

Steps to take if you've suffered medical harm*

Patients can be harmed in any setting in which healthcare takes place. This includes doctors' offices, hospitals, nursing homes, outpatient clinics, and even the patient's home. Whatever the setting, when patients suffer injuries, infections or errors in their healthcare, the members of the Patient Safety Action Network have found the following actions provide a good general framework for moving forward.

1. Remember to take care of yourself. There is little that is more stressful than unexpected patient harm and the life-changing events that it can bring. Injured patients and their families often receive little to no support from their health care providers. As a consequence, they are often left feeling confused, betrayed, frightened, and isolated. In addition, you may have difficult decisions to make with little information to go on. This is a time to reach out and let others help you.

How: If you and your family have a trusted friend, counselor, spiritual advisor, or church community, you may want to turn to them for support or to talk things through. In addition, patient advocacy groups like the Patient Safety Action Network (www.patientsafetyaction.org or <https://www.facebook.com/groups/patientharm/>) are a way to connect with people who have had experiences similar to yours. These groups can provide moral support and direct you to people or agencies who may be able to help. Online forums such as SmartPatients.com, which have discussion groups classified by medical condition, can offer valuable advice if you are continuing in treatment. And if you are a caregiver, please remember the importance of taking time for yourself and try to find a friend or family member who will help you out by substituting occasionally.

2. Get a copy of the patient's records. To find out what has happened in a patient's care, the first step is to get a complete copy of their medical records. The federal HIPAA Act ensures all patients the right to their medical records. These records can provide important information about the course of the patient's treatment and what might have occurred to cause harm.

How: As soon as possible after the incident, contact your doctor's office or the healthcare facility's medical records department and ask for a complete copy of your records, including doctors' and nursing notes, lab results and copies of diagnostic images. You may be asked to sign a "release of information" to verify your identity and the part of your record you are asking for. In the past, high fees have been a significant deterrent for patients seeking their medical records. The federal government now has guidelines recommending that charges to patients should be limited to costs incurred for copying, and that electronic copies of electronic records should be provided at no or nominal cost. If a facility quotes you a figure that seems out of line with these guidelines, it is worth questioning the basis for their fee or filing a complaint with the

Office of Civil Rights, which oversees patient access to medical records.

(<https://tinyurl.com/y9qv6tee>)

For electronic medical records, you may also want to request the audit log, which provides a timestamp and login number for every entry, and the revision history, which includes prior versions of entries that have been modified. These “metadata” are not part of the official medical record and usually have to be specifically requested.

If you believe you did not receive the complete record or know of something missing, return to the provider and ask again until you get the entire record.

3. If the patient has died, order a forensic autopsy, which includes toxicology tests. Autopsies - though not always 100 percent accurate -- are the most reliable means we have of finding out what happened in an unexpected death. Hospitals do not routinely conduct autopsies (<http://bit.ly/rRsEJL>), but the family always has the right to have one.

How: In some cases, the local coroner or medical examiner is supposed to be called if a patient dies in a medical facility. If the authorities decline to take the case, the family may have to pay an independent pathologist to perform a forensic autopsy. In that case, ask the coroner, medical examiner’s office, or funeral home for a referral to an independent pathologist. While this may cost more, you don’t want the hospital that caused the harm to do the autopsy.

4. Consider a consult with an attorney. Most cases involving medical harm do not end up in a court of law, but it is worth calling a malpractice attorney if you suspect that medical negligence or malpractice has led to patient harm. Malpractice litigation is a complex and specialized field and a malpractice suit should only be brought by an attorney who specializes in this area. A trusted general practice attorney may, however, be able to help you with some legal issues regarding healthcare harm or help you find another attorney who can. Even if you do not bring suit, an attorney may

- Write letters on your behalf if you find obstacles to getting a full set of medical records or a forensic autopsy report;
- Be helpful in reading and interpreting medical records and audit log;
- Facilitate a meeting with facility spokespersons, leaders or doctors;
- Offer advice if you have been offered an out of court settlement by a doctor or facility.

How: General attorneys can help with less specialized legal matters. If you need a malpractice attorney, ask around. Most lawyers and many people in the community know who the experienced local malpractice attorneys are. You can also find specialized attorneys by checking online databases (<http://bit.ly/KMp8zJ>) or googling “malpractice attorneys” plus your state or city. Caution: Malpractice attorneys usually operate on contingency fees, which they take as a percentage of the final settlement. If an attorney asks you to pay expenses up front, it is probably an indication that the attorney does not have faith in their ability to win your case.

5. Meet with the doctor and hospital officials. Ask them how they will prevent harm to future patients. If the patient has suffered damages or died, you can also negotiate directly with the doctor or hospital to waive medical bills or agree on an amount for compensation. No one should meet alone with the doctor or health system representatives, and it is advisable to bring an attorney if you anticipate making any kind of financial agreement.

How: Know what you want and have a plan in mind before approaching the providers. Do you want compensation? An improvement program? Better care for a patient who is still under the same provider's care? Lay out your proposals and how they could be achieved. Depending on your situation, you may want to start with the doctor, the hospital's patient relations department, or even the health system president's office.

6. Make sure the incident is reported internally. Accredited hospitals are required to conduct internal investigations of serious medical incidents. And they're supposed to have procedures in place to deal with incidents that lead to patient harm or *could* lead to patient harm. In real life, investigations are often rushed and superficial, and the recommended solutions may be ineffective. But even if the investigation process in your healthcare facility is flawed, it is still important to get your incident on the record and to have your family's perspective and proposed improvements included as part of the review process.

How: Ask to be part of the investigation, or at least to have your version of events included in the analysis. One caveat: if you think you will be pursuing legal action, you may want to talk to your attorney before becoming involved in the review process.

7. Report the incident to regulators, who can investigate. While regulatory action is often much milder than patients expect it to be, it creates a paper trail and providers may be cited or fined and required to create a program for improvement.

How: It's important to report to the correct agency. Depending on the circumstances, you may want to file complaints with one or many agencies. A few of the many entities dealing with healthcare accreditation and regulation are listed below.

- State health departments license hospitals and nursing homes (<https://www.patientsafetyaction.org/get-help>).
- Most hospitals, nursing homes, and ambulatory surgery centers are accredited. Accreditors are private organizations that are charged with ensuring that health care facilities meet Medicare requirements. The most widely used accreditors for hospitals and many other organizations are the Joint Commission (https://www.jointcommission.org/report_a_complaint.aspx) and DNV-GL (<https://www.dnvglhealthcare.com/patient-complaint-report>). Others can be found here: <https://tinyurl.com/y52o65vx>.
- Doctors are licensed by state medical boards (<http://www.fsmb.org/contact-a-state-medical-board/>).

- Nurses are licensed by state nursing boards (<https://www.ncsbn.org/contact-bon.htm>).
 - Medicare patients can also complain to Medicare (1-800-Medicare) or a Medicare Quality Improvement Organization (<http://bit.ly/JfHIBX>).
 - The Food and Drug Administration regulates drugs and medical devices (<https://www.accessdata.fda.gov/scripts/medwatch/index.cfm>).
 - The federal HIPAA Act, under the auspices of the Office of Civil Rights, covers privacy violations and questions about access to your medical record (www.hhs.gov/hipaa).
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- This post is adapted from a post by Marshall Allen from ProPublica that originally appeared in the group in 2012. The original post can be accessed [here](#).