

Disclosure Summary

Thank you to all who attended our Grand Rounds last Monday. The topic of disclosure is such a large subject matter, that we thought it might be helpful to send a summary of a few key points.

Disclosure Definition (Merriam Webster Dictionary): the act of making something known : the act of disclosing something: something (such as information) that is made known or revealed : something that is disclosed

Disclosing a medical error or a near miss is not an easy task, especially when you as the anesthesia provider only have a few moments to create a trusting relationship with that patient/family immediately preoperatively. There are protections in place for all health care providers during disclosure discussions. We are lucky to be in a state that has a very progressive apology inadmissibility law. Colorado was the first state to specifically exempt physicians' admissions of fault in 2003. We however, do not have a forced disclosure law. Five states (Florida, Nevada, New Jersey, Pennsylvania and Vermont) mandate notification to patients of any adverse medical outcome (2).

The apology law in Colorado is:

In any civil action brought by an alleged victim of an unanticipated outcome of medical care...any and all statements, affirmations, gestures, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to discomfort, pain, suffering, injury, or death of the alleged victim as the result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest (1).

The only states without an apology inadmissibility law are: Alabama, Alaska, Arkansas, Illinois, Kansas, Kentucky, Minnesota, Mississippi, Nevada, New Mexico, New York, Rhode Island, and Wisconsin. Other states only have partial apology laws, so it is necessary to know your state's disclosure laws when practicing in other locations. Full apology laws exist in: Arizona, Colorado, Connecticut, Georgia, and South Carolina (3). Only in states with full apology laws will statements of fault, errors, liability or mistakes not be taken as admission of guilt in a medical malpractice case.

This information is not given to scare you from talking to your patient, but in hopes that you will in fact have frank discussions with family members and patients. A study at University of Massachusetts and the FALLON Foundation found that patients are looking for a disclosure that contains the following (4):

1. Definitive statement that a mistake occurred

2. Full description of the mistake and the related health concern
3. Description of how the mistake happened
4. How the provider and the health care system will prevent the mistake in the future
5. A meaningful and sincere apology.

Vanderbilt University uses a “balance beam” approach to disclosures in order to decrease the risk of premature disclosure creating a delay in the fact- finding process. The approach involves: making a prompt statement to the patient, but avoiding assumptions or disclosing any unconfirmed facts; reassuring the patient that as more facts are discovered, he/she will be kept in the loop. (4)

Since we have multiple sites in the University of Colorado Anesthesia Department, there is not a formalized disclosure process, as of yet. As discussed at Grand Rounds, there are multiple professionals at your disposal to assist in the process. They can be there to guide you at any point. There are also multiple senior faculty members who have gone through disclosure experiences, and are happy to lend their expertise. All faculty and trainees should contact University of Colorado risk management in addition their site’s own risk management team.

Those of you practicing at sites other than University (CHC, DG, VA) – Kezia is happy to assist you, but will not have access to the record. She is happy to assist you and work with your hospital’s risk management team to ensure you are adequately represented.

Alison Bainard and Norah Janosy – Wellness co-directors

Bibliography

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2. F. F. Bender JD. “I’m Sorry Laws and Medical Liability.” AMA Journal of Ethics. April 2007, Vol. 9 No. 4: 300-304.
3. <http://www.physicianspractice.com/blog/apologizing-for-medical-missteps-whether-its-a-mistake-for-physicians#sthash.zfObIryD.dpuf>
4. Yougberg, Barbara. *Principles of Risk Management and Patient Safety*. Sadbury: Jones and Bartlett Learning 2011, ebook.