

Open disclosure: the truth revealed

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It's pretty obvious how forgiving our fellow humans are. More likely than not, most of us have heard inspiring true stories of forgiveness under extreme circumstances– like absolving mass genocide. Of course, we think pardoning murder may be a large feat, but the deed that is truly an achievement is the act of apology.

Most of us find it extremely difficult to make an apology to people that we've mistreated. Maybe it's because of the shame and guilt we all feel when we're in the wrong, or the embarrassment of admitting fault. Whenever we've had a fight with our friends and even our family, as teenagers, we prefer to avoid asking for forgiveness – no matter how wrong we are. Furthermore, apologizing for everyday misdeeds isn't a heavy ethical issue. Though you will be a better person if you say sorry, you aren't necessarily a bad person if you skip the apology.

However, in certain professions, not being sorry will cost you your job, your reputation and a heck of a lot of money. For example, the Lexington VA Medical Center paid approximately \$1.5 million for losing two major lawsuits that involved medical mistakes. In response to the litigation and legal problems, hospitals have effectively stonewalled patients on errors and adverse events, though this method usually backfires when the media catches scent of a cover-up. In order to avoid this messy PR situation, medical institutions then try to bury more mistakes. As you can see, these actions can lead to a pretty vicious cycle.

Fortunately, there is a possible solution to this mess. Many doctors and researchers advocate for the implementation of programs that encourage

doctors to inform patients about any medical errors that happen to the patient. Termed “ open disclosure”, this program has gained momentum over the years. Advocates for these programs point to policies in the Lexington Veterans’ Affairs (VA) Medical Center and the University of Michigan’s Health System (UMHS) as an example of open disclosure successes. In both the Lexington VA Medical Center and UMHS, doctors are encouraged to disclose any error to the patient and their family. The patient is also able to receive financial and medical compensation for the mistake.

During the early years of these two programs, some studies, which will be discussed later, have supported the claim that the programs at the Lexington VA hospital and UMHS provide not only emotional benefits for both the patient and the doctor, but also financial benefits for the hospital by lowering the total amount and size of lawsuits the hospitals faced each year. Many doctors would agree that open disclosure may have many emotional benefits, but the main problem with open disclosure programs is whether or not their financial benefits are real. The bulk of articles written on open disclosure deals with the possible theoretical benefits of these programs – many journals cite studies that survey how patients would react to a medical error followed by an explanation of why the mistake happened. There are very few studies that attempt to trace the financial benefits of open disclosure policies, which is understandable, since there are numerous reasons a hospital might see a drop in litigation rates. Due to the scarcity of these types of studies, many doctors fear that open disclosure will lead to more lawsuits and larger pay-outs. In addition, most states do not have

medical malpractice laws that would encourage doctors to tell patients about medical mistakes that happen during treatment.

Healthcare workers and scholars have suggested passing state law that provide limited legal protection for doctors who disclose errors depending on how severe the error is. Many doctors do not regularly practice open disclosure because they fear that patients will find it easier to sue when they have all of the information. In addition, the more informed the patient is of errors in their treatment, the more chances they have to file a lawsuit. On the contrary, researchers have found that many people would be willing to forgive doctors and have a good opinion of them if doctors alert them of errors in treatment and willingly give patients information on the errors. However, like the claim that open disclosure reduces the amount of lawsuits, this argument is merely supported by surveys and (possibly biased) stories rather than solid data. At first glance, the topic of open disclosure seems to be one-sided and quite bland.

However, at a closer examination, this “ boring” topic is a more complex problem waiting to be solved. Many open disclosure advocates tend to quote the same studies because there is simply not enough evidence supporting the open disclosure movement. For example, when faced with the daunting task of giving actual data points that prove the benefits of open disclosure, most researchers would go on to refer to two studies. One analysis, “ Liability Costs Before and After Implementation of a Medical Error Disclosure Program” by Kachalia et. al., even warns that though the data they collected at UMHS supports open disclosure, the study “ did not identify the specific factors that might account for the finding”.

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In other words, the researchers could not tell whether open disclosure actually caused the university hospital's drop in lawsuits. Actually finding statistical data is also a problem in itself. It is virtually impossible to pin down one reason for trends in litigation rates: anything going on in the hospital might contribute to lawsuits. Few hospitals are actually subjected to research on open disclosure. Though many hospitals nowadays have open disclosure to a certain degree, few actually research on how their programs have affected them financially. More infuriating is that supporters of open disclosure constantly mention exemplary programs in health, and even insurance, programs, but are not able to provide actual numbers on how beneficial these programs were.

Systems that have open disclosure policies, like the COPIC insurance company and Minneapolis Children's Hospital and Clinics, do not describe the benefits of their programs on their websites. Though the heyday of open disclosure seems to have passed, supporters of these programs should not rely on old, and possibly outdated, surveys of patients. Though these studies may seem rock solid, they may not always work in practice. In addition, advocates should strive to find more data on the programs that they claim are exemplary. This would allow doctors to assess the studies and results themselves rather than force them to blindly rely on what a biased author might say about a program.

Open disclosure may seem to have fallen out public sight, but by being more aggressive in its research, the open disclosure movement may rise again.

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