

● Medico-legal advice

Professional conduct, ethics and medical errors



David Quinn considers the ethics and obligations that come into play in cases where a medical error occurs and examines whether an apology is an admission of liability

The Irish Medical Council (the Council) recently published its revised Guide to Professional Conduct and Ethics for Registered Medical Practitioners (7th Edition, 2009). Principle 18 of the Guide states that doctors should acknowledge their mistakes to patients if something goes wrong and, if appropriate, apologise.

Further, they also must make sure that the effects of the mistake on the patient are minimised as far as possible and if the patient needs further care, the doctor must make sure that the patient is helped through the process.

The Department of Health and Children's Commission on Patient Safety and Quality



Assurance report on Building a Culture of Patient Safety in July 2008 highlights 'the growing support in international

literature for the concept that doctors should make full disclosure of medical errors to their patients'.

Most clinicians would agree that if an error occurred, they would take all the necessary steps in order to help and sup-

port the patient to a full recovery by minimising any further effects.

However, apologising, openly and honestly, is something that clinicians state they would be concerned about, fearing a perceived threat of litigation or potential difficulties in relation to indemnity cover.

No legal duty of care

In the UK, the House of Commons Health Committee, in July 2009 recommended considering a legal duty of candour (this is a legal requirement on practitioners to practice being open and honest with patients or their next of kin when harm is caused).

This is being widely supported by patient support groups in the UK and Ireland and they are calling for this duty to be adopted, as professional and ethical codes do not usually impose legal duties on those to whom they apply.

These patient support groups are also calling for this legal duty of candour to be extended to health managers and boards in hospitals. There is at present no such legal duty in Ireland.

However, clinicians could now face disciplinary action if the Council finds that they have not been upfront with patients and their family when a medical error occurs.

An apology is not an admission of liability and patients

may be less inclined to bring a case against their doctor if he/she has been open, frank and honest throughout the process and does everything he can to assist the patient back to full health.

It is common case that patients, when they bring a case, voice their anger at the lack, or absence, of communication from the outset from the clinicians and hospital, when an error occurs.

The Guide also states that doctors should give assurances to the patient or their next of kin as to how lessons have been learned to minimise such an error reoccurring.

It states that doctors must report any serious adverse events and near-misses to the appropriate health authority to ensure they are investigated.

The Clinical Indemnity Scheme already has such a system of reporting in place to register and manage such incidents. It is argued that such a system should be introduced across the private sector.

On the whole, the new guidelines are a positive step in trying to minimise the fallout from medical errors and breaking down old communication barriers.

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