When Things Go Wrong: Disclosure of Medical Error

Sigall K. Bell, MD

Beth Israel Deaconess Medical Center

Institute for Professionalism and Ethical Practice, Children's Hospital Boston

Harvard Medical School

How are we doing?

- 2/3 errors are not disclosed

  - *Blendon et al NEJM 2002*

- Even when disclosure happens, it often does not meet patient expectations

  - *Gallagher et al, JAMA 2003*

- Trainees often do not learn to disclose

  - *Wu et al, JAMA 1991; White et al, Acad Med 2008; Bell et al, Acad Med 2010*

When Things Go Wrong: Voices of Patients and Families, CRICO/RMF 2006

Available at: http://www.rmf.harvard.edu/

Patient Attitudes about Errors

- Conceive of errors broadly

- Desire full disclosure of harmful errors

  - Worry that health care workers might hide errors

- Information patients want disclosed

  - Explicit statement that error occurred

  - What happened, implications for their health

  - Why it happened

  - How will recurrences be prevented

  - Importance of an apology

Gallagher JAMA 2003

Clinicians' Attitudes about Errors

- Define errors more narrowly than patients

- Agree in principle with full disclosure

- Want to be truthful, but experience barriers to disclosure

  - Fear of litigation

  - Lack of confidence in communication skills

  - Lack of institutional support

Gallagher JAMA 2003

Why do patients sue?

- "Studies show that the most important factor in people's decisions to file lawsuits is not negligence, but **ineffective communication** between patients and providers."

- "Malpractice suits often result when an unexpected adverse outcome is met with a **lack of empathy** from physicians and a **perceived or actual withholding of essential information**."

Clinton & Obama, NEJM 2006

Vincent C, Lancet 1993

Reports from the field: University of Michigan

Disclosure policy adopted 2001; 3 components:

1. Acknowledge cases in which a patient was hurt because of medical error and compensate these patients quickly and fairly

2. Aggressively defend cases that the hospital considers to be without merit

3. Study all adverse events to determine how procedures could be improved

Clinton and Obama, NEJM 2006

Kachalia et al, Ann Intern Med 2010

University of Michigan

Clinton and Obama, NEJM 2006

University of Michigan: 9 years later

- Reduced total liability costs by about 40%

- Reduced the number of new lawsuits by about 65%

- Decreased the time to claim resolution by about 25%

Kachalia et al, Ann Intern Med 2010

Mock Trial Data

- Same case presented to two juries: one with disclosure, one without

- Disclosure resulted in much smaller judgments ($millions)

- No disclosure – jury assumed the hospital and clinicians were hiding information

- With disclosure – jury focused on meeting the needs of the patient rather than on punishing the organization

Gallagher, JAMA 2009

Popp, PL. J Healthc Manag 2003

Robbennolt JK. Mich Law Rev 2003

The Nurses' Perspective

- Nurses pay heavy emotional toll - nightmares, fear, guilt, and stress from even minor errors

- Nurses fear being "thrown under the bus" by physicians in disclosure conversations

- Nurses "walk on eggshells" during pre-disclosure period
  - Physicians can avoid the patient & family, nurses cannot

Shannon et al. Jt Comm J Qual Patient Saf 2009;35:5

Clinician support programs: The "Second Victim"

Have errors in your practice negatively impacted your life?

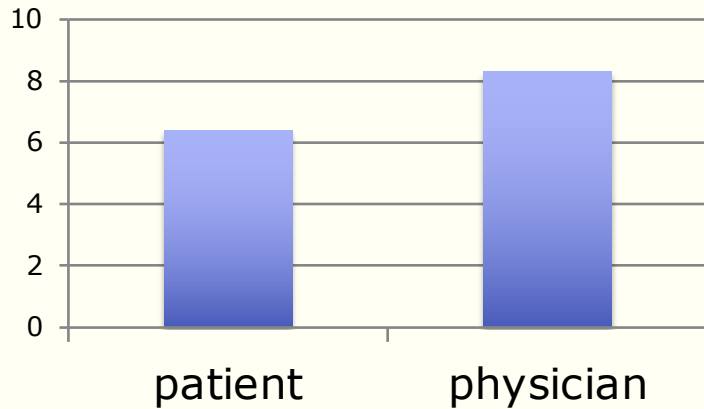|	Attendings
Your job satisfaction	42%
Your confidence in your ability as a physician	47%
Your professional reputation	13%
Your anxiety about future errors	61%
Your ability to sleep	40%

Gallagher Arch Int Med 2006

"Facing our Mistakes"

"Everyone, of course, makes mistakes, and no one enjoys the consequences. But the potential consequences of our medical mistakes are so overwhelming that it is almost impossible for practicing physicians to deal with their errors in a psychologically healthy fashion. Most people—doctors and patients alike—harbor deep within themselves the expectation that the physician will be perfect. No one seems prepared to accept the simple fact of life that physicians, like anyone else, will make mistakes."

Hilfiker, NEJM 1984

How Are Patients Currently Experiencing Disclosure?

Colorado pilot data (n=140 events)

overall quality (0-10)

score ≤4