Transparency, Apology, and Disclosure of Medical Errors

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Objectives

1. Describe the characteristics and benefits of disclosure and a good apology
2. Use apology effectively with patients and family members, staff, colleagues, and friends
3. Guide others (colleagues or ‘disclosure team’) in the use of disclosure and apology
Medical Errors are Pervasive

General Public

• 30-45% report error affecting self or family member 21% report error resulting in personal harm

Physicians

• ?

Most errors are made by good but fallible people working in dysfunctional systems
Patients want to be told!

• 87% think physicians should be required to tell patients about errors  
  (Kaiser/AHRQ poll, 2006)
• 91% say patients should always be told, even if no harm.  
  (Mazor et al, 2004)
• 92% want to know about complications  
  (Hingorani et al 1999)
• 98% want even minor errors acknowledged  
  (Witman et al 1996)
Physicians often DON’T disclose... physicians who discussed error with patient/family

4% (Residents; Engel et al 2006)
6% (Residents; Mizrahi 1984)
9% (Physicians; Lander 2006)
21% (Physicians; Allman 1998)
24% (Residents; Wu et al 1991)
28% (Residents; Hobgood 2005)
When asked directly physicians said they would . . .

<table>
<thead>
<tr>
<th>Errors that Result in --</th>
<th>Minor Harm</th>
<th>Major Harm</th>
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<tbody>
<tr>
<td>Hypothetically Report</td>
<td>73%</td>
<td>92%</td>
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<tr>
<td>Have Actually Reported</td>
<td>18%</td>
<td>4%</td>
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Apology

1. Communicate remorse

2. Disclose
   - Take responsibility
   - Offer an explanation

3. Listen to the patient’s perspective (facilitate expressions of emotion)

4. Empathize

5. Offer reparation
Rationale for Apology (and Disclosure)

It is the *human* thing to do
California Apology Law
Evidence Code 1160

The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action.

A statement of fault, however, which is part of, or in addition to, any of the above shall not be inadmissible pursuant to this section.
Likely to Reduce the Cost of Malpractice Litigation

• Patients who believe they are receiving incomplete information about an error often litigate to learn more
• Apologies may help deter legal action and promote more effective settlements
• Damage awards are often higher if errors were not disclosed
The Trial Lawyer Perspective

“I would never introduce a doctor’s apology in court. It is my job to make a doctor look bad in front of a jury, and telling the jury the doctor apologized and tried to do the right thing kills my case.”

- President, South Carolina Trial Lawyers Assoc.
Summary

Apology and disclosure . . .

• Should occur more often
• Is important and justifiable
• **Can be (dramatically) improved**
Adverse Events/Never Events/Sentinel Events/Misdaventures/Unintended or Unanticipated Outcomes

• System (Lost Lab Result)
• Medicine (Wrong Diagnosis or Wrong Prescription)
• Communication (Poorly Delivered Empathy or ‘Bad News’)

System Events

The Lost Test Result
What NOT To Say?
System Events

The Lost Test Result
What DO You Say?

• Use genuine compassion to communicate remorse
• Take responsibility
• Listen to and respect patient’s perspective
• Provide a good explanation using simple terms
• Empathize
• State what you can or will do
• Follow-up
What DO You Say?

• Use genuine compassion to communicate remorse
Communicate
Remorse

I’m truly sorry
What DO You Say?

• Use genuine compassion to communicate remorse
• Take responsibility
Take responsibility

“That the communication wasn’t better”

“That you didn’t receive the test result quicker”
Ways of Failing to Take Responsibility for the Offense

Offering a vague and incomplete offense

“I apologize for whatever I did”

Using the passive voice

“Mistakes were made”

Making the offense conditional

“If I did anything wrong”

Questioning whether the victim was damaged

“To the degree that you were hurt”
What DO You Say?

• Use genuine compassion to communicate remorse
• Take responsibility
• Listen to and respect patient’s perspective
• Provide a good explanation using simple terms
Elicit Perspective and Add A Good Simple Explanation

• Ask what they know

• Tell them what they need to know
  — Meet patient ‘where they’re at’

• Avoid jargon

• Small doses of information

• Ask for understanding
Demonstrate Listening
Let the Patient Talk

Doctors interrupt patients: mean ________ seconds

- Only 23% of patients completed opening statement

- If uninterrupted, patient took mean of 60 seconds and not > 2 1/2 minutes.

- Longer the time before interruption --> more complaints elicited

- Order in which complaints were given did not correlate with clinical importance.

Beckman and Frankel; Ann of Int Med Nov 1984
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Communication Event

The Angry Family Member
Missed Clues (Empathic Opportunities)

• Thoracic surgeons or oncologists responded to 39/384 empathic opportunities (10%)
• 50% of these statements occurred in the last one-third of the encounter, whereas patients concerns were evenly raised throughout the encounter.
• Conclusion: Too little too late

Morse, et al 2008
Recognize Clues (Surgery & Primary Care)**

- Clues per visit
  - S: 1.9
  - PC: 2.6
- Emotional in nature
  - S: 60%
  - PC: 70%
- Responded positively to patient emotions
  - S: 38%
  - PC: 21%

Levinson, et al 2000 JAMA
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Medicine Event:

Wrong Prescription
Make reparations
How Apologies Heal: The Case for Changing the Dialogue

- Restoration of self-respect and dignity
- Both parties have shared values
- Offended party will be safe in future encounters: a promise for the future
- Expressing the impact of the offense and knowing it has been heard
- Empowerment of the offended party
Disclosure and apology can be handled by an individual provider or a team

Disclosure/Apology Team (Key Functions & Roles)

• Provider and/or Representative (Remorse; Explanation in lay terms)
• Clinical expert (Medical aspects of the case including recovery)
• Reparation expert (Compensation & follow-up)