



## Disclosure of harm ‘Good medical practice’

When a patient is harmed while receiving medical treatment the Medical Council expects that the patient's doctor will advise the patient of the facts of the harm in the interests of an open, honest and accountable professional relationship. Disclosure should be based on the patient's interests and information should not be withheld to protect the interests of the doctor.

### Disclosure of harm

**01** When discussing ‘disclosure of harm’ the Medical Council means where a patient has been harmed as a direct result of receiving medical treatment in a clinical situation. This includes a situation where the harm may be a recognised risk of the treatment.<sup>i</sup>

### Introduction

- 02** The Council believes that open disclosure of harm will benefit the health and safety of the public and strengthen the doctor-patient relationship.
- 03** The Council acknowledges that the very nature of medical treatment means that a patient may be inadvertently harmed during treatment. This is not necessarily understood or expected by the public, media or other health practitioners.
- 04** Patients need to be made aware through the consent process that all treatment carries some risks and that a patient may inadvertently be harmed or experience a ‘near miss’. Recognition of these situations can lead to improvements in medical practice.
- 05** Over the past decade there have been moves toward increased accountability by the medical profession, strengthening of patient rights and improved systems. Examining adverse outcomes and ensuring that the problem that led to the harm is identified and addressed is part of this trend.

### Attributes of harm

- 06** Harm is rarely a result of negligence or incompetence.
- 07** Harm is often the result of a combination of factors that are attributable to more than one member in the health practitioner team or a breakdown in the health system.
- 08** Research into occurrences of harm in New Zealand, Australia, Canada and the United States indicates harm occurs in approximately 3-16 percent<sup>ii</sup> of hospital admissions.

### Accepted risks of treatment

- 09** All forms of medical treatment have recognised risks – a recognised possible outcome of the treatment that is not intended but acknowledged as a risk.
- 10** It is important that recognised risks are discussed with the patient as part of the informed consent process prior to starting any treatment. This means identifying the risk, explaining what the possible implications are for the patient if harm results and providing the patient with information about the implications of consenting or declining the treatment.

### Purpose of open disclosure

- 11** Open disclosure of harm is not about attributing blame.
- 12** Open disclosure of harm:
- contributes to a successful doctor-patient relationship by ensuring that trust between the doctor and patient is not compromised
  - is a right of a patient under the Code of Health and Disability Services Consumers' Rights
  - is necessary for the informed consent process, especially when the harm results in the need for further treatment or care

<sup>i</sup> The Medical Council's statement does not include situations where an incident during treatment may have caused harm, but did not because action was taken to amend the situation before the harm occurred.

<sup>ii</sup> Sally Hargreaves (2003) 'Weak' safety culture behind errors, says chief medical officer – BMJ, Vol. 326  
Louise Kershaw (2002) When things go wrong: An open approach to adverse events – Australian Council for Safety and Quality in Health Care; Sydney, Australia, page 5.  
P C Herbert, A V Levin & G Robertson (2001) Bioethics for clinicians: Disclosure of medical error – Canadian Medical Journal; Vol. 164, No. 4.  
Peter Davis (2001) Adverse Events in New Zealand Public Hospitals; Principle findings from a national survey – Ministry of Health, Wellington, page 15.

- provides an environment that enables the health team to learn in an educational manner because harm can be discussed openly
- is part of the move for increased transparency and accountability by the medical profession
- is an aspect of open and honest professional behaviour
- contributes to public awareness, information and education about the reality of medical treatment
- acknowledgement of a near miss can lead to a review of processes and contribute to a safety culture
- is a step towards ensuring patients are advised that they may be entitled to compensation through the ACC.

### Expectations of open disclosure

- 13** National and international research shows that patients and doctors have different concerns and expectations about open disclosure of harm.<sup>iii</sup> This difference can often lead to a breakdown in communication and misunderstandings. It is important that doctors address a patient's concerns as part of an open and honest doctor-patient relationship.
- 14** Research indicates that when disclosure of harm is made, the patient is usually concerned about what and how the harm occurred, why it happened, and what the long-term consequences are for his or her care.
- 15** Patients want to be reassured that systems have been changed to minimise the chance of it happening again to themselves or others.
- 16** When disclosing harm doctors are concerned that the patient should not be overwhelmed with technical details, nor should it cause distress to a patient who is already unwell.
- 17** Doctors and patients share a common concern about avoiding similar incidents in the future. These concerns however are often expressed to parties outside the doctor-patient relationship. Acknowledging harm done contributes to the ongoing confidence the patient has in his or her doctor, and in the health service.

- 18** A major contributing factor to doctors' reluctance to openly disclose harm to patients and their families is the fear of liability, damage to the doctor-patient relationship and the possibility of a complaint. Research demonstrates the opposite is true. Research in Australia and the United States indicates that a patient is more likely to complain if the doctor fails to disclose harm to the patient, or if the disclosure is not done in an open and honest manner.<sup>iv</sup>
- 19** It is possible to say sorry and express regret, without accepting liability and this is a common recommendation in most literature about open disclosure of harm.<sup>v</sup>

### What should happen before disclosure of harm?

- 20** It is important that disclosures are made in a timely manner. Therefore it is appropriate for the initial disclosure to take place as soon as practical, with a more detailed discussion with the patient to follow once the team has had an opportunity to meet and assess the circumstances that led to the patient being harmed. This will also give time for a patient to think about the situation and provide an opportunity to ask for more information.
- 21** Harm to a patient is often the result of a combination of factors that are attributable to more than one member in the health practitioner team or a breakdown in the service. If the harm occurred during a procedure undertaken in a team environment the team should meet to discuss the incident to identify:
- What happened?
  - How it happened?
  - The consequences for the patient, including continuity of care.
  - What will be done to avoid similar occurrences in the future?
  - Who should be present when the harm is disclosed to the patient?

This meeting may include a representative of the management or administrative staff who need to be involved in assessing how any harm identified is to be addressed both for the patient and in regards to any changes to the service.

<sup>iii</sup> T H Gallagher, A D Waterman, A C Ebers, V J Fraser & W Levinson (2003) Patients' and physicians' attitudes regarding the disclosure of medical errors – JAMA; Vol. 289, No. 8, page 1001.

**22** While it may be more appropriate to disclose the harm in stages so the patient understands and processes the information without being overwhelmed, ongoing delay in giving full information is only acceptable if this is in the patient's best interests.

### **Disclosing harm to the patient**

**23** The senior doctor responsible for the patient's care should disclose the harm to the patient. Research indicates that patients prefer to hear from the doctor with whom the patient has established a rapport or had previous contact. In situations where this is not the senior doctor, both practitioners should be in attendance. Research has shown that disclosure by hospital administrative staff or management alone, is not well received by patients.

**24** When preparing to disclose harm, consideration must be given to the patient's cultural and ethnic identity, the patient's first language and what support the patient may need. When appropriate, the patient must be advised about where and from whom, the patient or the patient's family can get support.

**25** Details about the nature of the harm, and any subsequent action including disclosure to the patient should be documented in the patient's record. The Council recommends the patient notes mention who was present, what was disclosed, the patient's reaction and any issues regarding continuity of care. If the harm occurred in secondary or tertiary care the patient's general practitioner must be informed.

### **A doctor's duty to protect patients<sup>vi</sup>**

**26** Protect patients from a risk of harm posed by a colleague's conduct, performance or health. Patient safety comes first at all times.

**27** The doctor should do his or her best to find out the facts, then follow the employer's procedures, tell an appropriate person or contact the Medical Council for advice<sup>vii</sup>.

### **Support for doctors**

**28** Harm to patients is rarely the result of negligence or incompetence and the doctors involved may find the experience stressful and difficult. It is important that doctors, as well as patients, have access to support.

**29** Doctors need the opportunity to discuss such incidents in a safe environment, and for there to be systems put in place to prevent a recurrence of the problem. The Council recommends employers provide training, peer support and a supportive work environment.

**30** The Doctors Health Advisory Service provides a support network for doctors. They can be contacted at **dhas.edwin@clear.net.nz** or by free phone 0800 471 2654.

**31** Medical indemnity insurers provide advice to doctors on matters including law and ethics. In situations where a patient has been harmed New Zealand indemnity insurers advise doctors to contact them for advice on disclosure.

## Notes

The Accident Compensation Corporation (ACC) provides a no-fault accident insurance for all New Zealand citizens and in the case of medical treatment, determines whether a patient is entitled to compensation due to medical misadventure.

*“ACC welcomes this statement for medical practitioners, as disclosure of harm is a key part in the process of ensuring New Zealanders are able to access compensation when they have suffered an adverse outcome from medical treatment. It is our hope that this statement will assist claimants to receive timely compensation. Removing a person’s right to sue for damages is a unique element of the New Zealand Accident Compensation Scheme. Early and accurate disclosure of harm will assist in the effective implementation of the compensation process”.*

*David Rankin ACC General Manager*

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