

Hospitals offer new take on medical mistakes

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All Donald Platt wanted was an apology. The tumor on his kidney was the size of a baseball by the time his cancer was detected in a CT scan - five years after his doctor misdiagnosed his symptoms and failed to order the right tests.

Platt sued, angered as much by his doctor's attitude as by the mistake.

"He never apologized," said Platt, an Upper Saddle River, N.J., resident. "If he had, I probably never would have sued."

Eager to resolve medical mistakes in a better way, some New Jersey hospitals and physicians are openly admitting errors to patients. They are offering sincere apologies and, sometimes, money.

Hospital officials hope saying "we're sorry" will cut down on lawsuits. It's a radical change from the "deny and defend" culture of medicine, which leaves patients angry and litigious.

"We want to try to do the right thing in these instances and resolve things more amicably, more efficiently and in a better way than blood and guts litigation," said Larry Downs, general counsel for the Medical Society of New Jersey. The society is evaluating "Sorry Works!" -- a program that claims to have reduced litigation expenses by two-thirds at some of the nation's hospitals.

At The Valley Hospital in Ridgewood, N.J., officials report that lawsuits are down more than half since the hospital started its apology program.

LibertyHealth, which operates Meadowlands Hospital in Secaucus and Jersey City Medical Center, say their program, "We're Sorry," has also had good results.

While the conversation can be unpleasant, patients appreciate the truth, said Dr. David Roy, who hopes more hospitals promote openness.

"A patient feels doubly violated when something happens because of a medical error and then they can't get any answers," he said. "It's a breach of trust."

Linda Malkin, Valley Hospital's director of risk management and claim services, agrees.

"It basically comes down to doing the right thing," she said.

Valley Hospital had a case in which a woman in her late 60s never received a required blood thinner and ended up having to have stents inserted to prop open her arteries, she said.

"It was really important that the physician communicate immediately" with the patient, said Malkin, who said she also contacted the patient about the mistake.

Valley picked up the tab for the extra days the woman spent in the hospital and offered her compensation, she said. The patient countered and an agreement was reached, said Malkin, who declined to reveal the amount.

Dr. Paul Mendelowitz, senior vice president of Holy Name Hospital in Teaneck, had a case 18 months ago in which a sponge was left inside a patient. The patient needed additional surgery to remove it.

"People were upset and annoyed," Mendelowitz said. "Part of dealing with this is acknowledging that and taking the heat that will come your way. We understand they're not happy. We're not either."

While the hospital didn't charge for the additional care, no compensation was offered. The family never sued, he said.

New Jersey hospitals reported 456 errors - including 72 that resulted in death - to the state in 2007, the last year data were available. Each year, up to 98,000 people are killed by medical errors in hospitals nationwide.

Reducing lawsuits is critical, especially in New Jersey, where 1,275 malpractice cases were filed last year. Millions are spent in payouts. Even when a hospital or doctor wins, they rack up costly legal bills.

The proponents of apology programs say they most certainly cut down on lawsuits. At the University of Michigan Health System, for example, lawsuits have been cut in half and litigation expenses have dropped by two-thirds, or \$2 million, according to Doug Wojcieszak, founder of Sorry Works!

Attorneys insist it is rare for hospitals to admit errors to patients.

"In my 20-plus years of practice it never happened," said Glen Rock attorney E. Drew Britcher, who specializes in medical malpractice. "One of the biggest issues clients complain about is they can't get answers from anybody. It creates a lot of animosity."

"What drives people to seek lawyers is anger," said Lee Goldsmith, a physician and attorney who practices in Englewood Cliffs. If a doctor seems honest and contrite, patients are less inclined to sue, he said.

"I've looked at cases and told people we need to sue doctors A, B, C and

D," Goldsmith said. "The client will tell me, 'not Dr. D, he tried to help,' and I'll tell them that it looks like Dr. D is the main problem. It's been said to me on more than one occasion: 'Then we won't bring suit.'"

Two recent cases put Jersey City Medical Center's apology program to the test.

In one case, a nurse failed to administer medication to a pregnant woman who had a blood type incompatible with her fetus. The woman had already left the hospital, so the hospital sent a nurse to her home to give her the injection, said Brenda Hall, a senior vice president and chief safety officer.

"They were grateful and understood," Hall said.

Another case involved a male patient in his 20s who died from an error last fall, Hall said. Despite repeated phone calls and certified letters, the family has not responded, Hall said.

While the New Jersey Hospital Association supports the apology concept, they, along with some physicians, worry it will give patients ammunition for lawsuits.

"There is still a feeling that if I say, 'I'm sorry,' that confers liability on a physician's or hospital's part," said Aline M. Holmes, senior vice president of clinical affairs.

"It's fantasyland," said Dr. Richard M. Winters, chairman of the medical board at Hackensack University Medical Center, where he says errors are disclosed to patients. "Until we have meaningful tort reform in this country and people can't sue for spilling coffee on themselves, we will have a hard time bringing people to the table."

From a physician's perspective, when there's an adverse event, "I don't believe anyone feels as worse as the physician," said Dr. Kenneth Garay, chief medical officer for LibertyHealth. "Communication is the best way to heal any bridges. It's hard for a physician. We're not trained that way."

In fact, some doctors are warned by insurers that any acknowledgment of error can nullify malpractice coverage, said Steven I. Kern, an attorney who represents physicians.

"Once the patient becomes aware of an error, you have now ceded a malpractice case," said Kern, a former deputy attorney general assigned to the state Board of Medical Examiners. "The apology becomes the trigger for the patient visiting an attorney."

Thomas E. Ricker, a Hunterdon resident who settled a malpractice case with a hospital in 2006, sees it differently. Physicians failed for weeks to inform him that he had a life-threatening bacterial infection. He suffered a stroke, must wear a leg brace and takes anti-seizure medication.

"Three-and-a-half years of depositions, a lawsuit and trial, and then they settled," said Ricker. "Why didn't they just say I'm sorry and make an offer? Everybody would have made out better."

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