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Ethical Issues: Saying I'm Sorry

Patients respond more favorably and are more trusting of physicians who provide full disclosure about medical errors than physicians who are less forthright or purposely hold things back when things go wrong. But there is no guarantee that full disclosure will prevent a lawsuit. In general, though patients may trust their physicians more if they are truthful, they expect restitution of some kind if they are harmed.

In a recent study nearly all patients, 99 percent, reported a desire for full disclosure if a mistake is made, but most, 83 percent, still want financial compensation if harm occurs, even if full disclosure is made.¹ The good news is that when disclosure does occur patients tend to be more satisfied with their physician and the care they receive, they have greater trust in the relationship, and there is much less likelihood that the patient will seek to change doctors. Patients also desire an apology and emotional support when errors are made and tend to respond positively to the physician when an apology is given. However, physicians in general are still very hesitant to disclose errors and when they do often “choose their words very carefully.” Physicians are also very hesitant to offer an apology or emotional support when mistakes are made fearing that this may be construed as an admission of guilt and open the door to litigation.² So there is an interesting dichotomy: Professional honesty may be rewarded with increasing trust and satisfaction from patients who still expect accountability for harms, intended or not. Reporting and disclosing medical errors, like many moral choices in life, may require personal sacrifice, but this does not preclude our moral obligation to do it.

An innovative experiment is taking place in Illinois where a group of doctors, lawyers, health executives, and patients have formed a coalition called *Sorry Works!*³ Their contention is that 60 percent of all medical malpractice suits are not about money, but a reaction to feeling abandoned and lied to when there is a bad outcome. The resulting environment of shame and blame following such events often makes families and patients feel shut out and angry. The idea, as reviewed in *Medical Ethics Advisor*, is that communication and compensation follow quickly when medical mistakes occur.⁴ Following a timely review of the case, the hospital contacts the family/patient and schedules a meeting. The hospital also advises the family to hire an attorney to represent and accompany them to the meeting, at which time the case is reviewed again in detail.

If medical error is determined to have contributed to a bad outcome, the hospital, physician and team step forward to apologize to the family/patient, after which two very important events follow during the meeting: A fair settlement is offered and the

family/patient are told by the hospital and physician how they plan to ensure that a similar mistake won't happen again. If no mistake was made, sympathy and full disclosure of the events are offered.

In the best case scenarios the patient's and families' questions are answered, they feel fairly compensated, and a lawsuit is avoided, saving everyone a great deal of financial and emotional expense. Though this approach does not guarantee that patients and families will not choose to go to court, the chances are much less that they will. Typically trust is sustained, patients and families are much more satisfied with the care and treatment received, and providers feel much less threatened and exposed when these situations arise because the outcomes have been so much more satisfactory for everyone concerned.

For more than 17 years, the VA hospital in Lexington, Ken. has employed the "extreme honesty approach" on which *Sorry Works!* is modeled and reports that lawsuits, settlement costs, and defense costs have dropped dramatically. Only three cases have gone to trial and the average settlement was \$16,000. The national VA average for such settlements is \$98,000. JACHO has used the VA Lexington model to develop a protocol that all hospitals — private and public — should follow to be accredited.

Sorry Works! does not discourage patients and families from filing lawsuits after a full explanation and settlement offer, if they feel compelled to do so. However, the University of Michigan hospital system reduced lawsuits by 50 percent and annual defense litigation expenses from \$3 million to \$1 million with this system of disclosure and apology.

The honesty and apology model works better than state-imposed caps on jury awards because it works faster, does not involve the courts, and serves to foster trust and communication between those at the bedside most intimately involved and most dramatically harmed by the event — the patients, families, and their providers. After all, the welfare of our patients is about the relationship, not the law, and the moral grounding that binds. Being human means that we make mistakes from time to time. Saying "I'm sorry" may offer the greatest degree of healing at such times.

1. **Mazor KM, Simon SR, Yood RA, et al.** Health plan members' views about disclosure of medical errors. *Ann Int Med.* 2004; 140(6):409-18.
2. **Gallagher TH, Waterman AD, Ebers AG, Fraser VJ, Levinson W.** Patients' and physicians' attitudes regarding the disclosure of medical errors. *JAMA.* 2003; 289(8):1001-7.
3. **Kraman S, Hamm F.** Risk management: extreme honesty may be the best policy. *Ann Int Med.* 1999; 131:963-967.
4. *Medical Ethics Advisor.* March 2005; 21(3): 25-36.