When is it safe to say “I’m sorry”?  
By Kristopher T. Starr, JD, MSN, RN

Will I face liability in a service recovery or patient relations situation by apologizing for care perceived as substandard?

This question raises very timely concerns about social expressions of empathy, such as presenting a disgruntled patient or family member with the words, “I’m sorry.”

What exactly are the legal implications of expressing remorseful understanding of a patient-perceived suboptimal care delivery scenario? Well, much like the intricacies of comedic timing (that is, the punch line), it all depends on the delivery. “I’m sorry you feel that your care has been substandard.” has a completely different message and legal posture than “I’m sorry we overdosed your grandmother on an opioid and now she’s intubated and may have suffered anoxic brain injury.”

According to The Joint Commission, service recovery “involves the service provider taking responsive action to ‘recover’ lost or dissatisfied customers and convert them into satisfied customers. Service recovery has proven to be cost-effective in other service industries.”1 Saying “I’m sorry” can be an extremely effective tool for service recovery. Expressions of empathy have long been known to have positive effects on patient-perceived service delivery delays. You may not experience a full service recovery (in other words, dissatisfaction may not be fully transformed into patient satisfaction), but you may blunt the impact when the Press Ganey results from patient satisfaction surveys hit your manager’s or CNO’s desk. In the current climate of high acuity, overcrowding, and long-wait ED visits, service recovery can be a useful tool in the arsenal of the direct care RN or the relief charge RN or even the department manager.

But, to the point, what about liability? Is an apology an admission of legal liability or culpability for a perceived medical or nursing error? The answer is ... maybe. But again, it all depends on the context of the apology and the delivery. When a patient’s condition suddenly and significantly declines, an apology without further clarification might send the message that you’re acknowledging some legal causality between care provision and a poor patient outcome.

So, am I advocating that you never use an empathetic expression? No. What I’m recommending is that you tailor any expressions to the negative feelings expressed by the patient or the patient’s perceptions of service failure rather than a specific act of commission or omission. Here’s an example. In a busy ED, where many patients present daily with abdominal pain, you could encounter someone with say ... a possible acute surgical abdomen. How would you address this patient’s concerns if a surgical consult is delayed and the radiologic evidence detects a surgical abnormality?

The approaches can be folded into two general categories: an apology for perceived delay and an apology for an unintended outcome.

“I’m sorry for the delay in getting a surgeon in to see you; we’ve had multiple trauma patients” sounds far different from “I’m sorry your appendix ruptured because it took 4 hours post-CT scan for you to see a surgeon.” These apologetic expressions both address the same thing, delay. But one addresses uncontrollable delay affecting everyone and the other suggests a deliberate delay affecting outcome, which may rise to disclosure and potential culpability.

So, the take home message is, use empathy ... just use it wisely and direct it to those things beyond your control, not something you can actively manipulate.

As an aside, I’ll reference a California Bar Journal article that outlines the power of apology in the professional malpractice context.2 After the unfortunate death of actor James Woods’ brother due to a missed diagnosis, a simple but sincere apology from the facility’s president persuaded the family to settle a lawsuit they seemed certain to win had it gone to court. I commend it to your reading.

REFERENCES

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