What to Do When Errors Occur

Chapter FastFACTS

1. **Although it might be normal to respond to making a mistake by withdrawing from the patient, reacting angrily, and trying to protect yourself, there are more appropriate and productive alternatives.**
2. **Studies show that physicians who sincerely apologize for errors and make any possible amends are less likely to be sued.**
3. **Malpractice insurers say the best way to avert a lawsuit is to admit when an error has occurred.**
4. **Because it may often be impossible to pinpoint who or what's at fault, the primary care physician has the primary responsibility for errors.**
5. **Knowing how to say "I'm sorry" can enhance the apology's effectiveness.**

Erica Friedman's uncle, a long-time smoker, went into the hospital for heart surgery. A chest X-ray revealed a lesion on his lung, but it wasn't relevant to his immediate treatment; and no one followed up to make sure he had it checked out—not the surgeon, not the radiologist, and not the pulmonologist who had the primary relationship with him. A year later, her uncle was dying of lung cancer.

"The pulmonologist claimed he'd seen the lesion and addressed the issue with my uncle," Dr. Friedman says. "He claimed my uncle refused to talk about it, but my uncle wasn't one to deny any surgery that he needed, and he certainly would

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have agreed to treatment if he'd known about it." The patient felt so betrayed by his pulmonologist that he sued. He died before he could give a deposition, and the suit went nowhere without its key witness. But both he and his family suffered great pain from the kind of error in communication—and subsequent denial—that can happen in medical practice.

"It's normal not to want to deal with people who are angry and upset. But if you think about it from the lens of your obligation to your patient, you'll take a very different tack."

Rosamond Rhodes, PhD
Director of Bioethics
Mount Sinai School of Medicine

As associate dean for undergraduate medical education at New York's Mount Sinai School of Medicine, Dr. Friedman has made it a professional mission to see that others don't suffer experiences like hers. About ten years ago, she put into place a curriculum on the ethics of medical errors so that medical students can learn where errors are likely to occur, the proper procedure for dealing with them, and when and how to tell patients about them. The students are given scenarios describing common errors and are asked what they would do. Actors play the part of patients who've been the victims of error, and the students rehearse how to admit that they or a colleague made a mistake. Medical students are encouraged to talk to their professors about incidents they observe during patient care that may seem like errors: to discuss what they could have done to prevent them and to analyze whether, and exactly what, the patient should have been told.

"The toughest thing for all [physicians] is to determine when you need to admit that something's gone wrong," Dr. Friedman says. "What you need to do is stop thinking about yourself and think about the patients, because your primary responsibility is to them. If admitting an error will help them, then you should do it." She says the first thing students need to learn is that a bad out-

come doesn't mean there's an error, and that despite their belief that they can fix everything, patients sometimes die or suffer permanent damage when no one is at fault.

The reverse is also true: An error doesn't inevitably lead to a bad outcome. But should patients be told about those errors anyway? Dr. Friedman says generally yes, both for ethical reasons and because disclosure may reduce the odds of the error's happening again. "I believe that if you're honest with your patients and partner with them, they can help prevent those errors from occurring. If you say, 'This drug might cause problems with your liver, so we need to do a test, and you should call us if we forget to do it,' the patients will feel in control, and they're much less likely to distrust you and blame you when things go wrong." She acknowledges that traditional medical culture makes it difficult to admit fallibility; and the crowded, rushed atmosphere at many primary care offices doesn't make it any easier.

Saying 'I'm Sorry'

A normal response to making a mistake is "defensive aggression"—withdrawing from the patient, reacting angrily to the suggestion of error, and generally trying to protect yourself, says Rosamond Rhodes, PhD, Mount Sinai's director of bioethics education. None of those responses helps your patients or yourself, she says.

"It's normal not to want to deal with people who are angry and upset," she says. "But if you think about it from the lens of your obligation to your patient, you'll take a very different tack." To preserve the trust that's necessary in a doctor-patient relationship, it's vital to be honest about what happened, take responsibility, and help the patient get through whatever injuries or hardships may result. (See "Immediate Response for Adverse Events: A Guide," p. 66.) Study after study has shown that

Immediate Response for Adverse Events: A Guide

The Doctors Company, a malpractice insurer, offers the following guidelines for minimizing the impact of an error and protecting both physician and patient:

1. As the first priority, provide immediate clinical care for the patient to prevent further harm.
2. Preserve evidence: medications, equipment, and supplies.
3. Document the basic medical facts that are associated with the adverse outcome.
4. Since the cause of the event may not be immediately apparent, review only the known medical facts with the patient and/or family. If a question cannot be answered, it's okay to say, "I don't know." Additionally:
   - Meet with the patient/family as soon as possible after the adverse outcome occurs.
   - Know that it is appropriate for you to express regret and offer empathetic statements.
   - Focus on the patient's current condition and steps being taken on the patient's behalf, and explain any changes in the patient's treatment plan.

physicians who sincerely apologize for errors and make any possible amends are less likely to be sued and more likely to be forgiven by their patients, Dr. Rhodes adds.

Practice can ease the awkwardness of apology, and most doctors have frequent occasions for apology even without any hint of medical error or injury. Frederick Turton, MD, an internist in Sarasota, Fla., and current chair of the ACP Board of Regents, tells patients he's sorry almost every day: for being late to an exam room, for a bad attitude exhibited by one of his office staff, for a blood draw that hurt more than it should. None of those things is life threatening or even particularly blameworthy; but his apologies spring from respect for his patients and concern for their time, their feelings, and their fears.

Apologies can provide balm even in situations where the patient is at fault, unfair though it may seem. One patient didn't tell Dr. Turton she was allergic to a certain antibiotic that he had prescribed, and she came into the office "pretty hot" about the reaction she'd had. "If I had known she was allergic, I wouldn't have given it to her," he says. "But I said, 'I'm sorry,' and her

face relaxed. She knew she hadn't told me, but she needed for me to say, 'I'm sorry.'" For more insight into finding the right words, see "How to Say 'I'm Sorry' for a Medical Error," p. 68.

The Malpractice Connection

Malpractice insurers know that admitting an error and apologizing sincerely and thoroughly are among the best ways to avert lawsuits. "There was perhaps a time in the malpractice world where doctors may have believed that 'deny and defend' was the way to approach an error," says Geraldine M. Donohue, associate director of risk management education at Physicians' Reciprocal Insurers (PRI), Roslyn, N.Y., a physician-owned malpractice insurance cooperative. But nowadays, she says, that policy no longer works.

"It's the most delicate of conversations and the most heart-wrenching experience for a physician to come to terms with," says Ms. Donohue, co-author of *Practicing Medicine in Difficult Times: Protecting Physicians from Malpractice Litigation*. PRI advises its physicians to be fully prepared before the conversation occurs: to be clear in their own minds how the error happened and what if anything can be done to remedy it. See ". . . And What Not to Say," p. 69.

PRI offers workshops in which physicians role-play with actors portraying patients who have been victims of an error. In addition to the value of participating in these workshops, it's useful for physicians to watch how their colleagues handle the situations presented.

The Dilemma of Finger Pointing

Dr. Friedman says physicians are often all too ready to blame the U.S. healthcare system for an error—and it's an easy target, given the poor communication and opportunities for error that abound. While an error may indeed be someone else's fault—a lab result sent to the wrong place, a triage nurse who didn't call back, a patient discharged from the hospital without a medication list—it may often be virtually impossible to pinpoint who or what's at fault. In the end, the primary care physician has the primary responsibility. (See Malpractice Claims Related to Adverse Events, p. 71.)

How to Say 'I'm Sorry' for a Medical Error . . .

Not all apologies are created equal. The Doctors Company provides the following analysis of what makes an effective apology for a medical error that caused harm to a patient.

- The physician acknowledges the event to the patient and family, explains what happened, and responds to each of the patient's and family's questions.
- The physician accepts overall responsibility. This is not an admission of fault or negligence.
- The physician empathizes with the patient and genuinely expresses both concern and regret. Examples of such empathetic statements include these:
  - —"This must be a difficult time, but my staff (or hospital) and I will be working to help you beat this."
  - —"I was saddened to hear of your loss, and my staff and I send our condolences."
  - —"Remember when we talked about some of the risks that can't be anticipated or prevented? Well, this is one of those instances. But there are several actions that we're going to take to help you, and we'll answer your questions so that you and your family are aware of what we're doing."
- The physician discusses the future consequences of the injury (hospitalization, medications, surgery, disability, etc.).
- The patient receives an explanation of what is being done to prevent this event from happening again to another patient.

An essential part of that responsibility is figuring out what happened so that you can explain it to the patient and keep it from happening again. That's not always easy. Christine Quinn, vice president of risk management services at PRI, recognizes the dilemma of an experienced and well-educated physician who has to admit an administrative failing. "You have to go to a patient who's having a major hit to their health and say, 'I'm terribly sorry, but things might have turned out differently if I'd seen this pathology report seven months ago.'"

Paperwork errors can be some of the most devastating because they're caused by bad systems rather than by an individual. "It's harder to defend a case where there was a paperwork lapse

. . . And an Example of What Not to Say

Here's an example of what not to say when you know that a mistake has been made:

"A female patient had gynecological surgery, and a metal clip was mistakenly retained. When it was discovered on X-ray, the patient had to undergo an additional procedure for removal of the foreign object. In the physician's office, during a follow-up visit, the doctor gave the patient one of his business cards. On the back of the card he added the words, 'Also specializes in metal clips.' The patient saw no humor in this gesture. The physician likely did not know how to express his sorrow for putting his patient through anxiety, worry, and the risks associated with an additional procedure. When he recognized his mistake, he did not know how to discuss this in a meaningful, serious, and contrite manner with his patient. His attempt at humor offended his patient, and a lawsuit was soon initiated."

Source: Thomas MO, Quinn CJ, and Donohue GM, Practicing Medicine in Difficult Times: Protecting Physicians from Malpractice Litigation*, Jones and Bartlett Publishers, Sudbury, Mass., 2009.*

because there's not much you can say," says Ms. Quinn. "Errors in judgment—where you picked A, but B would have worked out better—are less likely to come to suit and easier to defend than a paperwork snafu."

When a Colleague Makes an Error

What if an error is clearly a colleague's fault—a previous primary care physician or a specialist? Under what circumstances is it your responsibility to tell your patient instead of leaving that uncomfortable conversation for your colleague to handle?

These situations can be complex, especially if you have a longstanding professional relationship with the responsible party, Dr. Turton says. "The pressures are pretty severe, because you risk your professional relationship and your ability to practice with them, and you wonder how much it's your business to

reveal their problems," he says. "You go through the same mental gymnastics as when you commit an error yourself." Although the ethics of the situation demand that you reveal an obvious error, Dr. Turton says there's a gray area where the other physician makes a decision that you wouldn't have made, and it might be based on a different body of knowledge or on a different weighing of the risks and benefits.

"If someone made a mistake ten years ago and the statute of limitations has run out, and you can't help the patient by revealing it, then don't. But if the patient is still seeing that physician or if he or she could get some assistance for a disability, or if the patient is so torn up and confused that learning the truth would help, then it's your responsibility to point it out."

Erica Friedman, MD
Associate Dean, Undergraduate Medical Education
Mount Sinai School of Medicine

Dr. Rhodes says that if an error is apparently the fault of another physician and you don't understand how it happened, First, let your patient know that you don't know. Second, find out your colleague's side of the story. "It's really hard to know in most cases exactly what happened," especially if you have only the patient's account to rely on, she says. You may end up taking some heat from the other physician. "The best approach is to understand that that may happen, and just let it wash over you," she says. "Do your job and be non-judgmental."

What if you're on the receiving end of one of these conversations? "You should appreciate the courage and commitment of the doctor who makes the call, because it's being done for the sake of the patient," Dr. Rhodes says. "And you should recognize that the doctor making the call is afraid of a verbal assault from you."

Dr. Friedman advocates disclosing the errors of others, with a few exceptions. "If you can change things, or if it's going to impact the patient over the long term, you should tell them about

Malpractice Claims Related to Adverse Events

Most common diagnoses and underlying causes associated with negligent claims in primary care practices (total, 5,921)

Error (indefensible*)	Number (%)
Disease or injury category	
Acute myocardial infarction	269 (5)
Lung cancer	166 (3)
Breast cancer	147 (3)
Colon cancer	145 (3)
Brain-damaged infant	115 (2)
Appendicitis	95 (2)
Meningitis	80 (1)
Pulmonary embolism	79 (1)
Diabetes	72 (1)
Symptoms involving abdomen and pelvis	71 (1)
Other	4,682 (79)
Underlying cause	
Diagnosis error	2,003 (34)
Failure to supervise or monitor case	972 (16)
Improper performance	898 (15)
Medication errors	489 (8)
Failure/delay in referral	248 (4)
Not performed	229 (4)
Performed when not indicated or contraindicated	227 (4)
No medical misadventure	208 (4)
Delay in performance	156 (3)
Failure/delay in admission to hospital	142 (2)
Failure to recognize a complication of treatment	122 (2)
Other	227 (4)

*Claims resulting in an insurance payout because the payer saw no way to defend them.
Source: R L Phillips, Jr, et al, Quality and Safety in Health Care 2004.

the error," she says. "If someone made a mistake ten years ago and the statute of limitations has run out, and you can't help the patient by revealing it, then don't. But if the patient is still seeing that physician or if he or she could get some assistance for a disability, or if the patient is so torn up and confused that learning the truth would help, then it's your responsibility to point it out."

The Importance of Empathy

It doesn't help to hide your feelings or avoid patients who suffered when you know an error has been made, says Ms. Donohue of PRI. "The delicacy of the situation may make a physician inclined to spend a little less time with the patient, but instead they have to spend more time and stand by that person, not let him or her feel abandoned," she says.

"The patient is completely unaware that the doctor is losing sleep over the error and is wrestling with how to have a conversation about it, and that it's wreaking havoc with his life. The patient might feel that the doctor is indifferent." Eye-to-eye conversations and frequent contact are essential. A physician should be prepared to find for an injured patient whatever resources may be available to help the situation—and to let the patient know how badly he or she wants to fix things. "Some things can't be completely rectified, but that's the kind of communication we're talking about."