What to say when things go wrong

By Dennis J. Boyle, MD

Despite our best intentions, medical care does not always deliver the results that we anticipate. Unanticipated outcomes may result from potential complications, such as postoperative deep vein thrombosis or infection. Explicit errors, such as use of a wrong-size joint implant or a wrong-side surgery, also result in adverse outcomes. In some instances, although an outcome is excellent from a medical standpoint, the patient may think otherwise—perhaps because of his or her inability to return to work or to a favorite hobby. Discussing these events with our patients is critical. But when is the best time to do so, and what do we need to keep in mind when delivering bad news?

First, we need to examine why the adverse outcome occurred. It is important to determine whether harm resulted from care that met the standard and could not have been prevented, or if it resulted from substandard care that deviated from commonly agreed upon practice. Different types of events require different types of conversations, in part because of the implications for the involved parties (eg, whether financial compensation may be appropriate).

In fairness, the term “medical error” should be restricted to situations where an investigation clearly determines that another orthopaedic surgeon would have recognized that the action was incorrect and would have acted differently, preventing the harm that occurred to the patient.

Discussing unanticipated outcomes
Patients may experience two types of disappointment following an unanticipated outcome. The first disappointment stems from the adverse medical event itself, the other from the caregiver’s unsatisfactory behavior afterward. Physicians can avoid this second disappointment by working to reestablish trust and relationships after a bad outcome has occurred.

Research suggests that sensitivity and honesty can decrease the likelihood of legal action in these situations. Studies of medical errors and injuries have shown that most affected patients never seek compensation, and that 83 percent of medical liability lawsuits do not reveal a deviation from the standard of care. Lawsuits are often the result of patients believing that their physicians have not been honest with them after an adverse outcome. Open discussions may help avoid these situations.

Problems with disclosing errors
Unfortunately, most physicians believe that brutal honesty and an admission of guilt on their part will lead to more lawsuits. Surveys of physicians and healthcare organizations show that fear of a medical liability lawsuit is the most commonly perceived obstacle to disclosure.

Reluctance to disclose, however, can contribute to a patient’s perception that information is being distorted and concealed, which can actually motivate lawsuits. Our experience at COPIC suggests that discussing unanticipated outcomes with patients does not inevitably lead to lawsuits. It’s recommended, however, that physicians confer with their professional liability carrier prior to these discussions.

Other reasons that physicians may choose not to disclose an error include concern about their personal reputations or a belief that the patient has already suffered too much and the conversation may actually increase the patient’s and family’s stress and distrust.

Disclosure steps
Before disclosing any unanticipated outcome, the surgeon should review the event and develop a good understanding of all the relevant information, including the cause. Sometimes it may be immediately clear if there was an error
involved. It is necessary to be able to answer this question directly if asked during any kind of disclosure discussion. Before sitting down with the patient, anticipate the questions he or she might ask and what your answers will be. If necessary you might even consider role-playing the discussion. As always, talk to your professional liability carrier to get their advice about proper disclosure. At COPIC, we discuss the pros and cons and go over the following issues with each case.

Set aside enough time and use a quiet space to have disclosure discussions. Anticipate that several of these discussions may be necessary over time. Consider whether a friend or family member of the patient should be present, especially if the patient is still experiencing the effects of the anesthesia.

Sit down and lean forward. Always be aware of your own body language. Ask first how the patient is feeling and what he or she already knows about what happened. Consider opening with “I’ve got some unfortunate news.” Clearly state what happened and what the consequences for the patient will be. Above all, be empathetic.

Remember that “I’m sorry” has two meanings. That phrase could mean “I’m sorry you’re going through this” or “I’m sorry I’ve made a mistake.” Acknowledge and validate the patient’s feelings. If there is an error, admit it and that you’re sorry. Try to describe the event in clear language.

Discuss what happened and what will be done to avoid future events if applicable. Discuss what else will need to be done medically and how the event will affect the patient’s future health care. Above all else, listen to the patient.

At the close of the discussion, discuss next steps and be prepared to have follow-up conversations as the patient may have additional questions. Make sure to touch base with the family and see if they have questions or concerns. Designate a contact person if there is a need for further conversation. Be aware that these discussions are difficult, and make sure you take care of yourself emotionally.

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