for everyone involved through cooperation. An environment that supports that goal is essential to the process functioning as it should. The attorney should support the creation and maintenance of an environment that provides for the patient's (and/or their family's) healing and well-being, as well as positive and productive communications with all parties.
- 8. Embrace a fair model of compensation for representation.** As an alternative to that which is statutorily permitted, the attorney should consider using a flexible and fair billing arrangement with the patient that is commensurate with the efficiency of the resolution and reflects the depth of the attorney's involvement.