



Best Practices for Attorneys Representing Healthcare Providers in a Resolution of Medical Injury using the CARE Process

- 1. Approach resolution as a comprehensive, collaborative process.** Resolution should be the goal in all cases, and all resolutions, regardless of whether compensation is involved, should be adequate and fair. 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 patient safety improvements that the healthcare facility has implemented, as well as other provisions to help meet the medical, psychological, emotional, and financial needs of the patient.
- 2. Have expertise representing healthcare providers in a resolution of medical injury, and knowledge of and experience with the CARE approach.** Experience handling malpractice cases of varied complexity and exposure levels is critical to representation. Competence in this area of law and the CARE approach will help facilitate a collaborative discussion and timely resolution.
- 3. Support the healthcare organization to make a thorough review of the event.** If a review of the event has not yet been done, the healthcare facility should conduct an internal review of the case to determine the cause of the adverse outcome, identify any errors that caused the outcome, and develop solutions to prevent recurrence. If the review finds an error in care causing harm to the patient, then an investigation into adequate compensation for the patient may be indicated.
- 4. Facilitate an appropriate statement of empathy or apology from the provider.** In all cases, a statement of empathy should be made to the patient or his/her representative. If it is determined that the standard of care was not met, and an apology has not yet been made, the attorney should advise and support the healthcare provider in communicating about the adverse event, and offering an apology to the patient. If the standard of care was met, the attorney should counsel the healthcare provider regarding the need for any explanation into the events, including a genuine expression of empathy to the patient.
- 5. Be willing to participate in discussions with the patient and their attorney to reach a mutually agreeable resolution.** The CARE approach requires transparency about the adverse event through communication with the patient, allowing their questions and concerns to be addressed directly. The patient and his/her attorney should be given a thorough explanation and a chance to ask questions to understand what occurred. If the care was determined to be reasonable, it should be explained that the facility will stand behind its providers and defend the care in any further proceedings. In cases where compensation is deemed appropriate, the discussions should include identification of both long-term as well as short-term monetary needs to ensure that compensation is adequate and fair.
- 6. Help create an environment that is supportive and collaborative.** The CARE process is designed to achieve a resolution for everyone involved, through cooperation, and 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 his/her family's) healing and well-being, as well as positive and productive communications with all parties.
- 7. Support the healthcare provider throughout the process.** The healthcare provider often experiences emotional trauma after an adverse event. The attorney should be aware of the potential psychological and emotional needs of the healthcare provider, and provide support and education of the process throughout. The attorney should be aware of the resources available, and help the provider connect to these resources as necessary.
- 8. Utilize mediation to facilitate collaboration and compromise.** In the CARE Process, there should be an active reorientation away from a strictly adversarial approach and recognition that mediation can be a useful vehicle in creating integrative solutions. In circumstances where it is agreed that compensation is warranted, but difficult to agree upon the amount of that compensation, resolution and reconciliation can often be best effectuated by using a principled and cooperative mediation process.