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On fear and grief

Peter Carter, APLA National President



Peter Carter

Medical Defence Organisations have for a long time promoted a culture of denial among doctors called to account in the courts. This reached a new low earlier this year when the UMP placed a series of medical magazine ads featuring Dr Black, a Defendant in the Lipovac case.

The advertisements portrayed Dr Black as having been vilified by the courts even though he had adopted 'standard practice'.

They carried a healthy dose of fear mongering calculated to have doctors increase their policies to at least the \$10 million which was said to be the 'extraordinary figure' which the court had attributed to Dr Black's negligence. They also featured the doctor's endorsement of the insurer as 'scrupulously fair' and 'understanding of (his) feelings'.

The desired outcome was to have doctors darkly despising consumer lawyers and the legal system and at the same time lauding the white knight insurer while writing their generous premium cheques.

The advertisements make transparent the motive and purpose of the MDO anti justice campaign. They also illustrate how individual doctors are being exploited for the purpose of sustaining it and are being enticed to shelter among the familiar comfort of denial and anger rather than confront the intolerable reality of the consequences of bad doctoring.

For them, the intolerable truth is that doctors are accountable for their actions and that the arbiters of proper standards of care are the common law courts, not medical tribunals conducted by their peers.

It is far more comfortable, rather than face the truth, to lash out against the

legal profession. This is acted out in many ways. There is the resentment that it is a Judge (seen by doctors as members or former members of the legal profession) who is required to determine fault. Retaliation is an almost weekly theme in journal editorials and even newspaper columns where the distortions have found favour among journalists who also resent accountability and the lawyers who deliver it. I have even seen in medical journals, evangelical pieces one of which likened doctors to God and lawyers to the devil. The weekly lawyer joke column in a fortnightly medical magazine is a seemingly benign but profoundly viscous feature of this behaviour.

The practice and promotion of such resentment is dangerous, not to lawyers but to doctors themselves in that it reinforces the unhealthy consequences of their denial.

Then there are the countless features of 'bargaining', the unhealthy refusal to accept the current placement of the goal posts. The clearest example of this is the promotion of risk management and better medical practice but only if the rules are changed so doctors don't have to face their terror of accountability. The statement in a recent UMP journal, by its chairman: *There is an urgent need for risk management to reduce the incidence of negligence and for tort law reform to make compensation more manageable*, exemplifies this.

One MDO contracted a law school professor as a 'tort reform research fellow' to plot a number of specific strategies of confabulation to dilute the effectiveness of our justice system to deal with bad medical practice. American insurance executives have been trotted out as virtu-

ous experts to confer legitimacy upon these distortions. The specific proposals include limitations on expert evidence, caps on damages, structured settlements and a bureaucratic compensation system.

The phrase *tort reform* is itself the ultimate indicator of the perversity of their bargaining strategy. This tag already belongs to campaigns conducted over many years by organisations like ours, fighting to reclaim the rights stolen by business and government from workers and road users. To label a campaign for the **elimination** of individuals' rights, a reform is a stunning perversion surely even to these proponents.

Professionals, including doctors have eschewed other opportunities for service to their patients or clients. In so doing they are naturally distressed if they are confronted with a challenge relating to their professional judgment - especially if they are successfully sued. This is however a loss which must be dealt with and ultimately accepted.

Given the extent of energy being invested by the medical insurers and professional associations in fostering denial,

anger and bargaining and their exploitation of fear, the prospects of an acceptance by doctors that they should be accountable for their actions according to the ordinary laws of the land is distant.

One of the great tragedies of the medical profession's position is the way in which it leaves the victim, the doctor's own patient. Surely the delivery of fair compensation by an impartial legal system to casualties of negligent or reckless treatment is desirable. Doctors, by the deceptions of their insurers and associations, have become numb to this. The twist upon twist that they have constructed upon the truth leaves their patient - the victim - insignificant in their denial process.

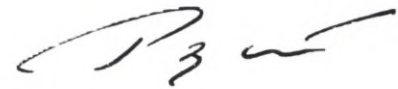
Lawyers are here to serve the law and through it, the people. One of the most important features of our justice system is that it is blind. There is no scope for collusion or distortion in favour of any person or group, however powerful. The medical insurance industry, infuriated by its refusal of special accommodation, will continue the attacks designed to weaken the delivery of justice, regardless of the

casualties. It therefore becomes our duty to defend our fundamental institutions against the sickness raged against them.

Membership Certificate

I have pleasure in enclosing with this edition of *Plaintiff* your Certificate of Membership. It is fitting at this auspicious juncture to our history that for the first time, membership certificates have been provided. The certificate is a small reminder of the powerful bonds we share and how important this collective endeavour is to us all.

I wish all members and their families a happy Christmas and satisfying, constructive and safe year in 1999.



Peter Carter, President

Letter to the President:

APLA broadcast fax to members

Dear Peter

On the eve of the Federal election I received a "Broadcast to Members" setting out the positions of the various political parties on topics of interest to APLA members.

I note that recommendations were made that APLA members could canvass votes of clients, staff, family and friends presumably either for the ALP or the Democrats.

I am appalled that APLA should be making these recommendations to members.

I have absolutely no doubt that one of a number of reasons why we were successful in our recent opposition to statutory amendments in South Australia was the fact that no political party could point

the finger at us as being anything else but apolitical. Whilst I have no opposition to APLA pointing out to members the positions of the various parties on topics relevant to APLA, I believe that it is quite another thing to suggest to members generally that they should become politically involved either for or against a particular party.

With best wishes.

Yours faithfully,

Angela Bentley,
Angela Bentley & Associates,
Adelaide

Response:

Political parties are accountable to the public for their policies and we must remain diligent and uncompromising in exposing the consequences of their choices.

APLA is, however, and always should be, apolitical in a party sense.

The broadcast was not intended to direct members to vote in a particular way but to illustrate the differing positions of the three parties in a way which would enable them to form their own view.

Our constituents are advantaged by members being made aware of these issues and by members advocating to others what conclusion they fairly draw as a result.

Peter Carter,
APLA National President