

ISSUES AT RISK

Apology just first step in event management

By Kathy Wire

A physician client recently asked me "What do you make of all this apology stuff? It's everywhere."

He's right. Like reality TV and spam, healthcare providers just can't seem to get away from the "apology stuff." I think it's a good thing, but only as part of a much larger, comprehensive program of disclosure. Both are valuable, but only together do they create an incredibly powerful tool for controlling losses. We refer to it as "event management."

Several things have become very clear as we study disclosure:

- Patients expect us to be honest with them.
- Our system of resolving claims is not working well; even tort reform will just slice off the top layer of claims.
- Jurors (who are also patients) like their doctors and don't want to punish healthcare providers unless we destroy their trust. Honesty and accountability support trust.

● Doctors want to disclose but are skittish about doing it.

● Defense lawyers don't like the idea, and they feed the providers' fears.

So how do you do it?

Most hospitals have disclosure policies, thanks to a JCAHO requirement. Those offer a good specific roadmap for events in the hospital. Medical staff members should become familiar with the policies, both to understand them in advance and to apply relevant portions to office events.

Here are some tips on disclosure that can be adjusted to fit in with hospital policy:

● Establish a strong communication network with staff and other providers. Strive to recognize adverse events immediately. Cockeyed optimism and hoping for the best don't help in this context. If you suspect a problem, talk to the patient and family; they can become your best observers. Risk managers know that the worst cases arise from providers' reluctance to recognize problems.

● The disclosure/apology discussion will be complicated and important. Think it through in advance, and practice if you can. Avoid defensiveness, blame or argument. This is not easy.

● The most basic apology, which expresses empathy and compassion, is appropriate for an injury that does not result from poor care. With a clear error, the accountable party should also acknowledge both error and responsibility. The apology may come from the physician, hospital representatives or, most often, both.

● Make sure that you have all the facts before you begin the discussion. Never make assumptions; "I don't know, but I will find out" has huge value. A provider who follows

through on that promise creates a tremendous opportunity to regain trust.

● Document the discussions carefully, and if the patient is hospitalized, make sure the documentation complies with hospital policy. Juries like to believe medical records and very likely will believe a note that is consistent with the physical evidence and your testimony.

● Think about bringing the patient and/or family into your subsequent loss-prevention efforts. Knowing that their pain has brought some good often reduces the negative emotions and isolation that lead to lawsuits. Patients often have very helpful insights into the factors leading to the event. After all, they are at the center of it.

● Make sure that all involved liability insurance carriers are aware of the event and your discussions. Often, the disclosure process neatly evolves into claim negotiations. However, the people with the money have to be aware of the situation and ready to act. All potential defendants and their carriers need to be involved if they want to take advantage of this least-adversarial opportunity to settle the claim.

Unfortunately, many carriers and self-insured entities have cumbersome claims-approval processes that hinder quick-resolution efforts for all but the smallest claims.

While there is only a little published evidence on the financial advantages of early resolution and disclosure pro-

grams, their value is increasing. The Department of Veterans' Affairs in Lexington, KY, found that its defense costs dropped dramatically and indemnity payments remained stable using such programs. The payments were also distributed more often to patients with valid claims, accomplishing the goal of compensating those injured. The University of Michigan just reported similar outcomes.

Even if the claim isn't resolved, the case will proceed to trial in a more favorable context. Experienced plaintiff lawyers understand that they don't ring bells when defendants have openly disclosed all the care problems. They freely admit that without a fight, they have a hard time making the case "ugly," and they have little to make the jury indignant. Juries figure out that if the defendants disclosed and apologized, the lawsuit is probably just about money. If defense attorneys suggest reasonable compensation, the plaintiff will just seem greedy.

And that isn't a bad outcome.

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