The Ethics of Medical Error Disclosure
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It is estimated that medical errors are the eighth leading cause of death in the US,\(^1\) and that hundreds of thousands of patients are harmed by preventable errors each year. Nevertheless, “Many patients harmed by a medical error never learn of the error.”\(^2\)

There are a variety of reasons physicians may choose not to disclose a medical error: the fear of litigation, embarrassment, discomfort with the disclosure process, or the faulty notion that learning about the error will cause the patient more distress.

“I have never seen a man or woman made worse by telling them the truth.”

This statement was made by Harvard philosopher and physician Richard Clarke Cabot in the early 20th century.\(^3\)

“There is almost universal agreement in Western countries that errors resulting in serious harm must be disclosed to patients.”\(^4\) However, surveys indicate that even when physicians disclose these serious errors, they may “choose their words carefully” and fail to completely explain the error and its actual and/or potential consequences.\(^5\) And when an error occurs that results in minimal or temporary harm, the likelihood that a physician will offer disclosure diminishes.\(^6\)

A study conducted in 2010 clearly indicates that patients and/or family members of harmed patients desire full disclosure of errors. Their expectations include:

- Disclosure of all harmful errors
- A clear explanation as to why the error occurred
- How the error’s effects will be treated
- How the practitioner or organization will prevent similar errors in the future\(^7\)

The importance of medical error disclosure is rooted in the framework of medical ethics. Medical errors are considered a violation of boundaries whereby a provider causes physical injury to a patient through errors in judgment, skill, or knowledge.\(^8\) Consequently, the physician’s response when these errors occur should be based on the principles of ethical conduct. The following four moral principles apply.

**Respect for autonomy**

This principle means that physicians must “respect the decision-making capacities of autonomous individuals.” In order to execute this autonomy, patients must have all the information about their healthcare and treatment, including information related to any medical errors, in order to make informed decisions about their care.\(^9\)

The concept of patient engagement also applies here, as the provider/patient relationship is grounded...
in an appreciation of patient’s rights and expands on these rights to include mutual sharing of information, consensus building, and shared decision-making.\textsuperscript{10}

\textbf{Nonmaleficence}

This principle refers to the moral obligation to avoid causing harm. This is a complex concept, as complications may occur for a variety of reasons, not all of which are related to medical error. The nondisclosure of an error or complication may cause additional harm to a patient if it delays medical intervention to treat the result of the error or complication. Even when errors are disclosed, the actual process of the disclosure, if performed inadequately or incompetently, may lead to psychological harm or distress, especially if the conversation is perceived to lack empathy, is not completely truthful, or seems detached or insincere. This may result in a loss of trust in the provider/patient relationship or even litigation.\textsuperscript{11}

\textbf{Beneficence}

This principle entails preventing harm and promoting well-being. When a patient seeks medical treatment, they expect that competent care will be provided. Beneficence in the event of a medical error requires providers to treat the patient’s experience seriously and take significant measures to treat the consequences and prevent recurrence of the event. A beneficent disclosure is empathetic and sensitive to the patient’s needs.

Another aspect of beneficence – “preventing harm from occurring to others” – clearly supports the notion that not disclosing an error is immoral.\textsuperscript{12} Competent error disclosure which leads to prevention of the same type of error in the future is key to improving patient safety.\textsuperscript{13}

\textbf{Justice}

This final principle, as it relates to disclosure, refers to the right of the patient to receive fair and appropriate compensation when harmed by an error.\textsuperscript{14} Disclosure is the first step in this process. Patients may incur additional expenses for treating the complications resulting from the error; at a minimum, patients are entitled to compensation for these expenses.\textsuperscript{15} If an error is not disclosed, the patient or his/her insurance may be fraudulently charged for expenses resulting from the error.\textsuperscript{16}

Many American medical professional organizations and accreditation agencies now endorse or mandate disclosure of serious unanticipated outcomes. The National Quality Forum has endorsed full disclosure as one of its “safe practices” for healthcare. Ten states currently mandate disclosure of unanticipated outcomes and more than two-thirds of states have enacted laws that prohibit some or all of the information in a provider’s apology from being used in malpractice litigation.\textsuperscript{17}

The \textit{Opinions on Patient Safety in the Code of Medical Ethics} from the American Medical Association summarizes the importance of disclosure as follows:

\begin{quote}
It is a fundamental ethical requirement that a physician should at all times deal honestly and openly with patients. Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions. Situations occasionally occur in which a patient suffers significant medical complications that may have resulted from the physician’s mistake or judgment. In these situations, the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred. Only through full disclosure is a patient able to make informed decisions regarding future medical care.\textsuperscript{18}
\end{quote}

An excellent description of detailed disclosure communication elements is included in Table I in the article \textit{Principles of Medical Ethics: Implications for the Disclosure of Medical Errors}.

Disclosure of medical errors is a moral imperative based on the ethical principles of respect for autonomy, nonmaleficence, beneficence, and justice. Full disclosure and transparency around medical errors can also enhance patient safety by providing the opportunity to fully analyze the root causes.
and prevent similar errors going forward. In order for organizations to provide effective, empathetic disclosure, risk management and patient safety initiatives and activities must include training and support for practitioners to meet this critical obligation to all patients.19

We hope you found this RisKey helpful. If you have questions or would like further resources on this topic, please contact your Coverys Risk Management Consultant.

References

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