The Ethics of Apology & Forgiveness and Communicating About Adverse Medical Outcomes

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Thank you for attending today’s workshop

Plan:
Begin with the “Why” – the ethics of apology and forgiveness
Move on to the “How” – discussion of alternatives to litigation
Then, some specific communication approaches and techniques to employ when talking with patients and families about medical error and/or adverse outcomes.
The Deeply Ethical Nature of the Apology

“The phenomenon of apology can be a window into the human emotions and behaviors that maintain and restore human dignity”

Lazare “On Apology” 2004

Apology as Virtue

An apology IS an adventure in virtue. It is radical honesty, based on a trust that honesty and kindness are appropriate responses, EVEN when the environment tells one otherwise.
Old Argument from Principle:

Don’t be transparent about the adverse event because it will undermine the patient’s trust in the physician and the medical system. Couching this as an argument for beneficence - sparing the patient/family the facts or from reliving the experience – is a form of paternalism.

The New Argument from Principle

The facts of his or her medical experience belong to the patient. Privileging patient autonomy, even when the physician may be more vulnerable as a result, can create more trust in the physician, the system and an inclination toward collaboration and resolution.
An Expanded Notion of Harm

Adverse outcomes, whether the result of error or unanticipated events, have a great potential for causing a break in relationship with the physician provider. This break represents a secondary harm that is often overlooked as effort is directed at reparation of physical harm and avoidance of a lawsuit.

The Opportunity of Forgiveness

Apology and the concomitant hope for forgiveness are predicated on an understanding of the full nature of the physician patient relationship, with its attendant vulnerabilities and human rather than commercial quality. A bad outcome throws all parties into uncharted territory.
Forgiveness and Relationship

The act of forgiveness can only be provided within this relational context.

“What is annulled in the act of forgiveness is not the crime itself, but the distorting effect that this wrong has upon one’s relations with the wrongdoer”

Joanna North “Exploring Forgiveness” 1998

What drives the desire to sue? Patient Perception

Lawyers identified physicians’ communication and attitudes as the primary reason for patients pursuing a malpractice suit in 70% of cases. Research showed that the following four communication problems were present in over 70% of malpractice depositions: **deserting the patient, devaluing patients’ views, delivering information poorly and failing to understand patients’ perspectives.**

Delivering Information Poorly

“I know, I know, for you this is unpleasant, awful” says the surgeon, “but for me for me it is shattering” (Gilbert, 1997)

“Mistakes were made”
“To the degree that you were…”
“I apologize for whatever happened”

Deserting the Patient

Both the conscious and the hidden curriculum for medical students teaches that the initial impulse to “avoid talking to the patient and immediately call Risk Management” is the right course of action.

(Current 4th year medical student, University of Colorado)
Alternative Options to Litigation

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration.


Kaiser Permanente Colorado Approach

The reSOLVE program includes:

• A patient-centered “no fault” approach for addressing medical injury and treatment complications preserving the patient physician relationship and compensating the patient for event-related out-of-pocket expenses

• Aligns with the “I’m Sorry Statute” (Colorado House Bill 03-1232)

• Is closely modeled after COPIC’s 3R’s program and the HCOM program
Goals of Early Resolution with reSOLVE

- Doing the right thing
- Preventing escalation
- Managing expenses
- Mitigating member dissatisfaction
- Protecting KP from adverse Publicity
- *Increasing Physician awareness of ramifications of AEs.

Communication Techniques and Approaches

Principles:
- Honesty
- Humility
- Openness
- Reparation of Relationship
“The Four Habits” Applied to Disclosure

The Four Habits Approach to Effective Clinical Communication is a communication framework developed by Richard Frankel, PhD and Terry Stein, MD that is used throughout the Kaiser Permanente Regions. The approach is based on earlier work from the Bayer Institute for Health Care Communication.

The Four Habits

1. Invest in the Beginning
2. Elicit the Patient’s Perspective
3. Demonstrate Empathy
4. Invest in the End
After an Error or Adverse Event:

How might a physician use Habit One, Invest in the Beginning?

Specific Techniques:

• Always sit down with the patient and/or family
• Meet in a quiet, private room, never in a hallway
• Spend time introducing yourself to everyone and in understanding his or her relationship to the patient
• Maintain eye contact and an open body posture
• Use a calm voice tone and avoid appearing rushed – you are there to discuss the situation as long as is needed
After an Error or Adverse Event:

How might a physician use Habit Two, Eliciting the Patient’s Perspective?

Specific Techniques:

- Ask, “What is your understanding of what occurred?”
- Allow each person present to offer a perspective, as they may differ substantially – seek to absorb the stories
- Avoid being defensive and interrupting
Specific Techniques: (cont)

• Engage in active listening, nodding, leaning forward. *80% listening, 20% talking*
• Maintain a calm and curious tone, even if you feel like arguing or correcting the perspective offered by the patient or family
• Seek to understand the situation from their perspective

After an Error or Adverse Event:

How might a physician use Habit Three, *Demonstrating Empathy*?

What are the barriers to engaging in empathetic communication?
Demonstrating Empathy:

Empathy, if authentically used, is a physician’s best communication tool in this situation.

Don’t be afraid of your heart!

Patients and families want to know, and feel, that their experience is validated and heard.

Specific Techniques:

Empathetic statements often begin with:

- It sounds like…
- I can see that…
- I can imagine that…
- I can’t even imagine what…
- It must be…difficult….frightening…

Instead of “I understand” use, “I want to understand”
Investing in the End

• Only after hearing the patient’s or family member’s perspective/story, and offering your empathy ask,
  ▪ “Would it be helpful if I gave you my perspective on the situation?”

• “An explanation without Empathy sounds like and excuse” Dan O’Connell, PhD

Investing in the End (cont)

  If a physician has engaged in an authentic exploration of apology for harm done and communicated openly and respectfully with the patient and/or family, Investing in the End may present a partnership and an agreement to move forward - in repaired relationship - toward a new beginning.
References

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*On Apology.* Aaron Lazare, MD  
*Healing Words: the Power of Apology in Medicine.* Michael S. Woods, MD  
*Exploring Forgiveness.* Robert Enright, PhD and Joanna North, PhD  
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Appreciations:

Kate Scannell, MD  
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