

# Medical Apologies

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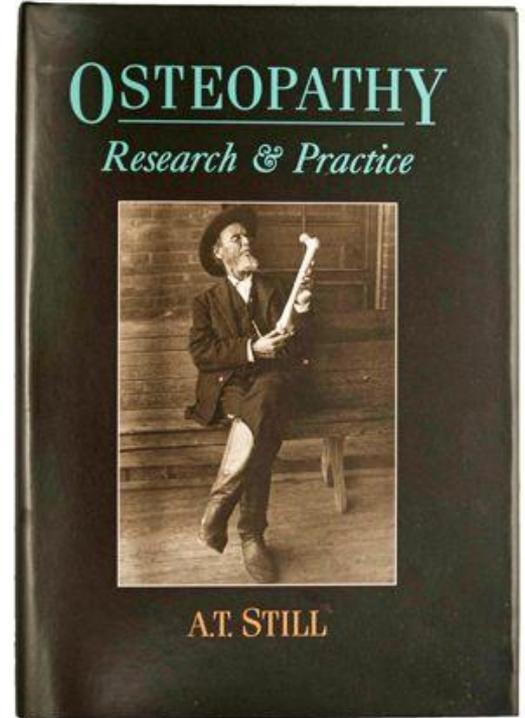
# Andrew Taylor Still

*“Truth has no cause to fear opinions.*

*It wants no flattery.*

*It neither loves nor hates.*

*It is food and comfort.”*



# Why?

(Why not?)

# Osteopathic Principles & Practice

- “The physician shall give a candid account of the patient's condition to the patient or to those responsible for the patient's care.” AOA Code of Ethics
- “It is a fundamental ethical requirement that a physician should at all times deal honestly and openly with patients. ... Concern regarding legal liability which might result following truthful disclosure should not affect the physician's honesty with a patient.” AMA Code of Medical Ethics section 8.6

# Barriers to Apologizing

- **Fears of litigation**
- Fears of disciplinary action from superiors
- Harm to professional reputation
- Embarrassment and shame
- Limited training and guidance in disclosing medical errors to patients
- Uncertainty as to who was responsible
- Uncertainty how much information to share with patients
- Not reporting near-miss events that did not cause patient harm

# Why Apologize, Why Report Medical Errors

- It's the ethical thing to do
- Can improve trust and strengthen physician-patient relationship
- Reduces the likelihood of malpractice lawsuits (results may vary)
- Can work to prevent future mistake if coordinated with QI
- What about guilt?

# Why do People Sue Doctors? (Lancet, 1994)

“Four main themes emerged from the analysis of reasons for litigation:

- “**concern with standards of care**--both patients and relatives wanted to prevent similar incidents in the future;
- “**the need for an explanation**--to know how the injury happened and why;
- “**compensation**--for actual losses, pain and suffering or to provide care in the future for an injured person; and
- “**accountability**--a belief that the staff or organisation should have to account for their actions.”

# Why do People Sue Doctors? (cont.)

- So that it would not happen to anyone else (91.4%)
- I wanted an explanation (90.7%)
- I wanted the doctors to realize what they had done (90.4%)
- To get an admission of negligence (86.7%)
- So that the doctor would know how I felt (68.4%)
- My feelings were ignored (66.8%)
- I wanted **financial compensation** (65.6%)
- Because I was angry (65.4%)
- So that the doctor did not get away with it (54.7%)
- So that the doctor would be disciplined (47.6%)
- Because it was the only way I could cope with my feelings (45.8%)
- Because of the attitude of the staff afterwards (42.5%)
- To get back at the doctor involved (23.2%)

# “Teaching Medical Error Apologies”

- Little training exists in medical education for apologizing for and addressing medical errors
- 384 medical students participated in the study (Medical College of Georgia)
- Essentials of Clinical Medicine Course (ethics, biostats, culture, professionalism, etc.)
  - Online reading and videos of physicians apologizing for errors
  - Interactive apology tasks assuming the patient or physician role
  - Small group exercises
  - Anonymous feedback by peers on written apologies
  - Standardized patient encounters
- Apologies written by females were rated higher in effectiveness by peers compared to males
- 74% of students considered the exercises useful and their confidence/comfort level in providing effective apologies increased at the close of the course

# Structure of an Apology

1. Timely reporting, generally as soon as the error is discovered
2. **Express regret** for the unanticipated outcome
3. **Disclose the error** or system failure that took place to the patient
4. **Discuss the consequences** of that error
5. **Discuss prevention strategies** to avoid the error in the future
6. Assume responsibility, restate regret, and **provide a formal apology**
7. Provide opportunity for the patient or family to ask **questions**
8. *Depending on the medical facility, provide financial compensation for added out-of-pocket expenses as a result of the error or other means of retribution*

# “Defend and Deny”

- Why?
- Providers overwhelmingly want to apologize
- Strongly cautioned against it by
  - Fear
  - Legal counsel
  - Institutional guidelines
- 1986: Massachusetts passed first “apology law”
- 2004: Colorado passed first apology law covering admissions of guilt

<https://goo.gl/bwdYPY> (List of Apology Laws)

# Types of Statements (Helmreich)

Partial Apologies / No personal responsibility

- I'm sorry about what happened to you (Goodwill / Sympathy)
- I want to help you recover (Benevolence)

Full Apologies / Personal responsibility

- I should have found a way to stop this
- I'm so sorry I let this happen

**Empathy vs. Apology vs. Admission?**

# MA General Laws, Chapter 233, Section 79L

(b) In any claim, complaint or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, all **statements, affirmations, gestures, activities or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error or a general sense of concern** which are made by a health care provider, facility or an employee or agent of a health care provider or facility, to the patient, a relative of the patient or a representative of the patient and which relate to the unanticipated outcome **shall be inadmissible as evidence** in any judicial or administrative proceeding, unless the maker of the statement, or a defense expert witness, when questioned under oath during the litigation about facts and opinions regarding any mistakes or errors that occurred, **makes a contradictory or inconsistent statement as to material facts or opinions**, in which case the statements and opinions made about the mistake or error shall be admissible for all purposes. In situations where a patient suffers an unanticipated outcome with significant medical complication resulting from the provider's mistake, the health care provider, facility or an employee or agent of a health care provider or facility **shall fully inform the patient and, when appropriate, the patient's family, about said unanticipated outcome.** *[[emphasis added]]*

# ME Revised Statutes, Title 24, §2907

In any civil action for **professional negligence** or in any arbitration proceeding related to such civil action, **any statement**, affirmation, gesture or conduct expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence that is made by a health care practitioner or health care provider or an employee of a health care practitioner or health care provider to the alleged victim, a relative of the alleged victim or a representative of the alleged victim and that relates to the discomfort, pain, suffering, injury or death of the alleged victim as the result of the **unanticipated outcome is inadmissible** as evidence of an admission of liability or as evidence of an admission against interest. **Nothing in this section prohibits the admissibility of a statement of fault.**



# Further Considerations (Helmreich)

- “...the context of choosing one’s words to avoid lawsuits is in itself incompatible with the concessionary, open, self-deprecating mindset characteristic of the apologetic stance. Once the possibility of evidence is considered, the apologetic context is constrained, if not corrupted.”

***ADMISSIBLE AS EVIDENCE vs SUFFICIENT TO ESTABLISH LIABILITY***

# “Sorry is Never Enough” (Vanderbilt U, 2016)

“In general, the results are not consistent with the intended effect of apology laws, as these laws do not generally reduce either the total number of claims or the number of claims that result in a lawsuit. Apology laws have no statistically significant effect on the probability that surgeons experience either a non-suit claim or a lawsuit.”

*For this study, it was assumed that apology laws increased apologies. Did they?*

<https://news.vanderbilt.edu/2017/02/01/apology-laws-malpractice-payoffs/>

# Apologies in Practice

- From 1990 to 1996, the Lexington VA had 88 claims and paid an average **\$15,622 per claim, compared with a \$98,000 average** at VA hospitals without 'I'm sorry' policies. (Klauer)
- In 2002, the University of Michigan implemented a procedure to disclose errors, apologize for them, and to compensate the patient. They reported a **\$2 million annual reduction in litigation expenses and a 40% reduction in new claims**. Their average cost of a claim **dropped from \$405,921 to \$228,308**. (Klauer)

# Lexington, KY, Veterans Administration (Kraman)

1. Investigation regarding malpractice or medical error
2. Contact patient or kin, advise that attorney may accompany if desired
3. F-2-F meeting, with CoS, attorney, QM, sometimes facility director
  - a. Details, including identities of people involved
  - b. Emphasis on regret of institution and corrective action taken to prevent future events
  - c. Answer questions
  - d. **Offer restitution**, incl monetary assistance, corrective treatment, or claims assistance
4. Claims assistance
  - a. Names and numbers of people who can help
  - b. ... or answer questions
  - c. Advised to retain counsel
  - d. Plaintiff's attorney confirms medical information that was volunteered
  - e. Plaintiff's attorney and facility attorney work out a reasonable compensation for loss

# Insurance Companies

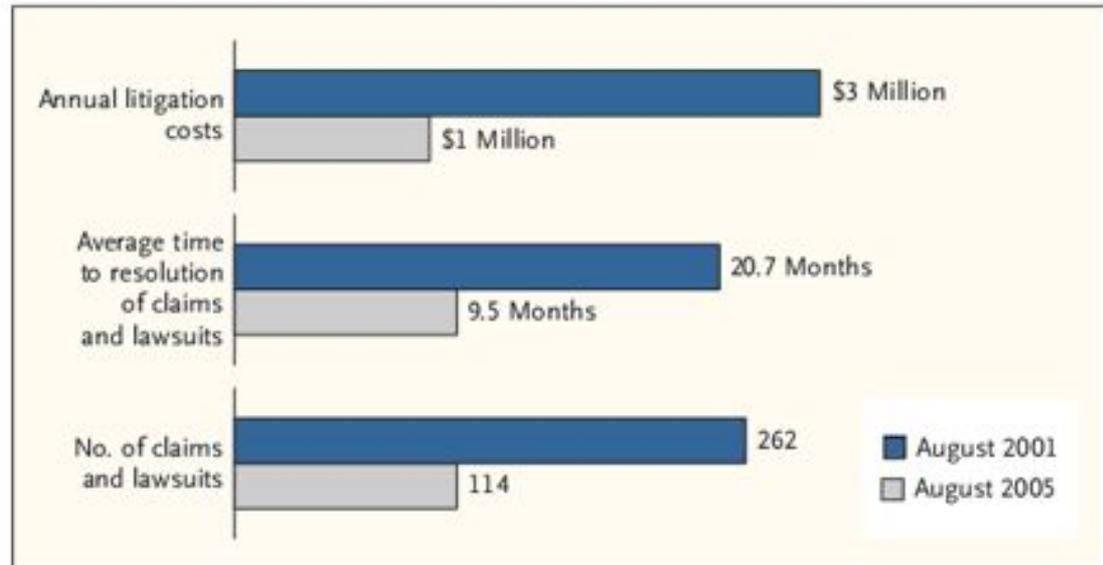
- COPIC Insurance Co., a medical liability carrier in Colorado, **started openly communicating about medical errors** in 2000 and reimburses patients for costs of up to \$30,000.” (Klauer)
- CRICO, or the Controlled Risk Insurance Company, a not-for-profit consortium that insures all claims from Harvard-affiliated hospitals, **data-mined claims information to prevent medical errors**. (Sanghavi)
- Med Pro offers a **5% premium discount** for insured physicians who participate in the company's "accredited risk management education program." (PerfectApology.com)
- One malpractice insurer in Denver promoted apologies and quick settlements among a group of physicians, average payments to aggrieved patients were **under \$6,000, compared with about \$284,000 for doctors not in the program**. (Courant)

# Massachusetts: DA&O

- Disclosure, Apology, and Offer, 7 hospitals incl Beth Israel and MGH
- Physicians apologize without fear of their words used against them in court
- Working in concert with malpractice insurers
- Fair, timely offers of financial compensation
- “Patient Safety Coordinators” coach physicians

# Conclusion

- Would you apologize? Remember: admissibility versus sufficiency.
- What is our institutional policy?



Results of Medical Error Disclosure Program at the University of Michigan Health System.

# Citations

Helmreich:

<https://www.law.columbia.edu/sites/default/files/microsites/law-culture/files/2011-files/JeffHelmreichLaw%26HumWorkshop2011-%20FINAL.pdf>

Klauer: <https://www.ahcmedia.com/articles/136295-apology-laws-the-complexities-of-apologies-and-error-disclosure>

Sanghavi:

<https://www.bostonglobe.com/magazine/2013/01/27/medical-malpractice-why-hard-for-doctors-apologize/c65KIUZraXekMZ8SHIMsQM/story.html>

Kraman: <http://annals.org/aim/article/713181/risk-management-extreme-honesty-may-best-policy>

PerfectApology: <http://www.perfectapology.com/medical-errors.html>

Courant: [http://articles.courant.com/2005-09-02/news/0509020057\\_1\\_lower-insurance-premiums-doctors-patients](http://articles.courant.com/2005-09-02/news/0509020057_1_lower-insurance-premiums-doctors-patients)

# **Thank you**

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