Disclosing Medical Errors to Patients: Ethical and Legal Dilemmas

Is it ever appropriate for a physician not to fully disclose a medical error? And what legal consequences can arise if he does not?

Nobody’s perfect. Chances are you have made an error when treating a patient. And with the threat of malpractice lawsuits constantly looming overhead, it’s only natural to feel a temptation to brush such an error under the rug.

How many of you have actually done that?

A new survey, conducted by researchers at Massachusetts General Hospital and published in Health Affairs asked nearly 2,000 physicians nationwide that very question.

One out of every five said that they had not fully disclosed a medical error to patients due to concern of a malpractice lawsuit in the past year.

The responses, which make up just one part of the survey’s findings, raise some difficult ethical and legal questions: Is it ever appropriate for a physician not to fully disclose a medical error? And what legal consequences can arise if he does not?

Physicians Practice reached out to both physicians and attorneys for some answers and advice. Here’s what they said.

Remember the Golden Rule

Obstetrician and gynecologist Patrice M. Weiss, chair and professor at the Department of Obstetrics and Gynecology at Carilion Clinic-Virginia Tech Carilion School of Medicine in Roanoke, Va., lectures nationally on disclosure of medical errors.

“When it comes to medical errors and disclosure, physicians should consider the golden rule as they consider what they would want their family members or themselves to be told — the truth,” Weiss told Physicians Practice in an e-mail. “Further, it is better to disclose an error than to have it discovered in medical-legal review, only to then face possible accusations of not being truthful.”

Weiss went on to note that “while full disclosure of medical errors is personally and professionally challenging,” it has its rewards. For instance, she cites the nation’s first full disclosure and apology program initiated in 1987 at a VA hospital in Lexington, Ky.

The program found that full disclosure of errors resulted in lower legal losses. Average settlement costs, for instance, were $16,000 at the VA compared to a national average of $98,000 at that time, Weiss said.

Big Consequences

In a Boston Globe article summarizing the results of the Massachusetts General Hospital study, Arthur Caplan, a bioethicist at the University of Pennsylvania, said that physicians who fail to disclose “may dodge a bullet, but if it’s found out later, they can really get clobbered for not telling the truth — to say nothing of the patient consequences.”

Don Karotkin is a malpractice attorney with Karotkin & Associates in Houston. He represents clients
engaged in professional liability disputes, professional malpractice claims, and professional ethics complaints.

In an e-mail to Physicians Practice, Karotkin said he agreed with Caplan, adding, “I think a physician should fully and promptly disclose all facts regarding therapeutic misadventures that have resulted, or are likely to result in the future, in harm to the patient.”

He went on to say that a more difficult question to answer is whether a physician should disclose an error regardless of whether or not the error caused or is likely to cause harm.

“Disclosure is probably generally the safer course of action for the physician from a liability and medical ethics perspective, but in this scenario full disclosure may serve no useful purpose or confer any benefit on the patient and may have only the negative effect of increasing his or her anxiety level,” Karotkin said. “I think physicians should consider this before opting to disclose harmless errors and decide what to do on a case-by-case basis.”

The survey also found that 78 percent of physicians practicing in universities or medical centers said they agreed that physicians should report all serious medical errors. For physicians practicing in solo or two-person practices, only 60 percent agreed.

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