



Best Practices for Attorneys Representing Patients in Resolution of Medical Injury using the CARE Approach

- 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 patients in a resolution of medical injury, and knowledge of and experience with the CARE approach.** The attorney should 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 healthcare facility.** The attorney should clarify medical and legal information for the patient, and assist in communicating with the healthcare facility/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 would 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 as well as 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, 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.
- 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.
- 9. 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/or reflects the depth of the attorney's involvement.