



What to Do if You Have a Concern about the Quality of Care from a New York Doctor

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Advice and resources for dealing with quality concerns

For many of us, our doctor is one of the most important people in our lives. We trust him or her to help keep us well or care for us when we're sick. There are about 70,000 actively practicing doctors in New York, and most provide high-quality care to their patients. There are times, however, when people have concerns about the quality of care received from a doctor. If this happens to you or a loved one, this tip sheet can help. It gives you:

- Practical advice about what to do and who to talk with, including phone numbers and addresses
- Links to resources that can help

This tip sheet explains steps you can take in your doctor's office to deal with your concerns about quality. It also tells you how to contact places that regulate or oversee doctors. You can also consider filing a lawsuit, but that is not the focus of this tip sheet.

Is it worth it to pursue a concern about quality?

For many of us, it's not easy to act on a concern about the quality of physician care that we or our loved ones receive. It's even harder if we try to talk with a doctor or their staff about our concerns, but don't feel we're getting anywhere. The process can be stressful, frustrating and take a long time. And in the end, it's possible that others may not agree with the way we see the situation.

Is it worth the time and energy to take action about the quality of a doctor? Only you or your loved one can decide. In making the decision, think about the continued harm that might take place if you do nothing—and think about how the actions you take might lead to better care for future patients and their families.

What is quality of care?

Quality health care is doing the right thing, at the right time, in the right way, for the right person and with the best possible results. Generally, care delivered by doctors and other health professionals must meet a "standard of care." That standard is the expected level and type of care provided by the average competent health professional in a given situation. A standard of care is based on good scientific studies or agreement amongst experts.

What can you expect as a patient regarding the quality of physician care?

To become a doctor, students have to go through a long training process. This includes hands-on learning in hospitals and other health settings. When they finish training, doctors promise to "do no harm" to their patients.

As professionals, doctors voluntarily follow codes of ethics that lay out the way they are to behave. For example, the American Medical Association Code of Ethics notes some patient rights in the patient-physician relationship:

- The patient has the right to receive information from physicians and to discuss the benefits, risks and costs of treatment options.
- The patient has the right to make decisions regarding health care recommended by his or her physician and may refuse any recommended treatment.
- The patient has the right to courtesy, respect, dignity, and timely attention to his or her needs.

The American Board of Internal Medicine Foundation and other partners have published a new physician code or charter. The Foundation works with an organization that certifies physicians caring for adults. This document specifically addresses quality and competence in what is expected of doctors:

- Physicians must be committed to lifelong learning and be responsible for maintaining the medical knowledge and clinical and team skills necessary for the provision of quality care.
- Physicians must be dedicated to continuous improvement in the quality of health care. This commitment means not only keeping their skills up-to-date, but also working with other professionals to reduce medical error, increase patient safety, keep an eye on costs and make sure patients are getting the best possible care.
- Physicians are required to provide care that is based on the wise and cost-effective management of limited resources. This includes avoiding unneeded tests and procedures that expose patients to avoidable harm and expense.

What are examples of quality concerns you might experience?

Health care quality concerns could arise for a variety of reasons while you are under a doctor's care. Some concerns are the result of a specific action a doctor or staff member takes (or doesn't take) as they treat you or a family member. This includes misdiagnosing a condition or prescribing a drug that you shouldn't take.

Other quality concerns result from how well the doctor's staff work together to safely care for you. For example, making sure that the right medical chart goes with the right patient or that patient messages are delivered on time.

Some actions are always cause for concern, such as when a physician or physician office member has a drinking problem or uses drugs. Other actions may not affect your health at all; some may cause inconvenience or pain; others may cause serious harm.

The most common complaints received by organizations that oversee or regulate doctors nationwide are:

- Over-prescribing drugs or prescribing the wrong drug
- Failing to diagnose a medical problem that is found later
- Misreading x-rays to identify a medical problem
- Failing to get back to a patient with medical results in a timely manner, which leads to harm to that patient
- Failing to provide appropriate care after a surgical procedure

What should concern patients the most—and what concerns organizations that oversee doctors—is when there is a pattern of problems with a doctor. If something happens once, it is usually a mistake. If it happens again and again, it may indicate a larger problem of competence or quality that could hurt any patient.

What steps should you take if you have a concern about quality?

Step 1 — Talk to your physician or another staff member who can address your concern.

Depending on what kind of problem you have and your relationship with your doctor, you might talk directly to him or her or to another office staff member about your concern. For example, if your concern relates to the way the doctor's office is organized, the doctor and staff may not know how it feels to be a patient in their office. They might be particularly interested if you thought mistakes could result from what you see. Speaking honestly about your concerns gives your doctor or another staff member the opportunity to explain why things happen the way they do. It may also lead to changes in the office.

If your concern is more medical in nature—for example, getting the wrong prescription, the wrong dose, or the wrong referral—you should speak with the doctor directly to correct the problem. Then think about whether this has happened before and be alert to whether it happens again.

If your concern is with a doctor that you've been referred to for specialty care, share your concerns about that physician with your personal doctor. It will help your doctor decide whether to refer other patients to that physician. Or, if your concern is with a doctor you're seeing while in the hospital or another health organization, again, let your personal doctor know. He or she may be able to tell you who in the facility can help you.

Step 2 — Leave the practice.

If you continue to have concerns about the quality of a doctor and their staff, you have the option to leave the practice and go to another doctor. Remember to check with your health insurance plan to see which doctors work with your plan and which are taking new patients.

You do not need to tell your doctor why you are leaving, but you might consider writing a note with your concerns. The more specific you are, the more he or she might be able to understand your views and possibly take action on them.

If you leave the practice, you should request copies of your medical records to take with you. Under New York law, you have the right to request a copy of your medical records. The doctor cannot charge more than 75 cents per copied paper page.

The New York Department of Health has more information on accessing your medical records:

<http://www.health.ny.gov/publications/1443/>

Step 3 — File a complaint with the New York State Department of Health, Office of Professional Medical Conduct.

If you feel you should take action to protect yourself and other patients from a doctor who you think poses a safety threat, you can file a complaint with the Office of Professional Medical Conduct (OPMC) within the New York State Department of Health. OPMC's mission is to protect the public from misconduct by physicians, physician assistants and specialist assistants. OPMC is the investigative arm of the State Board for Professional Medical Conduct (Board) that is made up of doctors and consumers. This Board has the power to discipline a doctor—to decide whether and how a doctor can practice medicine in New York.

Be aware that if your case is pursued by OPMC, the process can take a long time (on average, about 9 months) and involve many steps before action, if needed, is taken against a doctor.

There were 8,501 complaints received by the OPMC in 2010, about half from the public. The Board issued 307 “final actions” against doctors. These actions included revoking or suspending their license or placing some other restriction on their ability to practice in the state.

Filing the Complaint: OPMC has a consumer complaint form that you should use to file your complaint. It is available online to print out, fill out and mail in, or you can call them and have them mail you a copy: 800-663-6114.

Office of Professional Medical Conduct Complaint Form

<http://www.health.ny.gov/forms/doh-3867.pdf>

New York State Department of Health
Office of Professional Medical Conduct
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180-2299
800-663-6114

The investigation: When your complaint is received, OPMC staff review it to determine whether:

- 1) It concerns a doctor, a physician assistant or a specialist assistant, and
- 2) The complaint involves potential medical misconduct.

Examples of medical misconduct include:

- Practicing the profession with negligence on more than one occasion (for example, failing to do basic diagnostic tests, not recognizing or acting on common symptoms, not using accepted or effective treatments or diagnostic procedures, or not referring a patient to a specialist when appropriate).
- Practicing the profession with incompetence on more than one occasion-for example, not having the ability or skill to recognize patients' symptoms.
- Practicing the profession with gross negligence or gross incompetence on one particular occasion.
- Failing to make available a patient's medical records that have been requested and paid for.
- Ordering excessive tests or treatment.
- Abusing alcohol or drugs.
- Abandoning or neglecting a patient in need of immediate professional care.

A full description of definitions of professional misconduct is available here:

http://www.health.ny.gov/professionals/office-based_surgery/law/6530.htm

If staff find your complaint doesn't meet the medical misconduct criteria, the process stops (which occurs in just under half of all cases). In that case, you will be notified by letter.

If the complaint goes forward, it is assigned to an OPMC investigator for further investigation. The investigation may involve contacting you, requesting medical records, reviewing other data about the doctor and holding an in-person interview with the doctor. In some cases, an outside Board-certified physician reviews the records. After the investigation, if no misconduct is found, the case is closed. However, it is maintained on file so if others complain about this doctor, there is evidence of your concern in the records.

Next steps: If potential misconduct is found, OPMC staff prepare charges against the doctor and the case is referred to a three-member investigation committee (made up of two doctors and one layperson) of the Board for Professional Medical Conduct. At this point, the charges against a doctor are available on a website (see Physician Discipline Database below). The investigation committee can recommend a hearing, additional investigation, dismissal, warnings or consultations with the doctor. Information about doctors who receive these warnings or consultations is not publicly available. The

committee can also decide that the doctor poses an imminent threat to the public and recommend that their license be immediately taken away.

If the investigation committee recommends dismissal of your case, you will be notified. There are no appeal rights unless you have new information. Again, the case about the doctor stays on file at OPMC.

Cases that proceed go before a Board hearing committee—again composed of two doctors and a layperson. The hearing committee hears evidence and decides whether the doctor is guilty of medical misconduct. As the person making the complaint, you may be asked to testify. If the doctor is found guilty, the committee also decides on a penalty. Penalties range from community service to taking away a doctor's license to practice in the state or putting them on some type of probation. Either the doctor or the OPMC can appeal the hearing committee's decision to an administrative review board (made up of three doctors and two laypersons). Doctors can also appeal to the New York State legal system.

It's important to note that the Board at any point along the way may agree to settle the matter with the doctor.

How long does this process take? There are no required timelines for how long the entire complaint process takes. Review of initial complaints is usually done in a matter of weeks. A complicated case that goes through the entire disciplinary process can take up to 2 years. In 2010, the average time to complete a case was about 9 months.

Can I remain anonymous when I file a complaint? Under New York law, the person who complains to OPMC remains confidential; however, in the course of the investigation, the doctor may be able to figure out which patient's care is in question. Bear in mind, however, that many types of people can complain about a doctor's practice including family members, other patients, doctors or health professionals, medical malpractice insurers, or health insurance companies.

A complaint can be filed anonymously—that is if you don't want to give your name or contact information. However, OPMC has a hard time investigating such complaints and they may not be able to pursue them.

Additional information about the Office of Professional Medical Conduct complaint process:
Other information about filing a complaint with the OPMC:

http://www.health.ny.gov/professionals/doctors/conduct/file_a_complaint.htm

Where else can you go with a concern about the quality of a New York doctor?

Medicare: If Medicare (the federal health insurance program for people over age 65 or people under 65 who are disabled) pays for the care you're receiving from a doctor, you have an additional place to go with a quality concern. Medicare pays a Quality Improvement Organization (QIO) to take complaints from Medicare patients. Be advised up front, however, that these organizations primarily help doctors improve the care they provide. They do not punish doctors.

In New York, the QIO is called Livanta. You can call Livanta at the following number: 866-815-5440

Explain to the person who answers the phone what your concerns are. Depending on the type of problem you are having, they may be able to help you right away. For example, with your permission, they may be able to call the doctor's office to see if they can help solve your problem. In other cases, they may ask you to send your complaint in writing using a complaint form.

After you file a complaint with Livanta and allow release of your medical records, a doctor will review your records. After the review, you will get a letter indicating whether the standard of care was met in your case or not—that is, whether the expected level and type of care was provided.

For more information about the Livanta complaint system and to access an online complaint form: <http://bfccqioarea1.com/>

Physician Organizations

The physician's specialty society: A few physician specialty societies (the professional association affiliated with the physician's type of practice, for example, pediatrics or orthopedics) accept and have a process to review complaints against their members. For example, the American College of Physicians (ACP), an association of internal medicine doctors who generally treat adult patients, has a process for addressing "ethical complaints"

information about the ACP process:

http://www.acponline.org/running_practice/ethics/complaints/

Local medical societies: In some New York counties, local medical societies receive patient complaints. They try to help by mediating between a member physician and a concerned patient. For example, the Monroe County Medical Society offers a mediation service that tries to resolve complaints through education, problem solving and advocacy.

Here's a list of medical societies in New York State. Contact your local society to see if they have such a program:

http://www.mssny.org/mssnycfm/mssnyeditor/File/2013/About/Committees/042313/website_county_society_officers.pdf

Consumer Organizations

The Safe Patient Project (SPP) is a project of Consumers Union (publishers of *Consumer Reports* magazine) that seeks to eliminate medical harm in the health system. The Project is collecting stories about patients' experiences and concerns with their care in hospitals and from physicians across the nation, including New York. While they can't help with your specific complaint, the collective power of stories from patients and families can help SPP pass laws and seek other changes to make the health care system safer.

<http://safepatientproject.org/>

In a joint effort with the Empowered Patient Coalition, the Safe Patient Project is conducting a survey about medical events from the perspective of the patient. For more information about the survey:

<http://empoweredpatientcoalition.org/report-a-medical-event>

ProPublica is a nonprofit investigative journalism organization. They have an online patient harm questionnaire that asks for details about your concern. They write articles about people's experience of patient harm to bring public attention to these issues. The organization won't publish any information that would identify you without your permission. ProPublica also sponsors a Facebook group that can connect you with other patients who have been harmed.

Here is a link to their patient harm questionnaire:

<http://www.propublica.org/getinvolved/item/have-you-been-harmed-in-a-medical-facility-share-your-story>

On Facebook, search for: ProPublica Patient Harm Community

My Health Counts! is a project of the P2 Collaborative of Western New York, a non-profit organization dedicated to improving the health of people in Western New York. Its patient website includes a range of information about what to expect from a doctor visit, questions to ask and links to other relevant tools and resources.

<http://www.thinkbright.org/myhealthcounts/index.asp>

Where can you find out information about doctors in New York?

New York State Professional Misconduct and Physician Discipline Database: A database that includes all doctors who have had some type of disciplinary action taken against them.

<http://w3.health.state.ny.us/opmc/factions.nsf/physiciansearch?openform>

New York State Physician Profile: A site maintained by the New York Department of Health that includes background information about the physician's medical education, Board certification, malpractice history and other information. However, information about complaints against a physician is not available.

<http://www.nydoctorprofile.com/>

New York State Department of Health Adult Cardiac Surgery Reports: Provides information on cardiac surgeons who conduct coronary artery bypass surgery, valve surgery or angioplasty (also known as percutaneous coronary intervention or PCI) in New York. The reports are technical and the data on doctors is not up to date, but the information may still be of interest or use.

<http://www.health.ny.gov/statistics/diseases/cardiovascular/>

Other useful information:

If you're concerned about the quality of care in a New York hospital, managed care plan or HMO, or nursing home, or the care provided by registered nurses, here's where to go for more information:

IPI Hospital Tip Sheet:

What to Do if You Have a Concern about the Quality of Care in a New York Hospital

<http://www.informedpatientinstitute.org/HOSQuality-NY.php>

Managed Care:

New York State Department of Health - Complaints and Appeals

http://www.health.ny.gov/health_care/managed_care/complaints/index.htm

Health Care Bureau of the New York State Office of the Attorney General

<http://www.ag.ny.gov/bureau/health-care-bureau>

IPI Nursing Home Tip Sheet:

What to Do if You Have a Concern about the Quality of Care in a New York Nursing Home

<http://www.informedpatientinstitute.org/NUHQuality-NY.php>

Registered Nurses:

New York Office of the Professions

<http://www.op.nysed.gov/opd/complain.htm>

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