

Briefing Note: Documenting your complaint about medical services

Purpose of this Note: To provide some 'nuts and bolts' basic advice for medical consumers who find they have to complain about medical services.

A) Coming to terms with the work ahead.

If you have been injured (physically and/or psychologically) by abusive and negligent mistreatment at the hands of one or more medical providers then in many ways you may be encountering similar problems to those of a rape victim or a sexually abused child. Attempting to get recognition about what has happened to you, seeking to prevent the same fate befalling others, seeking compensation, and seeking to get your life back on an even keel is going to be a challenge and it will take some considerable time, perhaps years. Try to treat the whole very unpleasant task as a learning process that may even in time have a few positive features in unexpected ways even though you currently may be suffering grave loss.

Somehow you must gather up the strength to be very methodical about how you proceed (perhaps with very limited help indeed from others) and you also need to make good use of your limited time. It is very difficult to be methodical when you are injured and under stress. The best way to tackle the situation is to establish habits. First put aside specific times to pursue the complaint. Allocate at least one evening a week as your review and planning time (or some time at the weekend) and make this a habit. Just a few minutes a week may be all that is needed in some cases. But don't skip this review activity, as the longer you leave matters the harder it will be to remember and address the issues and get the work needed done.

B The paperwork task (The 'bedrock' essential for running your complaint)

- If you face a backlog of work, putting in good order a mass of documents, then you need to allocate an extra specific time each week to catch up. Or even perhaps more time in a block to catch up. But do be careful ! This is difficult work (a lawyer would charge you thousands of dollars to do it !) and trying to do it all in a rush may just leave you despairing and not much further forward. Make catch up work separate from the weekly review work and do a bit of both each week.
- Keep EVERYTHING that is related to the events. (i.e. notes you made, used boxes from medicines, receipts, bus tickets from trips you had to make etc) and all related documents. As letters, bills, and other items come to hand store them temporarily in a cardboard folder. (These cost about 50c at newsagents and supermarkets)
- Keep a day by day diary of all that happens. Actually buy a small cheap pocket diary that you can carry around with you. Make notes on any visits you made, phone calls you get, and any phone calls you make about this matter (Some days nothing will happen and so your diary will have blank pages, other days you may find you need to write a lot, and may need to use and mark clearly on earlier unused pages that your notes overflow back to from a particular busy day. Particularly make sure you record all names , phone numbers and the sort of information that you just will not be able to remember otherwise.)
- At regular intervals (at least once a week) review what has happened and bring up to date your records. To do this you have to file any new documents *, add to an index list **, and add to a narrative chronology *** . If you have a home computer then this will be of massive assistance as you can maintain the index and chronology as computer files. If you don't have a computer then seriously consider getting a friend to type up the chronology from time to time.

* File all new documents and items in date order from the cardboard folder into a large ring arch file binder (cost about \$3.50 at a supermarket) and use plastic pockets to hold all documents (these cost about 80c at a supermarket for packs of 10) . Mark in pencil on the back of each document an index number and also the word ORIGINAL. If the document is multi-page then staple the pages together. When you can get photo copies of the most critical documents and store the copies in the back of the same plastic pocket as the original document.

** Update your master index that lists all items in the ring binder. (each line of this index will have a document index number, the date of the document, who it is from, a few words to describe it, and the number of copies held (use a pencil to record this number as it will change from time to time as you send out copies and get new copies made.)

*** Update the narrative chronology to cover events over the past week. This chronology is a most important document as it is the primary way that you will be able to explain to others what has happened.

Why is a chronology vital ? ... and how to construct one

At various times you will have to explain (sometimes by letter) what happened. If you are disorganised and ramble on for a long time you will not only fail to keep an audience but also do your cause much damage. (But this is exactly what a majority of injured persons actually seem to do because they are in a mental turmoil as a result of the injury effects and the sense of injustice and betrayal that victims normally feel.) Medical professionals know all about this effect and some will exploit the effect to try to destroy your case. A very standard response by medical service providers to serious complaints is to try to carry out a character assassination on you, painting you as mistaken, neurotic, and even mentally ill. So any failure on your part to clearly and concisely explain what actually took place, without getting too emotional, will be taken by other people not familiar with your case as proof that you are crazy and what the medical professionals may be saying about you must be correct. It is very very easy for a medical professional to destroy

your reputation so be very careful. Often they don't even know when they start doing this kind of thing as it merges with the normal habitual control tricks some of them use on patients.

A regularly updated and checked chronology is a good way for you to combat attempts to discredit you. It is best used as a neat typed up document. It should not be very long, probably only 4 pages long as a maximum. The chronology consists of a list of important events (in strict date order) and a short note on each. The short notes may also reference other documents, notes and even other chronologies. For example if you were in hospital for 8 weeks and a lot of things happened then, it could be best to construct another chronology that lists just these 8 weeks in detail. Here is a fictitious example to give you a clear view of what just part of a chronology could look like.

C1: Main Chronology 1989 to 1996

Item No

1 Problems with diagnosis (using 3 GP's) over dizzy spells 1989 to 1990 (see separate document C2.) totally contradictory things said and a failure to advise me on what was actually happening with tests done.

2 23-11-90 Taken ill suddenly (vomiting etc) while visiting relatives, saw a GP and admitted to St Nowhere by ambulance(see note 1)

3 26-11-90 Still in hospital, psychological tests by a Dr Dim and caused me physical damage (see note 2)

4 27-11-90 Helped by relative to discharge myself against medical advice as their diagnosis was clearly incorrect and they were unpleasant and would not take into account my medical history. (see my letters of 19-12-91 18-2-91)

5 3-12-90 Saw my usual GP (Dr Noone) but now could not get far with him or explain, felt hospital had got to him. Was referred on to a Dr Nutter for more tests.

6 16-12-90 Saw Dr Nutter . Was shocked when to my surprise I found I was attending a psychiatric clinic (see note 3) Dr Nutter insisted in making a further appointment 15 January.

7 15-1-91 Again saw Dr Nutter. Again he was all but insulting. It was a total waste of time. I determined not to see him again and do not intend to keep the next appointment made for February. However I am weaker and clearly something is not right.

8 3-2-91 Again taken very ill suddenly but this time while shopping in town. Seen by a GP (Dr Hope) at a clinic. I did not tell the doctor much at all. Lots more tests done some results due over the next few days (see note 4)

9 10-2-91 Saw Dr Hope again the tests show that I have a long standing purely physical illness that has done some permanent damage due to it not being treated in time (see note 4 and medical report 10)

10 4-3-91 got reply to my letter (see let4) from Dr Nutter (see letnut1) which totally failed to make answers to my questions.

11 17-3-90 Used State Library Health Information Service to get details and to get explanation of some material in medical reports. I find now that the hospital had failed to do tests that were indicated, also that my GP failed to advise me correctly early on. (early test result interpretation appears quite wrong. see note 5 and medical report 3)

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C Some Other Strategies What to do - What not to do

Until you start putting communications in writing the formal process of making a complaint has not really started. However as soon as you make a full on verbal complaint the system may start working against you. There are some things that you should do well before saying directly that you will be making a formal complaint.

Get documents as soon as possible

Get all the documentation you can as quietly as possible. (According to what victims tell MCA medical records have a habit of being lost or mysteriously changing after a complaint really gets started.)

If public hospital records exist that relate to your complaint then you should first ask (phone up the hospital) to just view your records and take some money with you and then get copies of such records at the time. Try to make such requests as low key as possible. Do not say that your want such records because you are going to sue a doctor or wish to make a complaint. Just say that you are trying to understand more what happened to you. In fact you are doing this and probably will be much more able see what complaint you should make (if any) when you have all the details you can get.

Give them a chance to explain

In order to get access to records you will probably have to talk to various medical providers and others. Be very careful when you have verbal discussion with doctors or others involved. The onus of proof as to what was said or resolved will be on you, and as an ordinary member of the public your word is worth very little compared with that of a "qualified professional person" that you may later be in open conflict with. If at all possible take a witness with you if any meetings are essential and that you feel will raise difficult issues. Always make notes as what was said. If this is not possible at the meeting then make notes very soon after. In many cases if you do not formally contact the provider(s) involved at all you risk damaging your case, as you will not later be able to show that you gave the provider any chance to comment on or perhaps resolve by explanation the problem. So if you just cannot face the doctor or hospital do make contact in the form of a short letter just asking specific questions. Do NOT say in this letter that you are making a complaint.

Document your medical condition (if you can)

This is a very difficult problem. In many cases it is important to get an independent medical audit of the specific and relevant aspects of your medical condition soon after the medical events that caused you damage. But this is often all but impossible. Second opinions as written reports when they could be used in dispute with another doctor are very difficult to get indeed. Other doctors will usually run a mile if they are openly asked to give a report that may be used to attack a fellow doctor. For some conditions you could try some deception. Such as seeing a doctor geographically far away from the first about a minor issue and then also raising the other symptoms (not saying that you have already consulted a doctor about these symptoms) in the hope of getting an independent examination done. You may then have established some other medical records about your condition that you could use later on. Never say or indicate in any way to this other doctor that you may make a formal complaint about another doctor.

Letters to individual doctors

There is no point in making a letter of inquiry to an individual doctor longer than it has to be, it is a strain for you to write, and they may well just fail to make reply. Such letters are best done as basically a list of questions. Express deep concern about your situation and the outcome. As the background to the matter is known to the doctor or hospital don't waste space on going into a lot of details about what happened. Make most of the letter a set of questions asking for more specific details. Also make clear the extent of any pain, suffering, and disablement the treatment is causing you now and ask how such effects can be reduced. You should remember that this letter (and any other letters) could be available later on in court for all to see if litigation is at some point embarked on. It is thus in your interest to be fully accurate, clear, and not to use any insulting language in it, even though your emotions are probably boiling over with the injustice of your situation.

If you fail to get a reply after 2 weeks or so send another copy. Do not expect a long letter in reply. In many cases you can expect the reply to be very limited, that is 2 to 4 general sentences. Such a reply is not a reply in the true logical sense, rather it is an indication that the doctor has presumed that legal action could be involved at some stage and has switched to "self protection mode". If this happens then it means you are being seen as at this point as a very real threat to the provider. Further letters are unlikely to get further information or lead to any resolution. You then have to consider if you are willing to spend money on expert medico-legal advice and take the matter further

Letters to Organisations

From past experiences of members it is not unreasonable to assume, that any reply to your letter will come from a seemingly only partly human bureaucrat not directly involved (and thus unaccountable) , and whose easiest course of action is to ignore the substance of questions, and use bureaucratic language to sidestep aspects that are most important. He or she will also avoid making direct reply to aspects which show the provision of health care services in a bad light and avoid any hint that mistakes or substandard service has occurred or that any apology is in any way appropriate or due to you. In short a totally legal and at the same time totally insulting letter. The following points may assist you in avoiding some of the traps and help you to get a more useful reply.

Practical Aspects of Preparing Inquiry(complaints) letters

- 1) Think carefully of the exact reason that you are writing the letter(i.e. normally what information you hope to get back in a reply as a result of sending the letter), and make sure that the contents focus fully on and conform to this aim.
- 2) Consider the form of reply you expect to get and how to foil attempts to ignore your requests for information and action.
- 3) Ask for a reply (and enclose an S.A.E. if possible.)
- 4) Be specific , be clear, be concise.
- 5) Don't sidetrack. If detail must be added do this by numbering references to attached sheets, don't extend in length the primary letter of complaint. List at the bottom of the primary letter all such items enclosed say that they are stapled to the letter(and staple them there!). (This avoids the excuse of such items becoming easily "lost" by the chain of "unaccountable persons" who may handle the correspondence.)

- 6) Ask specific questions NOT general ones, and number all questions.
- 7) Avoid emotional language. Avoid all forms of repetition.
- 8) Structure the letter. (e.g. introduction(why you are writing), list of questions, list of enclosures)
- 9) Limit the letter to one page if at all possible. Use large sized paper (e.g. A4 or foolscap) not small note paper.
- 10) If at all possible get the letter typed or better still use a word processor and good quality printer and index all correspondence on a database. This will save you a lot of time if the matter drags on and many letters are involved. Keep copies of all letters that you send in a file (see above on filing document). This will save you hours of work in searching for items later.)
- 11) Keep at least 2 photo copies (or printouts) of all items sent. Mark one copy on the back "Original". If the case gets very complex consider keeping all such originals in a separate ring binder.
- 12) Check and double check before posting that all items listed as enclosed are in fact enclosed and stapled to the letter.
- 13) If after 14 days you don't get a reply write again. A short letter asking why there has been no reply is sufficient. (keep 2 copies.) Enclose a copy of the original letter and of any enclosures that were sent with the letter the first time. Send all this using certified mail AR. This forces someone to sign for receipt of your letter.
- 15) Be prepared to find the reply you get quite unacceptable in terms of your aims. If this is the case you could in some cases try just once more, questioning any errors in the reply you got. (It's probably best to again use certified mail AR for this) Remember do not be repetitious, rather use the opportunity to introduce additional questions, ask for clarification of aspects of the reply. Say clearly and forcefully, but politely, if you cannot agree with statements they have made about the case because their statements are not in accordance with the truth. (keep 2 copies as before)
- 16) If after another 14 days your inquiries have been ignored you will now have the proof (i.e. copies, and AR mail receipts) of this fact. If clear points exist at which they have in effect called you a liar and disagree on verifiable historical points you may be in a very good position to take things further.
- 17) In terms of helping other consumers don't judge the total results only on the reply you got. No one likes admitting in public the poor service has been provided but changes to prevent the failure being repeated are sometimes made out of the public eye. The fact that you have complained will in the long term help other consumers and may even help save someone's life if the topic of the complaint relates to a serious failure. If all medical consumers who had reason to complain had in fact done so in an effective manner many medical consumers who suffered fatal results because of shoddy treatment would still be alive today. In cases where a fatality does happen the chances of any effective action being taken is very much lower as the primary witness is dead. (As the saying goes "doctors bury their mistakes.")

D Taking Things Further

Getting far with a complaint today often needs lots of money and lots of luck. Four major problems exist for the medically injured who wish to get compensation by the only path possible (i.e. by becoming the plaintiff in a medical negligence case) :

- You cannot get access to all of your medical records.
- You cannot get expert medical advice and reports to document your case.
- You cannot find the needed expert legal advice.
- You cannot get funding to allow your case to proceed.

MCA has issued other notes that look at these problems. (BN/2-94/HCCa problems in using the NSW Health Care Complaints Act 1993 , BN/9-94 Legal fees and problems in getting legal advice, BN/12a-94/REC problems in getting access to your medical records, BN/9-94/PIRb MCA's view on how a complaints system should work.) Today there are more problems than solutions for negligently injured medical consumers. regulation of medical services is best described as just crazy from a safety viewpoint. For example the system can make doctors work shift work and then covers up when they kill a patient at 3 am by mistake after doing a triple shift. The scam being used is to try to define all negligence as just 'accidents'. The system currently spends \$ millions on covering up the problems and trying to manipulate the mass media. This makes it even more vital that you document your case and should complain as otherwise nothing will change. MCA continues to campaign for meaningful change. Please write to MCA letting us know of your progress (or otherwise) of your efforts we are interested to hear and to collect case studies that show just how unfair the present system is to persons who are negligently injured by medical providers. MCA is a voluntary group, does not meet in committee very frequently, so please do not expect us to reply rapidly. But be assured information about your case is of interest to us and may help stop others suffering as you have had to. Our postal address is:

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