

How to Talk About Mistakes: Ethical Duties and Legal Protections



Minnesota Psychiatric Society

*Improving Minnesota's mental health care through education, advocacy and sound psychiatric practice.
Our vision is physician leadership creating the nation's highest quality, affordable and accessible system of mental health care.*

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No conflicts

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Mistakes happen



"Davis, I'm beginning to think that quality control isn't your niche."

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How to do better after a medical error?



Adopt practices to avoid recurrence



Inform patient and mitigate harm

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What won't
work?



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If not
covering it
up, then
what?

- Minnesota disclosure law (2003) – Statute 144.7065
- First state to require reporting of adverse health care events
- Minnesota Department of Health receives and analyzes reports
- Goals were quality improvement and accountability
- State also has statutory peer review system

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Patient Safety
and Quality
Improvement
Act

- 2005 federal law
- Privilege and confidentiality protection for reporting and analyzing medical errors
- Goal of reducing occurrences and increasing patient safety
- 2021 report notes that mechanism was created, at least in part, due to fear of legal discovery being a significant barrier to voluntary reporting of errors by health care providers

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Report submitted...
What else could
be required??



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Ethical duties?

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Telling the patient



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Ethical principles support disclosure

Honesty

Patient autonomy

Non-maleficance

Beneficence

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Where can reminders be found?

- Joint Commission on Accreditation of Hospital Organizations:
 - *patients and, when appropriate, their families are informed about the outcomes of care, including unanticipated outcomes*
- AMA Code of Medical Ethics, Opinion 8.12
 - *physician should at all times deal honestly and openly with patients*
 - *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*
 - *Concern regarding legal liability which might result following truthful disclosure should not affect the physician's honesty with a patient*

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And....

- AMA Code of Medical Ethics, Opinion 8.121
 - *When patient harm has been caused by an error, physicians should offer a general explanation regarding the nature of the error and the measures being taken to prevent similar occurrences in the future. Such communication is fundamental to the trust that underlies the patient-physician relationship, and may help reduce the risk of liability*

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And....

- *APA Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*
 - *Section 1: A physician shall be dedicated to providing competent medical care with compassion and respect for human dignity and rights*
 - *Section 1.1: A psychiatrist shall not gratify his or her own needs by exploiting the patient. The psychiatrist shall be ever vigilant about the impact that his or her conduct has upon the boundaries of the doctor-patient relationship, and thus upon the well-being of the patient*
 - *Section 1.3: In accord with the requirements of law and medical practice, it is ethical for a physician to submit his or her work to peer review*

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And....

- *APA Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*
 - *Section 2: A physician shall uphold the standards of professionalism, be honest in all professional interactions and strive to report physicians deficient in character or competence, or engaging in fraud or deception to appropriate entities.*
 - *Section 5: A physician shall continue to study, apply, and advanced scientific knowledge, maintain commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.*
 - *Section 8: A physician shall, while caring for a patient, regard responsibility to the patient as paramount*

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ENOUGH
ALREADY!

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And...APA
Commentary on
Ethics in
Practice

- Topic 3.1.1 The physician-patient relationship: *psychiatrist is responsible for rendering medical care in the patient's best interest while respecting the patient's goals and autonomy*
- Topic 3.2.2 Honesty and integrity: *Honesty includes both ensuring that information provided is truthful and that information is not withheld from the patient.*
- Topic 3.2.6 Therapeutic boundary keeping: *The concept of beneficence holds that all interaction with a patient should be for the benefit of the patient and the concept of 'non-maleficence' holds that interactions that could potentially cause harm or misunderstanding should be avoided*

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What roadblocks might get in the way?



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Fear of
malpractice!

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But remember...



- Honesty about a medical error may reduce damages by ensuring that harm to patient is limited and potential ameliorative care can be given
- Honest disclosure and reporting also contributes to preventing future harm by reducing likelihood of mistake being repeated

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Apology Laws

- Vary by state
- Render inadmissible in malpractice litigation a physician's apologetic statement after medical error
- Partial apology laws protect expressions of remorse (but not admission of fault)
- Full apology laws protect expressions of remorse which include admission of error

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Stewart v Vivian, 91 N.E.3d 716 (Ohio 2017)

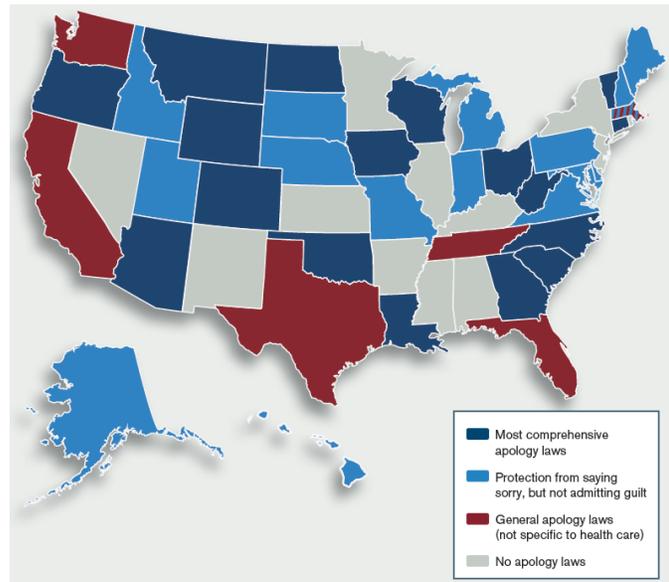
- Patient who was psychiatrically hospitalized (for prior suicide attempt) died by suicide
- In ICU prior to the death, treating physician made statements to family, including that patient had said she would keep trying
- Family brought suit and physician sought to have statement excluded under apology law
- Ohio Supreme Court concluded that State's apology law protected physician acknowledgement that medical care fell below the standard of care and statement was excluded from case

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What about Minnesota?

Minnesota is one of 12 states without an apology law

Source: ACEPNow, The Official Voice of Emergency Medicine
<https://www.acepnow.com/article/several-states-protect-physicians-who-apologize-but-be-careful/?singlepage=1>



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Any other alternatives?

- Some hospital systems have implemented disclosure programs with a similar goal of increased transparency for patients and reduced occurrence of medical errors
- University of Michigan Health System is example
 - Program includes open communication directly with patient, full disclosure and learning from experience, and compensation for injuries sustained
 - “Apologize and learn when we’re wrong, explain and vigorously defend when we’re right”
 - Observed demonstrated reduction in number of malpractice suits

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- Admit mistakes and learn from them
- Once you know better, do better

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Questions?



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