

patient, proactive full disclosure to patients who have been injured because of accidents or medical negligence, and fair compensation for injuries.” This is trust building and maintaining behavior.

Victim Management

The greatest barrier to disclosure and appropriate victim attitude management is management’s fear of liability, fostered by well-meaning but misguided counsel. Any credible way to reduce or mitigate this fear is essential to better behavior, reputation management, and litigation reduction.

The lawyer’s first assumption, now well ingrained in management, is that total honesty and candor in situations of omission, commission, error, and negligence can only lead to higher liability. The data in this article tend to refute that, saying essentially that the liability performance of the Lexington facility is better than other comparable facilities that rely on secrecy, denial, even deception.

The “Extreme Honesty” article also mentioned a study published in *The Journal of the American Medical Association* in 1992 that examined why 127 families sued their healthcare providers for perinatal injuries. “Of 127 families who sued, 43 percent were motivated by the suspicion of a cover-up or by the desire for revenge. Another study of 149 randomly selected patients in an academic internal medicine practice found that almost all the respondents “wanted their physicians to acknowledge even minor errors; many stated that they would respond to an unacknowledged moderate or severe mistake by filing a lawsuit.”

One lawyer interviewed for the article put it this way: “In over 25 years of representing both physicians and patients, it became apparent that a large percentage of patient dissatisfaction was generated by physician attitude and denial, rather than the negligence itself. In fact, my experience has been that close to half of malpractice cases could have been avoided through disclosure or apology but instead were relegated to litigation. What the majority of patients really wanted was simply an honest explanation of what happened, and if appropriate, an apology. Unfortunately, when they were not only offered neither but were rejected as well, they felt doubly wronged and then sought legal counsel.”

If you simply substitute the word “victim” for “patient” in U.S. Department of Veterans Affairs’ four-step “Extreme Honesty” process, you have the basis for a major lesson in reputation preservation for your company or organization.

Extreme Honesty: How This Process Works at the VA

The U.S. Department of Veterans Affairs uses a four-

step process to notify patients of negligence:

1. Risk management committee:

- * Identifies an instance of accident, negligence, or malpractice.

- * Investigates the facts.

- * Interviews involved physicians, the chief of relevant clinical service, and other personnel.

2. If the Committee finds malpractice or substantial error (resulted in loss of patient’s function, earning capacity, or life):

- * Plans are made to notify the patient or next-of-kin.

- * Patient’s surrogate or next-of-kin is called (usually by the chief of staff).

- * Family is told that there was a problem with the care in question and is asked to come to the medical center at their convenience for an explanation.

- * Telephone conversation provides just enough details to indicate the seriousness of the matter (including, if necessary, a statement that a medical mistake was made and that an attorney may accompany the patient or family, if desired).

3. Face-to-face meeting:

- * With the chief of staff, the facility attorney, the quality manager, the quality management nurse, and sometimes the facility director.

- * All details are provided as sensitively as possible, including the identities of persons involved in the incident.

- * Emphasis is placed on the regret of the institution and the personnel involved; and on any corrective action that was taken to prevent similar events.

- * Offer to answer questions and an offer of restitution, along with subsequent medical or surgical treatment.

- * Assistance with filing for service connection under 38 United States Code, section 1151.

4. Claims assistance:

- * Patient, surrogate, or next-of-kin is assisted in filing the necessary forms.

- * Victim is given the names and phone numbers of persons who can answer any additional questions.

- * Patient or next-of-kin is advised to retain counsel, if they haven’t all ready.

- * Committee is forthcoming to the plaintiff’s attorney so that the attorney’s review of the medical record will confirm the information that was volunteered.

- * The facility’s attorney and the patient’s attorney work together to reach an equitable settlement on the basis of “reasonable calculation of loss.”

Recent Developments

Saying “I’m sorry,” is becoming a mainstay in healthcare communication, triggered by the healthcare insurers, who have suddenly begun to realize that apologies promptly

and sincerely delivered, by all parties to an adverse medical event can significantly reduce, if not eliminate litigation. If you go to your favorite browser and click on "sorryworks.net" you'll come across a huge site involving a tremendous number of hospitals and healthcare organizations from across the United States, all of whom are joining in the chorus to urge doctors, lawyers, and medical administrators to engage in what is called in medical shorthand, the "I'm sorry" movement.

The pressure to do this is so great that in an increasing number of cases, failure to apologize promptly at the first sign of a medical problem could void a doctor's liability coverage and coverage to pay any attorney who might defend that physician or healthcare institution.

On September 28, 2005, Senator Hillary Rodham Clinton of New York and Senator Barack Obama of Illinois jointly introduced the "National Medical Error Disclosure and Compensation Act of 2005." The introduction of this legislation reads, in part, "Solutions to patient safety, litigation, and medical liability insurance problems, while challenging, are critical. In an attempt to address these issues, a number of hospital systems and private liability insurance companies around the country have adopted a policy of robust disclosure of medical errors with thor-

ough analysis and intervention, apologies for such errors and early compensation for patient injury."

"Overall, these policies have resulted in greater patient trust and satisfaction, more patients being compensated for injuries, fewer numbers of malpractices being filed, and significantly reduced administrative and legal defense costs for providers, insurers, and hospitals where such policies are in place."

Apparently, the ability for us to significantly limit litigation in crisis situations is at hand if we remember what victims need and the powerful closure value of apology. Managing the victim dimension creates time and conserves resources to deal with whatever the remaining aspects of your crisis happen to be. And, when it comes to litigation, only three of every 100 civil cases will ever get to trial. If you pursue a litigation strategy and you actually get to court, odds are you'll be hearing the old classic, "Who's sorry now?", being sung by the victims ? about you.

The victimized have enormous power in our society. The lesson is – chill out. Have a heart. Listen to your guts. When there are victims, set aside your inherently adversarial training and nature, and then, pragmatically and humanely, manage the victim dimension. It's how your mom taught you to behave, anyway. And that isn't mush.