Disclosing Adverse Outcomes and Medical Errors

Institute for Healthcare Communication

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- Institute for Healthcare Communication
  - Is supported in part by grants from Bayer HealthCare Corporation

- This program was developed in part with a grant from:
  - The Permanente Foundation

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Objectives

- Understand rationale for openness
- Appreciate others’ perceptions of situation
- Consider steps to take before, during and after an unanticipated outcome
- Acknowledge the ethical dimensions
- Practice the disclosure skills
Disclosure and Resolution

- Disclosure is telling the patient and family what happened.
- Resolution is the feeling that the situation has been addressed as well and as completely as possible to everyone’s satisfaction.
Qualities of an effective resolution

- Ethical
- Psychologically healing
- Legal
  - Washington Apology Law
- Economical
Patients experience two types of disappointment

- The disappointing unanticipated medical outcome
- The disappointing way the healthcare providers behave after the unanticipated outcome
  - Research suggests patients are more forgiving of the first disappointment than of the second

(Hickson, 1992; Beckman, 1994; Vincent, 1994; Kraman, 1999; Gallagher, 2003)
Malpractice suits are not an inevitable result of unanticipated outcomes

- Reduce the impetus for the patient and family to go outside our relationship:
  - Rebuilding rapport and trust
  - Resolving disagreements
  - Negotiating fair settlements when appropriate

(Lester, 1993; Vincent 1994; Hamm and Kraman, 2001; Mazor, 2004;
Unanticipated outcomes have 2 origins

- **Without error**
  - Standard met
  - Not normally preventable

- **With Error**
  - Standard not met
  - Normally preventable

Unanticipated outcome
Balancing Patient’s Right to Information With Organization’s Confidentiality Privilege

- Confidentiality privilege not intended to hide the facts of their care from patients.
- Confidentiality privilege allows organization to protect the deliberation process.
- Once the facts and their most likely causes are determined, aren’t the patient and family entitled to learn them.
  - Informed consent before hand implies full disclosure after the fact.

(Liang, 2002)
Outcomes may be unanticipated due to

- Uncorrected “unreasonable” expectations
- Biological variability
- Low probability risks & side effects
- Wrong judgments without negligence
- Medical or systems errors
What do we mean by medical/systems error?

- **Medical / legal:**
  
  “Act of commission or omission with potential consequences for the patient that would be judged wrong by skilled and knowledgeable peers at the time it occurred.” (Wu, 1997)

- **Failure of a planned action to be completed as intended or the use of an incorrect plan to achieve an aim (IOM)**

- **deviation from the standard of care**
When to discuss potential or actual unanticipated medical outcomes

- **BEFORE:** prior to treatment
- **DURING:** as concerns arise
- **AFTER:** unanticipated outcome
BEFORE treatment begins

- Establish partnership
- Use shared decision-making acknowledging risks and benefits
- Make recommendation, confirm patient’s agreement or continue discussion
- A signed informed consent form may be needed but the discussion is key
DURING treatment

- Elicit and respond to concerns
- Empathize with disappointments and doubts
- Demonstrate attentiveness & thoroughness
- Decide together on best approach
AFTER unanticipated outcome without error

Four aspects to address:

- Immediate clinical care of the patient
- Dealing with your own emotions, uncertainties and needs
- Developing clarity re: what happened
- Preparing for and having a discussion with patient/family
“AID” to disclosure and resolution

- Acknowledgment of adverse outcome
- Investigation and conclusions
- Disclosure
  - telling the patient what happened and following through until resolved
Team composition for initial discussion with patient

- PCP or attending present if medical error and/or significant harm
- Nursing or pharmacy and a supervisor if minor error
- If serious injury, a second person is essential to facilitate discussion, witness, support, and follow-up
- Consider need and value of involving a disclosure facilitator to oversee and guide the process
Role of disclosure facilitator

- Coordinates the AID process
  - provides support and guidance for the clinicians
  - maintains communication with patient family
  - identifies needs, questions and concerns
  - facilitates discussions, informal and formal
  - oversees until resolved
Before talking to the patient/family—Recognize and manage emotions

- Pause for self-reflection and ask for assistance
- Notice yours/their thoughts and emotions
  - How is emotional distress expressing itself?
- What help do you/they need and where can you turn to get it?
Initial acknowledgment or disclosure care was reasonable

- **ANTICIPATE** start with expression of sympathy
  - an “apology” for the situation
- **LISTEN** to understand the patient & family’s upset thoughts and feelings
- **EMPATHIZE** and normalize without defensiveness
- And then offer to **EXPLAIN**
Anticipate

- Anticipate emotions and questions
  - How did this happen?
  - What can be done about it now?
  - What does it mean for the future?
- Begin with an expression of sympathy
  - “I am very sorry that your family has been through so much this week.”
  - “I was sorry to learn that you had to return to the emergency room.”
Listen and Summarize

- Invite their story
  - Tell me what happened...
  - and what have you been told so far?
- Ask about their
  - Feelings
    - How are you feeling at this point?
  - Motivations
    - How can I be most helpful to you now?
  - Ideas
    - What are your thoughts about ...?
Empathize

Make sure the patient and family experiences:

- **Being seen**
  - Undivided, timely attention

- **Being heard**
  - Short summaries to assure understanding

- **Being accepted and understood**
  - I can understand how it would appear that way.
  - No wonder you are feeling misled.
  - This is very different from what we were all expecting.
Saying I’m sorry
(know which one you intend)

- **Expression of sympathy for situation.**
  
  “I’m very sorry that your family has been through so much pain this last week.”

- **Admission of responsibility**
  
  “I’m so sorry that I did not have the nurse bring those lab results directly to my office when she first got them and I might have gotten you into the hospital sooner.”
Explain and answer questions

- Ask before explaining
  - *Would it be helpful for me to explain ...?*

- Describe facts and answer questions willingly

- Avoid being drawn into controversies that suggest liability by others
  
  “It sounds like that was a frustrating experience up in diagnostic imaging.”
Unanticipated outcomes have 2 origins

Without error
- Standard met
- Not normally preventable

With Error
- Standard not met
- Normally preventable
If investigation concludes medical/system error caused injury

T - Truth, transparency and teamwork coordinated by the disclosure facilitator
E - Empathy for patient/family experience
A - Apology and accountability to prevent
M - Management of all aspects

- Exemplary patient care
- Emotional support for all involved
- Ongoing communication
- Offers of practical and financial help in recovery from injury
Who attends formal disclosure

- from facility side:
  - disclosure facilitator, attending physician, other staff whose behavior contributed to the harm, more senior administrator, risk manager and possibly attorney

- from patient side:
  - patient, patient’s family and others as requested by patient
    - advocate, attorney, tape recorder?
Formal/post investigation disclosure meeting

- Disclosure facilitator helps prepare staff and invites and orients patient and family
- Either the TEAM or ALEE track is followed depending on investigation conclusions
- Individuals explain, demonstrate empathy, accept accountability and apologize in proportion to their contribution to the harm
- Clinician involvement should be largely concluded here. Compensation issue may remain
In Summary

**Standard Met**
- Anticipate, Adjust,
- Listen
- Empathize
- Explain

**Standard not met**
- Truth, Transparency, Teamwork
- Empathy for full impact
- Apologize and be Accountable
- Manage until resolved
- Medical Care
- Emotional Support
- Ongoing communication
- Practical and financial