

# Disclosure of Errors and Apology: Law and Ethics

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## ABSTRACT

Error disclosure and apology are evolving concerns for advanced practice nurses who have increased exposure to liability. Error disclosure is required by regulatory agencies and the American Nurses Association Code of Ethics for Nurses, yet barriers to disclosure exist and nurse practitioners may not be aware of state apology laws that protect some statements from use in civil lawsuits for negligence or malpractice. Two law cases that apply apology laws are reviewed to illustrate these protections. Best practices for error disclosure are presented, and nurse educators are urged to include error disclosure content in nurse practitioner curricula as part of safety and quality education.

**Keywords:** apology, ethical, error disclosure, legal, liability, nurse practitioner

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Patient safety and medical errors have been areas of rising concern in health care. The Institute of Medicine report *To Err is Human*<sup>1</sup> has brought national attention to the number of medical errors and preventable injuries that occur every day in the United States. According to this report, approximately 98,000 patients die in the US each year because of preventable medical errors. A medical error has been defined by the Institute of Medicine as the failure of a planned action to be completed as intended (ie, error of execution) or the use of a wrong plan to achieve an aim (ie, error of planning). Because in part of this increased public awareness of medical errors, advanced nurse practitioners (NPs) face uncertainty as to whether they should or must disclose such errors to patients. Additionally, they may be ill prepared to do so and have concerns about increasing their risk of liability with disclosure or an accompanying apology. However, there are ethical, legal, professional, and regulatory supports for medical error disclosure that NPs need to be aware of as part of their evidence-based practice.

This article discusses issues related to medical error disclosure including benefits and barriers to disclosure, professional and regulatory perspectives, and guidelines and best practices for NPs to follow in

disclosing errors. Legal cases and outcomes in which medical errors have occurred and application of medical apology statutes (laws) are reviewed. How these cases and statutes impact NP practice is also addressed. Review of the nursing literature reveals that these topics have received scant consideration, especially as related to advanced practice nurses. NPs are likely to be affected by these topics because of participation in areas of practice formerly encompassed in medical practice such as prescribing, diagnosis, and referral of illnesses. The majority of readings in the literature are related to medical error disclosure and physician practice; therefore, a discussion of these issues in the nursing literature is both relevant and timely to fill this gap.

## PROFESSIONAL ORGANIZATION AND REGULATORY PERSPECTIVES

Transparency is an integral component of providing safe and responsible care. A critical element of transparency is disclosure of harmful errors. This has been a practice recommended by accrediting organizations and professional bodies. One of the tenets of communication and patient safety is the ethical obligation to promptly disclose medical errors.<sup>2</sup>

In 2001, the Joint Commission on Accreditation of Healthcare Organization (now called, The Joint

Commission) issued the first nationwide disclosure standards, requiring patients to be informed of all unanticipated outcomes of care.<sup>3</sup> In 2006, the National Quality Forum endorsed a new safe practice guideline on the disclosure of serious unanticipated outcomes to patients. Together with disclosure of events, the National Quality Forum recommends explaining patient implications, a commitment to investigate the event and share findings. These guidelines advise physicians to express regret to the patient when there are adverse outcomes. These are evidence-based practices that are in consensus with The Joint Commission, Institute for Healthcare Improvement, Agency for Healthcare Research and Quality, and the Centers for Medicare and Medicaid Services.<sup>4</sup> Likewise, NPs are advised to follow these guidelines and practices in error disclosure. It is likely that NPs will be held to these standards in similar situations. Although these guidelines are not legal mandates, the recommendations of these well-known health care organizations comprise professional standards that could be used as evidence in malpractice cases or other legal challenges.

### **AMERICAN NURSES ASSOCIATION CODE OF ETHICS AND QUALITY AND SAFETY EDUCATION FOR NURSE STANDARDS**

The American Nurses Association Code of Ethics for Nurses<sup>5</sup> mandates that nurses have a professional responsibility to promote a culture of safety. As part of this mandate, nurses must not only follow institutional guidelines for disclosure of errors but also must ensure responsible disclosure of errors to patients. Further guidance as to how to achieve these goals is not provided in the code. Another provision of the Code of Ethics emphasizes that nurses are responsible for the care that patients receive and accountable for their own practice. This is especially relevant for advanced practice nurses where the scope of nursing practice continues to evolve. NPs are increasingly involved in procedures and treatments that have traditionally been part of medical practice, thus exposing them to risks involving serious medical errors where they may have direct liability when negligence or malpractice is found. However, it is important to note that there has not been any official statement made by the

American Academy of Nurse Practitioners on error disclosures to date.

Another professional standard applicable to advanced practice nurses and medical errors is offered by the American Association of Colleges of Nursing's Quality and Safety Education (QSEN) Consortium.<sup>6</sup> In its document specifying graduate-level competencies including knowledge, skills, and attitudes, the QSEN advisory group identified major competencies for advanced practice nurses in the knowledge area of safety as including the integration of strategies and safety practices to reduce harm to patients, self, and others. Further skills related to the safety area are specified as reporting errors and providing support to members of the health care team to be forthcoming about errors and near misses and using evidence-based practices to create policies to respond to errors. Attitudes in this safety area include valuing open and honest communication with patients and families about errors, encouraging reporting of errors to improve quality and systems, and committing to identifying errors and to individual accountability for errors. These professional QSEN standards provide another strong mandate for NPs to practice responsible error disclosure when needed and to explore the impact of an apology in these circumstances.

### **BENEFITS, BARRIERS, AND DRAWBACKS OF APOLOGY AND ERROR DISCLOSURE**

Supporting improved patient care and providing safer care to patients remain the primary drivers behind apology laws and recommendations for error disclosure. Additionally, studies have shown that apologies can decrease the losses that would result from litigating claims, and results of 1 study showed that "an apology gave the wronged party a sense of satisfaction and closure, resulting in faster settlements and lower demands for damages."<sup>7</sup> Others have pointed to the psychological benefit of an apology for both practitioners and patients—a way of showing respect, empathy, and sympathy as well as assisting in emotional healing. These principles are certainly consistent with ethical practice by NPs and implement tenets of the Code of Ethics for Nurses.

Although patients, and even practitioners, may view an apology as a necessary part of the resolution process when an error occurs, insurance companies

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