

Without prejudice ...

Lawyers are fond of giving their opinions, and I leapt at the chance to offer some observations on the wonderful world of medical complaints from the perspective of an HDC legal advisor. And what better time to do so than as I am about to leave HDC after four fascinating years here.

Having spent the first six years of my legal career mainly in the world of commerce, I joined HDC because I wanted to do something worthwhile, and, dare I say, help people. The area of health law has fascinated me since university – the combination of science, legal principles and human nature. I happily pointed out to my husband, a GP, that it would give us even more to talk about over the dinner table. He was delighted.

It would be fair to say that I have encountered mixed reactions from doctors when I tell them where I work. One of the most common is to hear their personal theory about complainants. A recurring theme is the perception that patients complain because they have nothing better to do or for vexatious reasons. At this point I generally observe that a very small number of complaints fall into this category. For the most part, complaints are made by concerned, genuine people who have not been able to get the answers they need elsewhere.

Which is not to say that we don't get the occasional, shall I say, 'persistent' complainant. For some reason (punishment perhaps?) it has been my lot to deal with a few such cases. I started counting the emails I have received from one man, and gave up when I reached 80. At least most of them were short, some being just a subject line such as "got you you rotten dodgers" or "your cheek exceeds [sic] all bounds". I recently confessed to a friend that I would almost miss these emails, and was promptly diagnosed with Stockholm Syndrome.¹

And of course this is also a good opportunity to point out that if doctors are interested in finding a group of people with a tendency to pursue a complaint with real 'commitment', they need look no further than their peers. In my experience, doctors can be amongst the most unforgiving complainants. I perhaps naïvely thought that doctors would be more understanding of a slip-up by one of their profession. Quite the contrary, it appears. The length and detail of some complaints that I have seen from doctors has been truly impressive – even by the standards of someone who has dealt with 1000-page construction contracts. A good reminder, perhaps, that you might one day find yourself on the other side of the fence?

Complaints by their very nature have a negative aspect – people generally don't write to tell us about things that have gone well. Lawyers should be used to being involved in situations where things have gone wrong and people are unable to resolve matters themselves. Even so, dealing with a steady stream of unhappy complainants (and providers) can be wearing. For me this is more than balanced by the belief that complaints can change things for the better and provide accountability where needed. In all honesty, the most negative aspect of my work has been that it has fuelled my

¹ According to Wikipedia Stockholm Syndrome is a psychological response sometimes seen in an abducted hostage, in which the hostage shows signs of loyalty to the hostage-taker.

previously controlled hypochondria to DSM levels (such self-diagnosis is probably not a good sign ...). Oh, and my husband has probably become rather tired of my lectures on the importance of taking good notes.

Nobody wants to be complained about. Doctors often ask what they should do to avoid complaints. Never making a mistake and being incredibly nice to everyone is the facile response. Good communication is a more realistic answer. Perhaps another is that receiving a complaint is not the end of the world, and chances are it can be resolved in a way that is relatively painless for both parties.

In my four years at HDC I've observed many changes. Consumers are certainly becoming more aware of their rights. And how to use Google (I've tried pointing out that the website of a US medical malpractice lawyer might not be the best source of objective information).

The greater emphasis on early resolution of complaints enabled by the changes in 2004 to the HDC Act has in my view been positive – complaints are resolved more quickly, and real effort is made to take a constructive and often creative approach to ensure that lessons are learnt from events without the need for formal investigation.

I have learnt a lot from my time at HDC – not just about medical law but also human nature, how to read doctors' handwriting, and that there really are (at least) two sides to every story. There's a great bunch of talented people at HDC who are here because of a genuine interest and commitment – it's certainly not for the money or flash offices. I will definitely continue to follow HDC's work with interest.

Now, I know that doctors enjoy lawyer jokes, so let's finish with one.

“A doctor and a lawyer were attending a cocktail party when the doctor was approached by a man who asked advice on how to handle his ulcer. The doctor mumbled some medical advice, then turned to the lawyer and asked, ‘How do you handle the situation when you are asked for advice during a social function?’ ‘Just send an account for such advice,’ replied the lawyer.

On the next morning the doctor arrived at his surgery and issued the ulcer-stricken man a \$50 account. That afternoon he received a \$100 account from the lawyer.”

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New Zealand Doctor, 21 May 2008