

SAYING 'SORRY' HELPS

UNITED's practical experience (supported by the findings of a number of contemporary studies) indicates that a patient's decision to take legal action or complain against you is, to a significant extent, determined by the way you manage an incident that resulted in harm to the patient. A patient's decision to take legal action or complain against a general practitioner may be fuelled by perceived insensitive handling, poor communication or delay after an adverse clinical incident.

UNITED supports the view that open, honest, timely and concerned communication is a most important factor in maintaining a therapeutic relationship even when a clinical consequence occurs that results in harm to a patient.

SAYING 'SORRY' IS PART OF AN OVERALL RESPONSE TO A PATIENT'S COMPLAINT

In managing an incident in which unintended clinical harm has resulted to a patient it is generally appropriate for you as the treating doctor to:

- acknowledge to the patient that an adverse event has occurred
- acknowledge that the patient may be unhappy with the outcome
- express regret for what has occurred - saying 'Sorry'
- provide the known clinical facts
- discuss what ongoing care can be provided including the cost of treatment and any concession you can make (eg bulk billing, extended periods for payment).

These steps are not only recommended good clinical practice but may in many cases minimise the risk of the patient complaining or contemplating taking legal action against you.

WHAT SHOULD I SAY?

When communicating with a patient regarding an adverse event, you need to be aware of the risk, when expressing regret, of inadvertently making an admission of liability.

An 'admission of liability' is a statement that proves, or tends to prove a person's liability and negligence for harm or damage caused to another. This can be compared to an 'expression of regret' which is an expression of sorrow for the harm experienced by the patient.

For example, statements which admit fault may be admitting liability, such as:

'it is my clinical error that has caused this injury.'

or

'I have made a terrible error in judgement in the management of your condition.'

Alternatively statements which are appropriate expressions of regret generally cannot be interpreted as admissions of liability:

'I am very sorry that the treatment has not alleviated your symptoms.'

or

'I am very sorry this has happened.'

HOW SHOULD I SAY IT?

There is some evidence that even a doctor's tone of voice can influence the likelihood of a claim eventuating from their approach to discussing a patient's adverse event. Both in your verbal and non verbal behaviour showing concern and anxiety (which you will probably be feeling anyway) are

better than trying to be cool and detached or legalistic. Your tone should be collaborative, eg 'Let's see how we can sort this out?' The meeting with your patient should not be rushed as it could give the impression you are not sincere about listening to their concerns.

IS THERE ANY LEGAL PROTECTION?

Each of the Australian states and territories has legislation which allows expressions of regret to be made without being an admission of liability.

For example in New South Wales, the Civil Liability Act 2002 (Part 10) (ss67-69) provides that expressions of sympathy or regret do not constitute an expressed or implied admission of fault or liability and is not relevant to the determination of fault or liability. In addition, evidence of an apology being given cannot be used in making a civil claim against you.

SHOULD I RING MY MEDICAL DEFENCE ORGANISATION BEFORE I SEE THE PATIENT?

An aim of the protective legislation is to create an environment where doctors can feel comfortable expressing regret to patients. So there shouldn't be a need to contact your MDO.

However, if you feel unsure about your legal position you should contact your medical defence organisation for advice. UNITED offers a telephone advice service for its members. The service operates during business hours and, for emergencies, 24 hours a day.

For further advice on this topic, or to provide your feedback, email us at united@unitedmp.com.au.