

Risk Tip: What to Say and Not Say When There's an Unexpected Outcome

In recent years, there has been a growing sense that offering an apology when a patient has a poor outcome is not only the “right” thing to do but may even help avoid a malpractice lawsuit.

Discovering a patient has been injured during treatment is a terrible, personal experience. Having to actually tell a patient or family member about the unanticipated outcome is an even more unpleasant experience.

No one wants to be the bearer of bad news or take responsibility, especially in these litigious times. Many doctors also feel an apology may be perceived by a patient as nothing more than a hollow, self-serving attempt to avoid blame and litigation. In today's world, however, many patients and their families expect an apology—or at least an explanation—after an injury or unanticipated event. Some states have even enacted laws to encourage doctors to disclose to their patients—or in some cases—mandate when treatment errors have occurred.

Patient Relationships are Critical

While it is possible that a patient will blame the doctor as a result of hearing an apology, defense attorney Kevin Hulslander believes doctors who show a human side to their personality and are concerned about the results of their treatment are more likely to avoid lawsuits. Hulslander says, “The type of relationship that has developed with the patient is key. Patients are less likely to sue doctors they like. Doctors who are hard and insensitive get sued.”

Consequently, open communications should be the foundation of the doctor-patient relationship from day one. Let your patients know that you will be upfront with them about their health care, and they will be your active partner in treatment decisions.

Think it Through

As with any risk management strategy, whether to apologize should be approached thoughtfully and on a case-by-case basis. Doctors should choose their words carefully, expressing regret for the occurrence of the event rather than any individual actions. An apology can be mistaken for an admission of liability if not well thought out. “It is best to express sympathy for their problems without admitting negligence or responsibility,” Hulslander says.

No matter how you choose to handle the situation, documentation surrounding the event, the patient's injury or condition, and the discussion with the patient and/or family should not be placed in the patient's record. Instead, the doctor should start a separate personal file.

Even if a lawsuit does develop, having said “I'm sorry” is not necessarily a bad thing—it can reflect a caring, conscientious doctor. “I try to turn it into a positive in front of a jury if the statement is admitted into evidence,” says Hulslander.

What should you do? We encourage you to call our Confidential Claims Advice Hotline at 1-800-640-6504 any time you want to confidentially discuss a concern or situation you're not

sure how to handle – including whether to apologize to a patient. We can talk you through the many issues and guide you toward the best approach for your individual situation. Your call will not result in our opening a claim file unless a request for damages has already been put in writing. copier or other equipment, you'll earn patient, client and employee trust by taking the appropriate steps to protect their information.

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