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Is the Norwegian System of Patient Injury Compensation in the best interests of patients?

OPINIONS

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The Norwegian System of Patient Injury Compensation and the Patients' Injury Compensation Board have been harshly criticised in reports on the Norwegian Broadcasting Corporation's NRK News by patients and lawyers as well as by former and current medical experts within the system. These reports have aroused considerable media interest. Short, edited TV reports and interviews, however, do not provide adequate background information about what the criticism is based on, and to what degree it is justified.

The Norwegian System of Patient Injury Compensation is a government agency under the Ministry of Health and Care Services and deals with complaints about incorrect treatment in the public and private healthcare services. Skilled case officers collect all patient records and documentation of relevance in assessing the complaint. The case officers then evaluate what area of expertise the complaint concerns. Subsequently a doctor with special competence in this area will be tasked with assessing the complaint. After reviewing the case

documents, the expert then writes a statement. The statement is submitted to the patient and the treatment institution for comments before a decision is reached.

Most patients benefit from this part of the scheme. Without such support, many patients would find it difficult to file a claim on any basis other than their own subjective feeling of having received incorrect treatment. Moreover, case processing is completely free.

Expert assessment of the complaint

Reviewing the patient records and diagnostic imaging is a major task for a medical expert. In most cases, it is sufficient that one expert assesses the treatment but in some cases several experts are needed to assess the treatment at different stages of the course of illness. In these cases, the Norwegian System of Patient Injury Compensation applies the principle that each expert only assesses the area in which he/she is a formal specialist. A specialist in general practice evaluates the treatment the GP gave the patient, a specialist in internal medicine evaluates the medical treatment while a surgeon evaluates surgical treatment, and so on.

The expert must determine whether the treatment was in line with good medical practice. If the treatment is substandard, the expert must then decide whether there is more than a 50 % likelihood that there is a causal connection between this and the patient's injury. Both these assessments are based on the expert's judgement and are therefore not necessarily objective.

What deviations should be documented?

When a patient complains about a treatment pathway, the expert is obliged to point out *all* major and minor deviations from normal treatment in his/her statement, as is the patient's entitlement. However, at the Norwegian System of Patient Injury Compensation's half-yearly meetings of internal medical experts and the management group, the internal experts are urged to focus on factors that may be relevant to the injury.

However, since these assessments are discretionary, I am of the opinion that it is vital that all major and minor deviations in the treatment pathway are highlighted. If treatment, in addition to a major deviation, is also characterised by a number of other deviations from good medical practice, this may suggest generally substandard treatment. All deviations from good medical practice should therefore be included in the statement, not least out of consideration for the patient.

Disagreement among experts

These days, medical treatment is not as specialised as one might think, as Professor Geir Hoff and others have pointed out (1). Guidelines such as regulations on patient records, guides, structured pathways and the like often govern patient treatment. Most doctors can therefore easily assess whether good medical practice has been followed, also in specialties other than their own. For this reason, a surgeon can assess whether the GP has assessed the patient well enough and referred him/her for further treatment at a sufficiently early stage; the surgeon can also assess whether the anaesthetist was in full control of the patient's blood pressure and oxygen saturation during the operation, to mention a few examples.

Several studies have shown that violations of general medical treatment procedures and standard guidelines are often the cause of incorrect medical treatment (2, 3). If these deviations are not pointed out, it may mean that patients do not receive the compensation they are entitled to, or that they only receive compensation after going to court where other experts can contribute to the assessment.

In Case 2013/01876 I found several clear deviations in the treatment that the specialist had overlooked. Since I was not formally qualified to assess this, my immediate manager and the specialist asked me to change my statement as regards these points, which I was unable to do for reasons of professional ethics. However, in another case where there was similar disagreement, the expert without formal specialty qualifications was forced to back down. As a result, the statement did not describe the medical disagreement between the experts, and consequently the patient was not informed about this.

Another case (2007/01186) related to a serious treatment injury illustrates the fact that assessments by other colleagues without formal qualifications may be of crucial importance. Both the Norwegian System of Patient Injury Compensation and the Patients' Injury Compensation Board rejected the complaint on the basis of the expert assessment of specialists in two different specialties. Since the Board was summoned to appear in court, a lawyer asked me to evaluate the case as an expert witness for the patient. As a paediatrician, I discovered material and serious errors in the treatment pathway in both these specialties. When the Board became aware of my statement via the pleading to the court, it was decided to re-examine the case, and the notice of proceedings was withdrawn.

These cases underline that a generally competent medical specialist is clearly capable of evaluating the course of treatment in other specialties. Such assessments can also counteract the herd mentality that is still rife in many specialties of (preferably) not criticising colleagues. Therefore it is difficult to understand why the Norwegian System of Patient Injury Compensation stubbornly clings to this silo mentality as regards competence – this has no place in modern medicine.

How important are the experts?

The Norwegian System of Patient Injury Compensation points out that NRK erroneously reports that the medical experts decide cases (4) whereas other information also constitutes an important basis for the decision, for example, statements from the treatment institution, other documentation and the patient's own descriptions. In addition, the statements must be considered in the light of the applicable legislation, and this is not the task of the medical experts.

Case 2012/03173 concerning delayed diagnostic workup and treatment illustrates this. For several years, this case constituted a stressful conflict for me between loyalty to the Norwegian System of Patient Injury Compensation as my employer and my own professional ethics responsibilities. The complaint was originally rejected because the complaint was said to have been submitted too late and that the case was therefore legally time-barred. However, because of an administrative error, I was asked to give an expert assessment of the complaint. I concluded that the patient had been subject to incorrect treatment and had been the victim of a repudiation of liability on the part of the health services to a degree I had never previously experienced.

I was therefore very surprised when I was notified that my expert assessment would not be evaluated since the case had been rejected on legal grounds. The Norwegian System of Patient Injury Compensation would therefore not deal with the complaint, and consequently the patient would not be informed of my assessment. Following repeated pressure from me, it has now finally been decided to send my statement to those involved more than three years after it was written. It is incredible that the Norwegian System of Patient Injury Compensation can decide that a case is time-barred without any assessment by medical experts.

Biased case processing?

Both patients and health personnel have claimed that patient injury compensation schemes appear to have a vested interest in patient claims preferably being unsuccessful (5). Nevertheless, the Norwegian System of Patient Injury Compensation consistently denies that it has rejected patients' claims on insufficient grounds (4, 6), pointing out that only 10 per cent of the decisions in cases appealed to the Patients' Injury Compensation Board are reversed (4). They forget to mention that a number of cases proceed to court and are won there. However, very many of the cases that patients (finally) win in the district court are appealed to a higher instance by the Patients' Injury Compensation Board.

Nevertheless, the question of substandard treatment and the causal connection with an injury represents a discretionary medical assessment that different experts may make differently – such is the everyday world of medicine. Therefore, it is beyond comprehension that grounds are found for appealing a judicial decision where the judges have concluded on the basis of an overall evaluation of the various legal and medical arguments that the patient has a

rightful claim for compensation. Recently there was a case where the Patients' Injury Compensation Board appealed a judicial decision in its disfavour all the way to the Supreme Court of Norway, where it also failed to win the case (7).

When a case of incorrect medical treatment is appealed all the way to the Supreme Court, the motive for the appeal is probably based on legal prestige rather than an objective assessment of the causal connection between incorrect treatment and patient injury. Either way, it is reprehensible.

Management group without medical expertise

Although many aspects of the Norwegian System of Patient Injury Compensation and the Patients' Injury Compensation Board can be criticised, I believe that the majority of patients and the health care service should be grateful for the existence of this scheme in Norway. Even though a number of aspects can be improved, I do not agree with the allegation that the Norwegian System of Patient Injury Compensation is a bastion of power and arrogance (8, 9).

However, there appears to be a high threshold for taking criticism seriously, and there is strict internal justice. Skilled experts who present objective criticism internally, or whose testimony as expert witnesses in court is a contributing factor to the patient being successful in the court action after having his/her claim rejected by both bodies, are often marginalised or removed from their position. Moreover, the silo mentality previously mentioned in the assessment of experts' qualifications has no place in modern medicine and benefits neither the organisations themselves nor the patients.

In all likelihood, a number of these aspects can be explained by a lack of medical competence in the management group, which results in legal aspects such as formal qualifications and legislation often being accorded greater importance than medical issues. It should go without saying that the management group in this organisation should possess broad medical competence.

The patients in the cases mentioned or their next of kin have consented to the publication of the article.

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