

Nuts and bolts of disclosure:

Practical aspects of doing disclosure in your facility

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About the speaker

- Michael Lloyd has been working in healthcare risk/quality/malpractice claims/patient safety/compliance since 1983 in the physician, ambulatory, inpatient, clinic, dental, home health and liability insurer environment
- He is board certified in insurance, risk management and healthcare risk management
- He owns two motorcycles and six bicycles



This is how a
risk manager
rides a
motorcycle

Presentation overview

- Disclosure foundations
- What to disclose
- How to disclose
- Disclosure documentation

Nuts and bolts of disclosure

Disclosure foundations

A disclosure foundation

- Each facility should have a disclosure foundation:
 - A policy and procedure
 - A disclosure team
 - Disclosure training for the team and other necessary parties
 - 24/7/365 access to disclosure resources
- Put this into place before the crisis

Sample disclosure policies

- http://www.medicalmutual.com/risk/forms/hospital_policy_disclosure_unanticipated_outcomes.pdf
- http://www.mnhospitals.org/inc/data/pdfs/outcomes_new.pdf
- http://www1.va.gov/vhapublications/view_publication.asp?pub_id=1637
- http://www.sh.lsuhs.edu/policies/policy_manuals_via_ms_word/hospital_policy/h_2.35.0.pdf

Make up of the Disclosure Team

Many disclosure teams are selected from these core functions

- Risk management
- Nursing
- Medical staff
- Administration
- Legal
- Quality
- Spiritual services
- Ethics
- Social work
- Patient relations

What is the role of the team?

- Does your Disclosure Team do the disclosure for high-level or critical disclosure incidents?
- Is your Disclosure Team a consultative service that provides support, coaching and just-in-time training for clinical staff that does the disclosure?
- Both approaches are valid
- I like the first option

Disclosure training resources

- <http://www.thedoctors.com/KnowledgeCenter/PatientSafety/DisclosureResources/index.htm>
- <http://healthcarecomm.org/training/continuing-education-workshops/disclosing-unanticipated-outcomes-and-medical-errors/>
- <http://www.sorryworks.net/booksoon.phtml>

Disclosure training resources

- <http://www.rmfm.harvard.edu/education-interventions/materials-for-instructors/disclosure/disclosure-support-materials.aspx>
- <http://app.ihio.org/lms/coursedetailview.aspx?CourseGUID=614af4d5-09ed-4c08-b495-59673b0a581a&CatalogGUID=6cb1c614-884b-43ef-9abd-d90849f183d4>
- Your malpractice insurer

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What to disclose

What to disclose?

- Coming up with a disclosure strategy
 - What types of adverse events or errors to disclose?
 - Do you just disclose adverse events or errors resulting in harm?
 - What about close calls or potential adverse events that did not result in any harm?
 - What about contributory factors or disclosing the errors of others?

What to disclose

- Patients will receive a truthful and compassionate explanation when:
 - Outcome of care varies significantly from what was anticipated
 - A medical error or adverse event has occurred resulting in clear or potential clinical consequences
 - A near miss has occurred and the patient and/or family is aware of it

The level of disclosure

- A low level (Clinical Disclosure) response is indicated for all incidents where the error or adverse event did not result in any permanent injury or significantly increased level of care.
- This could also include near misses

The level of disclosure

- A high level (Formal Disclosure) response is required for all errors or adverse events where there is:
 - NQF Never events
 - death or permanent loss of function;
 - permanent injury or lessening of body function; and
 - a need for surgical intervention, transfer to a higher level of care or major change in clinical management

Who does what?

- A low-level (Clinical) disclosure is best done by the front-line clinical and managerial staff with assistance as needed by the Disclosure team
- A high-level (Formal) disclosure is best done by the Disclosure team with assistance as needed by the front-line clinical and managerial staff

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How to disclose

What patients want to know

- What happened?
 - Discuss the known facts and avoid speculation
- Who is responsible?
 - Did someone do this to me?
- Is someone going to say they are sorry?
 - Is an apology indicated for this event?
- What are you doing to prevent this from happening again?
 - How is this not going to happen in the future?

Initial incident response

- Prevent further harm, provide appropriate care and identify support for the persons involved in the incident (patient, family, staff, and providers)
- Implement your disclosure P&P and call the risk manager / disclosure team
- Will the team be taking over or will they be supporting others in charge of the process?

Initial incident response

- Explain your recommendations for further diagnostics, treatment and the implications for prognosis
- Report the facts as you know them without editorializing or placing blame
- Tell them that the matter will be investigated and further information will be provided as it becomes available

Timing of disclosure

- In all situations, an initial discussion with the patient and/or family should take place within 24 hours and no longer than 48 hours
- Additional disclosure will be done as the investigation progresses, a root cause analysis is done as necessary, and more information becomes available

Who should attend disclosure?

- Who has information about the error or adverse event?
- Who has a good relationship with the patient and/or family?
- Who has the ability to fix the problem or prevent future occurrences?
- Who can take responsibility for the financial or administrative aspects?
- Should lawyers be there?

Disclosure roles

- Providing clinical information and opinions on prognosis is a good role for the provider or clinical staff
- Admitting an error and apologizing is a good role for the provider and/or risk management staff
- Admitting liability and offering compensation is a good role for the risk management staff/insurance company

Critical skills for disclosure

- How to get help with disclosure
- How to say the right things
- How to be able to explain complex medical issues to laypeople
- Be an active listener, empathize and draw out the participants
- Remain calm under pressure and in tense situations
- The ability to apologize

What to say at the meeting

- Who takes the lead at the meeting: staff, LIP or Administrative?
- The nature of the event or error
- The time, place and circumstances of the event or error
- Causation factors
- Known consequences to the patient
- Potential consequences to the patient
- Actions taken in response

What to say at the meeting

- The person(s) who will manage ongoing patient care
- The person(s) who will manage communication with the patient and family
- Actions taken to address systems issues that caused or contributed to the event or error and actions taken to prevent future occurrences

What to say at the meeting

- Charges directly related to the event or error will be removed from the bill
- An apology of responsibility for the event or error when it was the result of system failure or an unambiguous error
- An apology of sympathy for the outcome when it was not the result of system failure or error
- Write up something in advance

Billing issues

- Writing off bills can go a long way towards making people happy
- It is more difficult to write off or pay for bills when there is a combination of errors by multiple parties
- Section 111 reporting obligations apply to some settings
- Private/governmental payors are refusing to pay for care related to errors

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Disclosure documentation

Documenting the disclosure

- The date, time and place of the discussion
- Who was present at the discussion
- The facts of the event
- Further information will be shared as it becomes available
- The specifics of any offers of assistance and the response thereto by the patient/family

Documenting the disclosure

- Any questions asked by the patient/family and what answers were given
- What was promised to the patient/family
- Do not assign blame or admit liability
- Do not mention risk management, incident reports, attorneys or your insurance company

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The exciting finale

Potential disclosure problems

- What about the money: the role of compensation in disclosure
- The role of the LIP in inpatient disclosure when the adverse event or error does not involve the LIP
- Patients who have counsel present at disclosure
- Disclosure alone is not a magic bullet in reducing malpractice claims

Additional disclosure resources

- <http://www.macoalition.org/documents/respondingToAdverseEvents.pdf>
- https://www.ecri.org/Documents/Patient_Safety_Center/HRC_Disclosure_Unanticipated_Events_0108.pdf
- <http://www.med-law.co.il/imgs/uploads/JCFINA~1.pdf>
- <http://psnet.ahrq.gov/primer.aspx?primerID=2>

Additional disclosure resources

- <http://www.ihl.org/knowledge/Pages/IIWhitePapers/RespectfulManagementSeriousClinicalAEsWhitePaper.aspx>
- <http://www.med.umich.edu/news/newroom/mm.htm>
- http://www.cmpaacpm.ca/cmpapd04/docs/resource_files/ml_guides/disclosure/pdf/com_disclosure_toolkit-e.pdf

Summing up

- Create a strong foundation for your disclosure efforts
- Talk to your risk managers and insurance companies for more help
- Have a disclosure team to handle the tough cases
- Say the right things to patients
- Be transparent but don't shoot yourself in the foot

Further questions?

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- Look for the fluorescent person on a motorcycle or bicycle in Mill Creek
- My opinions do not necessarily reflect the position or policy of PH&S