



## **WHEN APOLOGY IS APPROPRIATE — AND WHEN IT'S NOT**

*The Medical Protective Company*

What is the most appropriate method for apologizing for an adverse or unanticipated outcome? Unfortunately, there is no simple answer. The parties invested in the concept of apology for an adverse or unanticipated outcome are often focused on their own positions on the issue. Thus, they may not appreciate all of the ramifications of apology and transparency.

### **Legislators and Health Policy Experts**

At a public policy level, there's a misperception that medical errors can be easily identified and that an apology should automatically occur. This misperception fails to address some key elements.

First, in many cases, it can be very difficult — and sometimes impossible — to rapidly determine whether a patient's bad outcome was the result of negligence. Because of this, it may seem like a good idea to pass state legislation that bars an assumption of negligence if a healthcare provider apologizes for a poor outcome. Yet, in reality, forcing an apology from a provider who may have done nothing wrong could erode the provider-patient relationship.

In addition, most people, at one time or another, have had the experience of receiving an insincere apology. If a provider does not feel that he or she is at fault for a poor outcome, an apology might come across as insincere, which may serve to incite anger in the patient or his/her family rather than avoid it.

### **Hospital and Healthcare Organization Leaders**

Many hospitals and healthcare organizations have policies and training programs related to disclosure and apology. These programs and policies may vary widely in their support for the provider team. For example, many providers may not have received much actual disclosure training. As a result, they may not have the skills to navigate an emotionally charged conversation with the patient or his/her family members.

Also, the provider may already have had a challenging relationship with the patient or family before the bad outcome, and, therefore, may not be the best person to offer an apology without assistance from an appropriate representative from hospital or organization leadership.

## Healthcare Providers

Some providers are willing to take responsibility for any adverse outcome, because they assume that it must have been their fault. In actual practice, many other factors — such as patient non-compliance or poor organizational processes — can influence outcomes, and providers may have no control over complications that occur.

Sometimes bad things just happen — in spite of good care. It's entirely appropriate for a provider to empathize with a patient's unanticipated outcome. Empathy does not necessarily equal an apology, but it does require sensitivity and responsiveness on the part of the provider.

## Medical Malpractice Carriers and Defense Counsel

Sometimes, if a disclosure and apology are offered appropriately, liability can be averted. Some professional liability carriers, in collaboration with defense counsel, advise providers to avoid using words such as "sorry," "inadvertently," and "apparently." These words typically send the message that someone was not paying attention, and their use may lead the patient to suspect that they received negligent care.

## The Apology

So when is an apology appropriate? Disclosure and apology are recommended when it has been objectively determined that an error definitely occurred. Errors might include:

- Care rendered to the wrong patient;
- Use of the wrong procedure;
- Surgery on the wrong site;
- Flawed communication processes; or
- Medication errors — e.g., the wrong drug, the wrong dose, or the wrong method of administration.

If a provider becomes aware that one of these scenarios has caused an unanticipated outcome, it is appropriate to disclose the facts and apologize for the error. At the same time, it is equally important to focus attention on the ongoing needs of the patient. The provider will want to advise the patient/family about any ongoing care the patient will receive as a result of the error and what steps will be taken to prevent this type of error from occurring again in the future.

Hospital or practice leadership should support a non-punitive culture in which disclosure and apology can occur comfortably. Patient safety cannot be achieved in an environment of blame and negativity. Leadership should also encourage emotional

support for the patient/family, ongoing treatment as necessary, and answers to questions as additional information becomes available.

When an unanticipated outcome occurs, and a cause is not immediately apparent, providers should establish honest lines of communication with the patient/family, preferably with one individual who can serve as the point of contact. Communication should focus on the patient's current condition, steps that are being taken on behalf of the patient, and the commitment to keep the family informed as additional information becomes available. If investigation of the outcome indicates that an error occurred, then it should be disclosed and an apology offered.

## **Conclusion**

Very few patient injuries occur because of malicious intent on the part of healthcare providers. Preventable patient injuries often occur in environments in which staffers are overworked, policies and procedures are not clear, or there is a lack of accountability and professionalism.

Offering an apology is appropriate when a complete review of an event reveals that something unexpected or unanticipated has happened, that it could have been prevented, and the appropriate person is offering the apology. Although apology can be seen as a tool to prevent litigation, sometimes it is just the right thing to do.

*This article was produced by the clinical risk management team at Medical Protective, the nation's oldest professional liability insurance company dedicated to the healthcare professions. For additional information, please contact Laura Cascella at [laura.cascella@medpro.com](mailto:laura.cascella@medpro.com) or visit the Medical Protective website at <http://www.medpro.com/>.*

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