Do Physician Apologies Make a Difference?

A study reported in the September 1st issue of the *Journal of General Inte*
Medicine brought renewed attention to the question of whether physician apologies to patients can reduce the risk of malprac lawsuits. The somewhat surprising conclusion of the study-based on simulations conducted at Johns Hopkins-is that while accepting responsibility may boost patients' perceptions of physicians, it may not stop them from suing.

Before addressing the import of the study, it is important to review the risks associated with physician statements to patients i California. Like many states, California has an "apology law" that prohibits the use of statements or gestures "expressing sympathy or benevolence relating to the pain [and] suffering" to prove liability. Physician statements of sympathy to a patient family member are protected. Statements that accept fault or responsibility, on the other hand, are not protected.

In other words, statements like "I'm so sorry that you are in so much pain" are safe; they cannot be used against a doctor. Statements like "I'm so sorry that I hurt you," on the other hand, can be used to substantiate a malpractice case.

With this in mind, it is worth considering some interesting facets of the study. First, even if malpractice suit rates didn't drop in study's simulations, the study did confirm that physicians got higher ratings of their competence and elicited greater trust whe they made apologies. First, the ability of apologies to impact patient perceptions is significant, with or without a concomitant reduction in malpractice. Second, the study focused on malpractice lawsuits rather than licensing board complaints; given the absence of any financial incentives for patients in the filing of Medical Board complaints (as opposed to malpractice cases), th is good reason to think that a good apology will reduce the filing of Medical Board complaints.

With this in mind, how can physicians stay within the contours of the protection of the apology law, while still making appropri expressions of empathy? The key are three protected elements of what Dr. Michael Woods, author of Healing Words: The Po of Apology in Medicine, calls the 5 "R's": (1) Regret: ("I am so sorry you are going through this"); (2) Recognition: ("This has b so hard on you"); and (3) Remaining engaged: ("I am here for you."). Physicians can convey these three messages without fe of liability. (Dr. Woods' other two "R's" – (taking) responsibility and (helping) remedy – should be reserved for cases where the is clear, conceded physician error; as noted above, taking responsibility, will be admissible in court.)

In considering how to talk to patients, it is worth noting the finding of researchers in the recent study that patient's perception what was said was more significant than what the physician actually said. It is not enough to convey the right words; the right tone is essential. Physicians should speak from the heart (without going off message). Active listening – focusing attention on patient (or family member) – is critical. Physicians needs to listen, paraphrase back what is expressed in a non-judgmental, non-defensive manner, so that the speaker feels heard and understood in an emotionally supportive way. Patients or family members are often as desperate for emotional support as they are for information about what happened and why. Before discussing anything about the medical issues, the physician must ask the patient (or family member) how he or she is feeling and, if appropriate, ask questions.

It is important not to procrastinate; patients (or family members) need soothing when feelings are raw. Clarity, honesty, and directness are essential; an evasive statement may be worse than no statement at all. It is better to speak in person, informall in a private place; email is a bad idea. Ideally, doctor and patient should be in close proximity, on the same level (i.e. both sitti or both standing, without a desk or bed in between them.

Finally, it is a good idea to document the conversation. Taking notes while patients are speaking is a great way to demonstrat

active listening skills. It may also be helpful if, as the recent research suggests, the conversation doesn't prevent a malpractic suit from being filed.

Nelson Hardiman partner Harry Nelson has spoken and written extensively on the subject of physician (and other healthcare provider) apologies. An outline from a CME presentation that he has delivered to physician organizations and hospital medica staffs can be found HERE. Organizations interested in CME presentations should contact Nelson Hardiman at info@nelsonhardiman.com