

Best practices for attorneys representing health care providers

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 patient safety improvements that the health care 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 health care providers in a resolution of medical injury, as well as knowledge of and practice 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 health care organization to make a thorough review of the event.** If a review of the event has not yet been done, the 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 their 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 health care 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 health care 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, allowing patients to have their questions and concerns addressed directly. The patient and their 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 and 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. 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.
- 7. Support the health care provider throughout the process.** The health care provider often experiences emotional trauma after an adverse event. The attorney should be aware of their potential psychological and emotional needs, and provide support and education throughout the process. The attorney should know what resources are available, and help the provider connect to these resources as necessary.