



## Message from the editor

Medical professionals and lawyers both agree - the best thing for patients is to have the support they need to recover.

As important as communication is between a patient and their treating physician, co-operation and communication between lawyers and medical professionals is critical. Understanding this, we have focussed this edition on how medical professionals can successfully and easily work with a lawyer.

Our Adviceline continues to receive a high volume of enquiries from injured people concerned about their legal representation. We thank all practitioners who have been providing our information brochure to their patients.

If you require further information about any of the topics discussed in this edition of the Legal Check-Up, contact us on (03) 9321 9988.

- Bree Knoester, Partner

## Doctors and lawyers: a key relationship

The treating doctor of a patient with a compensable injury has a vital role to play in their patient's claim. While few doctors relish involvement in a personal injury claim, a doctor who understands the legal framework that their patient is working through can dramatically improve financial and even health outcomes for their patient.



A good doctor/lawyer relationship can also assist doctors in understanding their role in the system and minimise their exposure to the system. The provision of medical reports which address the key medical and legal questions reduce the need for supplementary reports and the likelihood of court attendance. Communication is key to good doctor/lawyer relationships.

As lawyers, we can assist doctors by clearly and succinctly setting out the legal framework that governs the patient. A doctor who is uncertain as to what is being asked of them, or does not think that they can assist their patient, should not hesitate to contact the lawyer directly. It is perfectly acceptable for a lawyer to explain the legal process, the purpose of the claim and the role of the doctor.

In circumstances where a doctor does not feel that their opinion would assist, it is in the interests of all parties (doctor, patient and lawyer) for this to be communicated before the doctor commits their views to writing. It is certainly not the doctor's role to be an advocate for their patient. The value of a doctor in a compensation claim is in their clinical expertise and integrity. In circumstances when a doctor's view would not assist the injured person, we would ordinarily withdraw our request for a report.

Though our focuses might be different, doctors and lawyers are in the practice of obtaining better outcomes for injured people. We understand the concern that many doctors have – that the stress of litigation and dealings with insurers are bad for their patient's health. However, in our 40 years' experience acting for injured Victorians, we believe that obtaining fair compensation for life-changing injuries – including payment of reasonable medical and like expenses – can and does greatly assist an injured person get their life back on track.

- Harriet Burton, Lawyer

# Medical Reports and Court Attendance



From our experience, a prompt, fair settlement achieved prior to a court hearing is almost always the best outcome for an injured person.

In this outcome, the injured person receives reasonable compensation without the risks, costs and stress of a court hearing. Therefore we put forth the strongest possible case to the defendant lawyers well in advance of the hearing, in the hope of procuring a fair settlement offer. Medical reports are a crucial part of our case.

Clear, detailed medical reports which address the questions put by lawyers can be the difference between a matter running to trial and a matter resolving.

Occasionally, we receive medical reports which - though they have doubtless taken time and effort to produce - are of limited assistance and may require further time and effort to rectify. For example, a medical report that does not address questions posed in the requesting letter will almost always prompt us to request a supplementary report.

Medical practitioners should be careful not to comment on issues outside their expertise, such as alleged negligence. Doing so may impact upon the weight given to their medical opinions.

It is also important to remember all written and verbal communication between doctors and lawyers form part of a report and should be set out in the medical report. While there is nothing wrong with a medical practitioner seeking clarification from a lawyer, any input from the lawyer should be acknowledged in the report. Absent this acknowledgment, it could be implied that the report is a 'joint project' between lawyer and medical practitioner.

When a case proceeds to Court, a doctor's evidence can be crucial. Judges and juries are often more inclined to accept the opinion of a treating doctor over a medico-legal expert due to the greater understanding that a treating practitioner may have of the claimant and their injury. However, as with medical reports, this will only be the case if the medical practitioner is considered to be objectively assisting in the matter, rather than acting as an advocate for their patient.

We seldom call doctors to give evidence, particularly if we are satisfied that their views have been set out in medical report(s) that are before the Court. In the event that a medical practitioner is required (usually at the request of the defendant), we will do all that we can to minimise the inconvenience caused. If a doctor knows he or she will be unavailable on certain dates, they should inform the lawyer as soon as possible so that the lawyer can take steps to accommodate the doctors schedule.

- Seamus Herrick, Lawyer

## Good medical records

Keeping good medical records is an essential part of medical practice. Importantly, it is also a requirement under the Medical Board of Australia's Code of Conduct for Doctors that medical records are 'clear and accurate'.

The importance of maintaining good medical records is two-fold. Firstly, clear and detailed medical records will ensure seamless continuity of patient care as the incoming medical practitioner will be able to identify exactly what treatment the patient has received thus far. Secondly, maintaining detailed and accurate medical records will offer protection to a medical practitioner if the medical treatment they provided is questioned.

Finally, it is important to remember that pursuant to the *Health Records Act 2001*, patients are entitled to access information contained in their records and medical records; and are also often subpoenaed as evidence in court. The fact that records are accessible should serve as a reminder to all medical practitioners that keeping clear and accurate records is a requirement of good medical practice and not merely an administrative tool.

- Isabelle McCombe, Graduate

## Top tips for medical records

Good medical records should be:

- Dated;
- Typed or legible;
- Contemporaneous or recorded as soon as possible after the consultation or treatment;
- Structured, meaning that they will separate out the history given, the findings on examination, the treatment given, and the plan going forward, including any prescriptions or referrals (this is particularly important for general practitioners because patients often attend with multiple ailments); and
- Respectful to the patient.



# Subpoenas: your rights and obligations

A subpoena is a legal document asking a person to give evidence in a case even though they are not a party. If you receive a subpoena, the first thing you should determine is whether you have been subpoenaed to give evidence at Court or simply to produce documents to the Court.

Disobeying a subpoena is a contempt of court and you could be arrested or imprisoned for failing to comply. However, you do have rights. If you believe that a subpoena is asking you to do things which are not possible, excessively onerous or prejudicial to you or your patient, you should call us to discuss your concerns.

## Subpoenas to produce documents

You are only required to provide documents which are within your possession, custody or control and which are described in the subpoena. You can object to producing some or all documents based on several grounds, including:

- any document that is not specified or described in the subpoena;
- any document that was created for the dominant purpose of obtaining legal advice (this would include any letters to lawyers or reports written at a lawyer's request);
- the subpoena requires you to search too large an amount of documents;
- the subpoena would involve producing a document which would incriminate your patient;
- the subpoena requests a document the production of which would be injurious to public interest;
- the subpoena was filed for an improper purpose, such as delaying proceedings, serving private interests or giving documents publicity;
- the subpoena requires you to make fine judgements regarding relevance; or
- the subpoena asks for documents which are not relevant to legal proceedings.

If you do not want to produce a document or think a subpoena may be objectionable, you should contact us.

## Subpoenas to attend court

If you are asked to attend court, you must attend. If you cannot attend you need to inform the court at your earliest opportunity. If you feel you are unable to give the evidence asked because it is beyond your recall, knowledge or expertise, you can then object to giving that evidence. Please call us to discuss your concerns.

- Sarah Thorn, Lawyer

## The importance of understanding

**When we meet claimants from non-English speaking backgrounds, we assess their English-language proficiency so as to ensure they have capacity to give full instructions and to understand legal advice. As a witness in court, it will be vital that the claimant can articulate themselves clearly and succinctly.**

In cases where English-language proficiency is inadequate, a professional interpreter should be engaged. This may be particularly important in medico-legal examinations, where language barriers and cultural issues may impede the practitioner's ability to take an adequate history.

To safeguard the integrity of medico-legal reports, professional interpreters should be engaged, even in circumstances where a family member or friend of the claimant might otherwise be able to assist.

We also engage professional interpreters at other key junctures in a legal matter: at client conferences; settlement conferences and of course, at court.

We will arrange for a professional interpreter to attend medico-legal examinations with these claimants. However, if you form the view that the claimant requires an interpreter and none is present, you should immediately contact us so that the necessary arrangements can be made.

- Giorgina McCormack, Graduate



# Our news

## Melton office officially launched

Adviceline Injury Lawyers officially opened its new and expanded Melton office on Thursday 23 June 2016 with a launch celebration.

The office was opened by Melton Councillor Sophie Ramsay. Also in attendance was a number of representatives from the City of Melton and the Legal Services Commissioner.

The Melton office, located at 43 Wallace Square, is operated by Partner Lisa Paul, Lawyer Genna Angelowitsch and support staff Yvonne Carullo and Kelly Bell.



*From left: Assistant, Yvonne Carullo; Receptionist, Kelly Bell; Partner, Lisa Paul, Councillor Sophie Ramsay; Lawyer Genna Angelowitsch.*

## LOCATIONS

### Epping

Shop 110B, Epping Plaza  
Cnr of Cooper / High Street  
Epping VIC 3076

### Melbourne

Level 8, 555 Bourke Street  
Melbourne VIC 3000

### Melton

43 Wallace Square  
Melton VIC 3337

### Moe

Level 1, 18-20 Kirk Street  
Moe VIC 3825

### Springvale

369C Springvale Road  
Springvale VIC 3171

## CONTACT US

T 03 9321 9988  
advice@alil.com.au

## Life after compensation

We often talk of special cases and successes but for our clients, the world does not stop at the end of the Court case. One recent example is a career teacher who sustained a back injury during the course of his employment. After three operations, Senior Associate Naomi Riggs was able to successfully settle a claim on behalf of her client.

Within a month of settling his common law damages claim, Naomi's client visited Zimbabwe where he became involved in helping the Intabayengwe Village (located 14km from Victoria Falls) break the cycle of poverty through education. As a career teacher his skills were in high need and this was a fantastic opportunity to put those skills to use in a meaningful way. The Lesedi Primary School, established in 2014, provides an opportunity for children to avoid being bound by physical farm labour from early childhood. The school has just received official recognition as a registered school by the Ministry of Education and teaches pre-school to grade 2, with grade 3 classes commencing in 2017. Part of the established premises now also provides for adult literacy classes.

For more information on the Lesedi Primary School project, go to <http://www.ngoko.com/charitable-trust/lesedi-primary-school/>.

This client's significant contribution to society has made a difference in the lives of hundreds of children in Zimbabwe, and we wish him much success in his continued involvement with this charity.



*Lesedi Primary School,  
Intabayengwe Village*

