Disclosure of Adverse Events to Patients and Families
FAQs

What events need to be disclosed?

- All sentinel events
- Adverse events and medical errors that:
  - Result in temporary or permanent impairment of body function
  - Require transfer to an ICU, additional surgery or other medical intervention

What is an adverse event?

An injury to a patient caused by their medical care rather than their underlying disease

Examples

- Pneumothorax from central venous catheter placement
- Anaphylactic reaction to a medication
- Unintended laceration/perforation

✓ Most adverse events are not associated with a medical error
✓ Adverse events do not necessarily imply negligence

What do I say if I don’t know what happened yet—don’t know the cause?

Initiating contact right away is important. Remember to state only the facts you know. Do not speculate, hypothesize or “think out loud”. Expressing personal concern is appreciated by patients:

“I am sorry for what has happened” or
“I regret this has happened. I know it’s not what either of us wanted or expected, and I’d like you to know how very sorry I am for what you are going through. I am responsible for your care and will find out what happened and will keep you posted on what I learn.” (Give a time frame within which you will try and get back to them.)

Who should disclose? Does it have to be the Attending Physician even if the harm was caused by someone else?

The Attending Physician or his/her designee should coordinate the disclosure, confer with other members of the team, when possible, lead the disclosure, or delegate it when it is impossible to be there. Disclosures should always be face to face, except in unusual situations.

What does the AMA say about the obligation to disclose?

- “Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions…
- In these situations, the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred…
- Concern regarding legal liability which might result following truthful disclosure should not affect the physician’s honesty with a patient.”

What do patients expect in a disclosure?

Patients say they want the following:

- An explicit statement that an error occurred
- What the error was and the error’s clinical implications
- Why the error happened
- How recurrences will be prevented from happening to others
- An apology or expression of sympathy for what they are experiencing


Doesn’t saying “I’m sorry” imply guilt?

Expressing regret in the form of an apology is showing compassion. “I’m sorry you’re in so much pain” or “I’m sorry you had to go through this difficult time” is an expression of compassion rather than an acceptance of culpability.

Did Tort Reform prevent “I’m sorry” statements from being introduced in a lawsuit?

Yes. Section 538.229 provides that “portions of statements, writings, or benevolent gestures expressing sympathy or . . . benevolence relating to the pain, suffering or death of a person and made to that person or” his family, are inadmissible. The statute cautions, however, that the admission into evidence of a statement of fault is not prohibited by the statute.

How do I respond to anger from the patient or family?

“I’m sorry you’re upset. I’m upset about this, too. I am doing everything I can to understand how and why this happened.” Taking a time out to consider what needs to be said and how to continue may be necessary.

If I disclose more often will I open myself to more threat of lawsuits?

It’s really too soon to tell if more disclosure equals more liability, however all studies so far indicate the opposite may be true. Patients are less likely to sue if there is a trusting, honest relationship with the physician. Even in the case of an error, offers to compensate for additional care and lost wages may lead to a settlement but without the financial and emotional costs of a lawsuit.

I understand it is better to confer with the health care team before disclosing. What if the circumstances make that impossible?

When multiple attending physicians are involved in the care of a patient, it may be necessary to disclose without conferring. However, after speaking with the patient or family, let the other physician know what you have said to avoid multiple explanations or confusion in later conversations. When in doubt, make initial contact with the family with plans for a follow up conversation, giving you time to confer with Risk Management and the other physicians.
How will Risk Management advise me about disclosure and concerns over liability?

Risk Management will provide advice in keeping with these Guidelines. If you have any questions or concerns, you can contact your Department Chair/Supervisor or the Director of Risk Management.

Do most physicians disclose adverse events?

No. Only a third of adverse events with harm are disclosed, despite physicians believing it should always be done. Of 538 participants, 97% of faculty and residents stated they would disclose a hypothetical error resulting in minor (97%) or major (93%) harm to a patient. However, only 41% had disclosed an actual minor error and only 5% had disclosed an actual major error (resulting in disability or death).

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- 1332 physicians and 1800 lay members of the public were surveyed. 35% of physicians and 42% of public reported an error in their care or close family member. 31% of those were disclosed.


- 114 internal medicine residents at 3 academic medical centers identified their most significant medical mistake in the past year. 90% were described as serious and 31% involved the death of a patient. Only 24% reported that they had discussed the mistake with the patient or family. 54% discussed it with the Attending.


- A survey of 540 intensive care unit physicians from Western European countries found that only 32% reported disclosing full information about errors to patients although 70% thought they should.


How should I respond to an adverse event?

- Take care of the patient.
- Contact WUSM Department of Risk Management for all adverse events and patient disclosures (362-6956).
- Speak to the patient and express your sympathy: “I’m so sorry this has happened to you. Let me find out why. Then we can talk about what we’re going to do to help prevent it from happening again.
- Contact Risk Management for advice about conversations and documentation issues as well as requests for compensation.
- Participate in the hospital “debriefing” of the event and the Root Cause Analysis, if one occurs. This may help guide you in further discussions with the patient.
- Consult a senior member of your department faculty for support.
Are there events where disclosure is not required?

- Disclosure of non-significant events, (ones that do not harm a patient), should be a matter for clinical judgment by the skilled practitioner. Such incidents do not require disclosure to the patient because they do not affect the patient's well-being. Disclosure is a matter of 'proportionality': the greater the harm or risk of harm caused by an event, the greater is the duty of the health practitioner to disclose this event to the patient and/or to the patient's substitute decision maker.

**Examples:** A minor delay in giving a patient a medication may be an unwanted event but if there was no harm to the patient as a result, disclosure would not be required. The disclosure of certain intra-operative events, such as bleeding or hypotension that are promptly treated with no consequence to the patient, would also be discretionary.

Is it normal to be so upset by an adverse event, even if I may not have been responsible?

Yes. After medical errors, physicians have reported feeling upset, guilty, self-critical, depressed, and scared.


Physicians expressed the need for support or counseling in a confidential setting to deal with the impact on their personal and professional lives.

For many physicians, the most difficult challenge was forgiving themselves for the error.