MAKING A COMPLAINT

INFORMATION FOR HEALTH CONSUMERS

A joint project between the Health Consumers' Council WA Inc.
&
WA Country Health Service
MAKING A COMPLAINT
Information for Health Consumers

This resource will provide information about what you may choose to do if you are concerned about a health service.

Making A Complaint:

You may wish to first attempt to resolve the issue directly with the health service provider by writing or speaking to the service provider about the incident. This gives the provider an opportunity to address the problem and put things right, where possible.

What Help is Available?

1. **In public hospital settings**: Complaint coordinators (or customer/patient liaison officers) will receive your complaint and direct it to the appropriate person in the hospital.

2. **In the private sector**: (general practitioners, medical specialists, allied health workers, dentists) Ring the service provider and ask about their internal complaint process/policy.
   - If you feel it appropriate, ask to speak to a senior person such as a unit manager, practice manager or head of department.
   - Try to remain calm and polite when speaking to the service provider to ensure the complaint is properly understood.

   Or
   - You may wish to find out from reception the name of the manager of the service and address your written complaint to this person. Verbal complaints are easily overlooked so it is to your advantage to complain in writing. That way, someone becomes responsible for writing back to you.
   - When submitting a complaint in writing, be firm but polite in your letter and keep your message direct and to the point (ideally 1-2 pages only).
   - It is wise to keep a copy of your written complaint.

If you are not happy with the outcome of the internal complaint process, you may wish to request a meeting with the District Manager, Regional Director or CEO of the public hospital or the Manager of the private health service.

You can access assistance about how to make a complaint by calling the Health Consumers’ Council on 1800 620 780. If the complaint has not been addressed in a satisfactory way or is substantial the Office of Health Review can assist.

Is there an Independent Health Complaints Office?

**Office of Health Review**
The Office of Health Review (OHR) is an independent statutory body (established under an Act of Parliament) to investigate complaints against any health service provider. To make a complaint call 9323 0600 or 1800 813 583 and an official OHR form will be posted to you.
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What happens next?
You fill out the form as accurately as possible and send to the OHR. Your complaint is then delegated to a case officer who will usually forward a copy of your written complaint to the Provider for a response. The case officer is able to obtain copies of medical records (with your permission) as well as other information and to seek expert opinions on whether the actions of the provider were reasonable. ‘Reasonableness’ is the criteria the OHR uses to make its determination.

And then?
The OHR is able to assist both parties to agree on a mutually acceptable resolution through conciliation. Conciliation is a voluntary process. It can only proceed with the consent of both parties. Prior to the final stages of conciliation, you may decide that you wish to turn to the courts for settlement. If you are involved in or contemplating legal action, contact the OHR to discuss how they may be able to assist you and the provider come to some resolution outside the courts.

- The OHR has a one-year time limit for complaints (i.e. you have one year from the event to register a complaint.) This may be extended by the discretion of the Director of the OHR. For disability consumers, this time limit is two years.
- Conclusion of a complaint lodged with the OHR may take some time...say, from 2 weeks to 12 months, depending on the complexity of the issue and other factors.
- There are occasions where the issue of complaint cannot be resolved. The OHR will provide a detailed explanation for the outcome reached.

Contact Details:
Office of Health Review
Level 17, St Martins Tower, 44 St Georges Terrace, Perth WA 6000
PH: 9323 0600. Country Freecall: 1800 813 583
Postal Address: GPO Box B61 Perth WA 6838

What About the Medical Board of WA?
The Medical Board (MB) is responsible for the registration of qualified medical practitioners in WA. The MB will only take complaints about doctors. It will receive your complaint in writing (forms available on 9481 1011 or contact the Health Consumers' Council) and will then make a determination as to whether the service provider is in breach of the Medical Act (1894).

Breaches of the Medical Act involve gross carelessness or gross incompetence, or infamous or improper conduct.

The MB will seek a response to your allegations from the medical practitioner concerned. Based on this information (plus any additional information the MB has sought), the complaint will go before the MB where it is decided whether the ‘case’ will go on to formal inquiry, (similar to a civil court) where all relevant material (medical notes, witnesses) is taken into consideration.
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The Medical Board may or may not access medical notes in the early stages to assist them in coming to the decision about whether or not the case will go to formal inquiry.

- There is no time limit for complaints with the MB.
- Complaints with the MB may take some time to conclude.

Contact Details:
Medical Board of Western Australia
Level 8, London House, 216 St Georges Tce, Perth, WA 6000
GPO Box 2754, Perth WA 6001. Phone: 9481 1011

The Office of Health Review (OHR) and the Medical Board (MB) will not deal with the same complaint concurrently. They may refer cases between bodies if they feel the complaint is not within their area. You may raise a complaint with the Medical Board even after the conclusion of an OHR enquiry bearing in mind the two bodies use their respective legislation to guide their investigations. If a decision has already been made by the Medical Board (even if the complaint did not go to full inquiry) the OHR cannot deal with the complaint.

Criminal Matters
If your complaint about a health service provider concerns criminal offences, (eg sexual assault or physical assault) you should consider going to the police.

Equal Opportunity Commission
If you have a complaint about treatment by a health service provider which you believe involves discrimination or harassment (on the grounds of race, gender, age, marital status, sexual orientation, impairment or disability, religious or political conviction) or sexual harassment you could consider contacting the Equal Opportunity Commission (EOC). The EOC operates under the Equal Opportunity Act (1984). A Commissioner Officer will speak with you about concerns you have relating to your rights under equal opportunity law and will advise you about the EOC complaint process.

Contact Details:
Equal Opportunity Commission
Level 2, Hartleys Building
141 St Georges Tce, Perth, WA 6000
PO Box 7370, Cloisters Square, Perth WA 6850
PH: 9216 3934
Toll-free 1800 198 149
What about Legal Proceedings?
If you are considering legal proceedings, you should seek legal advice about whether you are able to pursue your issue in the courts. The Health Consumers' Council has a list of lawyers who take on medical negligence cases. We are happy to provide these to health consumers.

Health Service providers are legally bound to:
1. Provide information which enables you to make an informed decision about the proposed treatment, and
2. Provide you with competent health care.

The above two legal obligations are distinct from codes of conduct, ethical guidelines or professional guidelines. Breaches of these codes of conduct etc may be cause for complaint but do not necessarily warrant legal proceedings.

Some medical negligence lawyers operate on a ‘no win, no fee basis’. It is important to ask about the fee basis when you have your initial phone or face-to-face discussion with the lawyer.

The lawyer will often need to seek an independent medical expert opinion from the eastern states in order to determine whether your case looks like it could be winnable in terms of a medical negligence claim. This expert opinion is based on medical notes (as the legal system operates on evidence and expert opinion) and may cost you somewhere in the range of $500 - $2 500. (This range is only a rough guide - you will need to speak to the lawyer about this fee.) This is called a ‘disbursement fee’ and will usually need to be paid by you as an up front cost for you to proceed with legal action.

This medico legal expert opinion would need to be supportive of the view that the service provider was negligent in their treatment of you.

- You should bear in mind that proving medical negligence is quite difficult and completing legal proceedings against a practitioner may take many years and be emotionally harrowing.

What about the Health Consumers’ Council?
The Health Consumers' Council (HCC) provides an advocacy service to WA health consumers. The forms of assistance this advocacy may involve are:

- **Talking** through the issue to clarify or define the main factors within the complaint. This may assist consumers direct their complaint to the most appropriate place and to come to a decision about what would be a satisfactory outcome.
- **Attending** appointments with consumers and service providers in an advocacy (or independent third party) capacity.
- **Writing** letters, faxes or phoning service providers on behalf of consumers to assist in resolving an issue.
- **Providing** resources (eg. “Sample letter of Complaint”) to assist consumers manage their own complaint.
- **Faxing or writing** to providers on the HCC behalf after a consumer has raised a general issue worthy of direct mention to the service provider (in some cases the consumer may wish to remain anonymous).
- **Assisting** to write up complaints to the Medical Board or the Office of Health Review;
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- **Assisting** consumers to access medical records through *Privacy Amendment (Private Sector) Act 2000* and through *Freedom of Information* requests.
- **Visiting** consumers in hospital or at home if medically necessary.
- **Attending** lawyer’s appointments with consumers.
- **Other** assistance as required.

**What are My Consumer Rights?**

As a health consumer / patient you are entitled to:

- Be treated with care, consideration and dignity.
- Be given clear information and explanations.
- Ask questions about the service to make sure you are clear about what it offers, who is eligible, what costs are involved, and what your responsibilities are.
- Ask questions about any issue pertaining to your health care...discharge care arrangements, proposed treatments or procedures, full disclosure of all associated risks of treatment, alternative treatments, costs etc.
- Be given time to take in and understand the information provided.
- Be informed if the proposed treatment or procedure is experimental or part of medical research.
- Obtain assistance from trained interpreters if required.
- Ask to be referred to a more senior person if you are not happy with the quality of the service provided.
- Obtain a second opinion (except where this is not possible, for example in an emergency).
- Give your informed consent before treatment begins.
- Withdraw your consent and refuse further treatment (except in certain circumstances.)
- Appoint someone to make decisions on your behalf if necessary.
- Leave the hospital at any time, except in the case of some infectious diseases and psychiatric conditions. (If you leave the hospital against medical advice you will need to sign a waiver to say you are responsible for your own illness or injury and will not hold the service provider responsible).
- Confidentiality of all personal records (except where the law requires that information be given to some person or authority.)
- Have access to your medical records in the public sector through Freedom of Information Legislation and in the private sector through the *Privacy Amendment (Private Sector) Act 2000*.

**What are My Consumer Responsibilities?**

As a health consumer, you should:

- Treat staff with care, consideration and dignity.
- Ask questions about the service and your treatment, and keep asking questions until you fully understand the issue.
- Give the service all the information about your health (including any special needs) to enable the health workers to give you the best care and advice.
- Tell staff if you are unable to or don't intend to follow your prescribed treatment plan.
- Tell staff about any changes in your health, including any problems you may have with the treatment you are receiving.
- Keep appointments or let the service know if you are unable to attend.
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Don’t Forget…
A good quality complaint service will:
- Acknowledge receipt of your complaint promptly.
- Give you the opportunity to tell your story, even if you have written a letter.
- Provide you with a written list of the issues of complaint for your agreement.
- Make a time for the next progress report at the end of each contact with you.
- Advise you of avenues for taking your complaint further if you are not satisfied.

The information in this booklet is intended as a guide only. It is not the role of the HCC to give legal advice. You should always consider seeking legal advice on matters related to intended legal action and appropriate professional advice from the Office of Health Review, the Medical Board or from the Equal Opportunity Commission on your particular circumstances.

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4 Lord Street, Perth WA 6000
GPO Box C134 Perth WA 6839
Ph: (08) 9221 3422
Fax: (08) 9221 5435
Freecall: 1800 620 780
E-mail: hconce@iinet.net.au
Website: www.hcc-wa.asn.au

[The information in this brochure was adapted from HEPack; health rights for drug users, published in 2000 by AVIL]