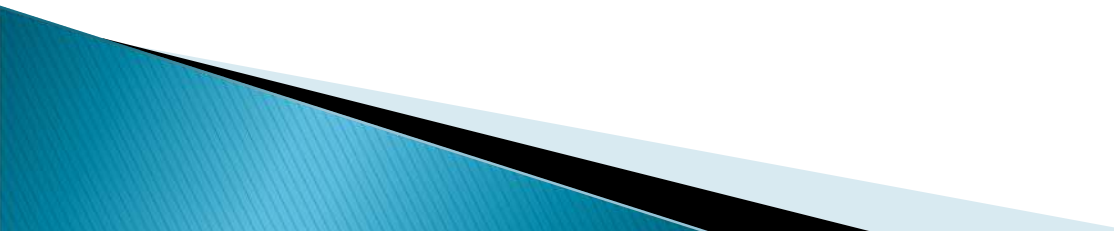


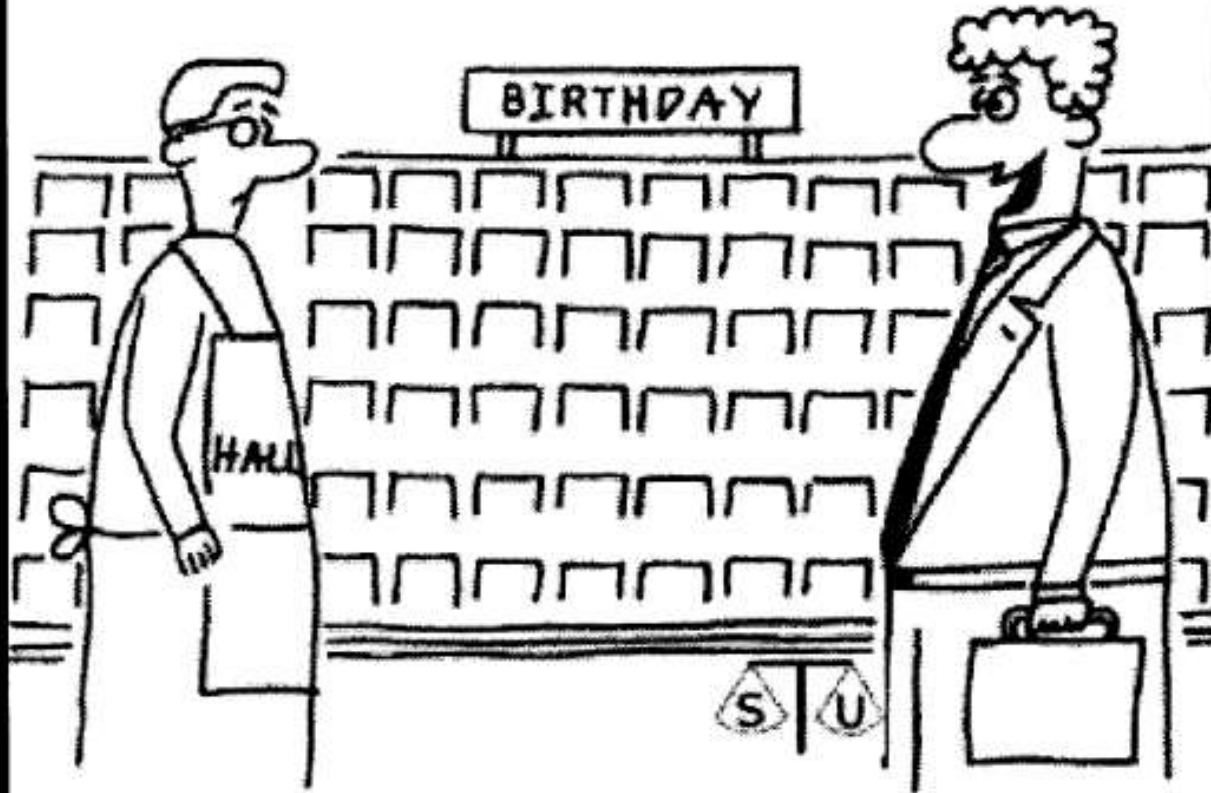
ART OF THE APOLOGY

Linda Stimmel
Wilson Elser Moskowitz Edelman & Dicker
901 Main Street, Suite 4800
Dallas, Texas 75202-3758
Linda.Stimmel@WilsonElser.com



Speaker Objectives

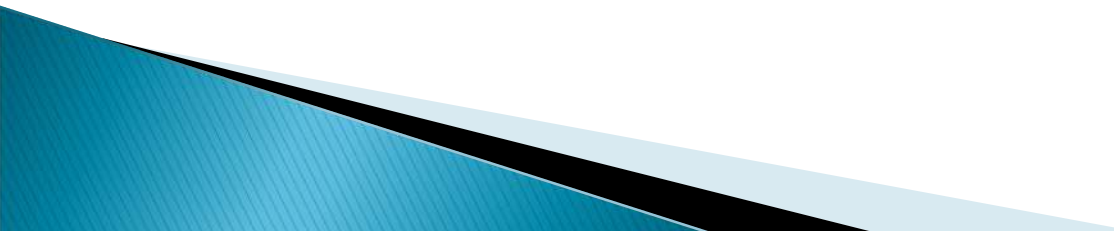
- ▶ Clarify how to document protectively, but honestly, when a negative result occurs.
 - ▶ Explain how to approach a family member or a patient who is unhappy with the care provided.
 - ▶ Describe the appropriate policies and procedures to protect their actions in case of a negative result.
- 



Do you have an "I'm Sorry" card
that stops short of admitting liability?

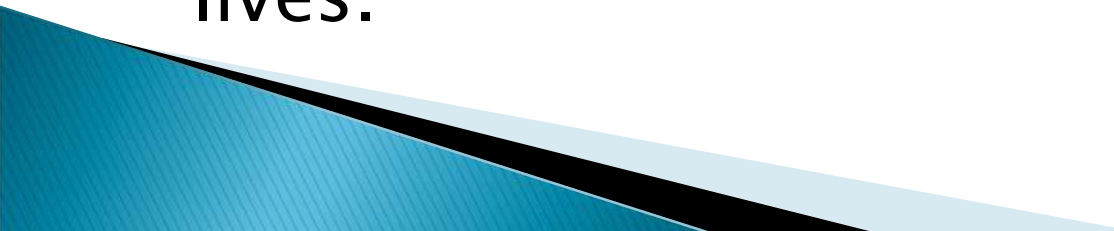
Why Healthcare Providers Are Afraid To Apologize

- ▶ Legal liability.
 - ▶ Medical errors are inescapable.
 - ▶ Providers upset, and feel fear, guilt, humiliation, and disappointment.
 - ▶ Why? “Failing to meet their own high standards.”
 - ▶ The Journal of the American Medical Association study – 76% of physicians had not disclosed a serious error to a patient.
 - ▶ Common standard to avoid malpractice allegations is to deny and defend.
- 

- ▶ Reasons why providers had not disclosed the error?
 - ▶ Instinctively try to lessen the pain by disowning or distancing themselves from what occurred.
 - ▶ Legal admission – Black’s Law Dictionary – “confessions,” “concessions or voluntary acknowledgment made by a party of the existence of certain facts. A legal admission is not limited to words, but may also include demeanor, conduct and actions of the person.
 - ▶ Examples of Admissions and Apology (card and bypass patient).
- 

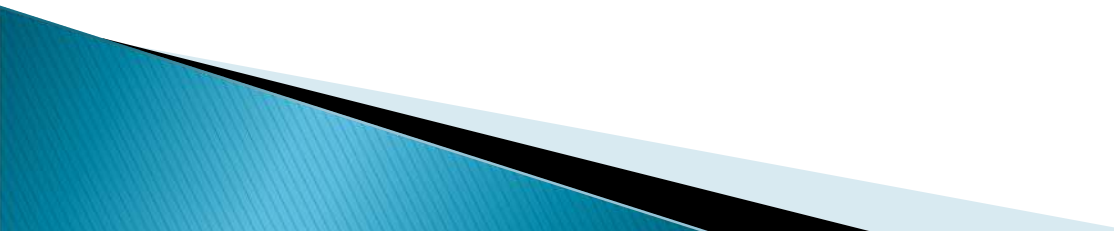
Why An Apology Is Important

- ▶ Uniformly, patients believe an apology is desirable.
 - ▶ Patients have no idea that medical errors cause such emotional turmoil for physicians and nurses.
 - ▶ Patient looking to be acknowledged or valued.
 - ▶ Persons harmed continue to “replay” their experience over and over again, which causes them to feel increasingly angry.
- 

- ▶ If lawsuit still occurs after an apology, the provider is in a better position of defense.
 - ▶ In one study, 25% of lawsuits were brought because a patient realized that a healthcare provider had failed to be completely honest or had intentionally misled them.
 - ▶ Apologies are more powerful in a medical setting because of the existing doctor/patient relationship.
 - ▶ No one wins in litigation.
 - ▶ An apology done correctly saves money and lives.
- 

- ▶ When a provider is silent after a mistake – it appears to the patient that a trusted caregiver is the enemy. “...it becomes a relational breach.”
 - ▶ Apologies can reduce animosity and facilitate a settlement.
 - ▶ The Veterans’ Affairs Medical Center in Lexington, Kentucky had the highest malpractice claims in the V.A. system. Now they are the bottom 25% – due to a strict risk management approach + direct and quick apologies to patients. If patient harmed by a medical error – patient immediately informed and offered an apology by the chief of staff. Also, if risk management determined the hospital or its employees negligently caused a patient’s injury, a fair settlement offer was made.
- 

- ▶ Apologies do not require any data bank reporting.
 - ▶ An apology is a non-punitive gesture if done appropriately.
 - ▶ Hopefully, disclosing medical errors should help the public appreciate the uncertainty of medicine and the risk. They will not be too quick to heap unwarranted blame on the medical profession.
 - ▶ In the absence of information about the causes of medical errors, patients might be even more inclined to blame medical professionals and facilities for accidents.
- 

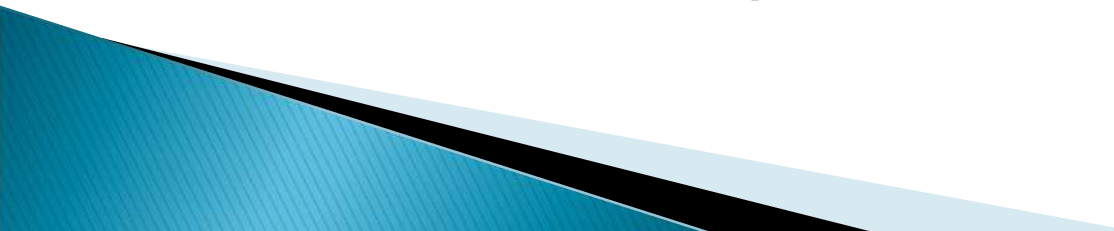
- ▶ The Joint Commission executed patient safety standards. One of those standards has caused concern among providers. It says, “Patients, and when appropriate, their families are to be informed about the outcomes of care, including unanticipated outcomes.”
 - ▶ Remember, these JC Standards are not law!
- 

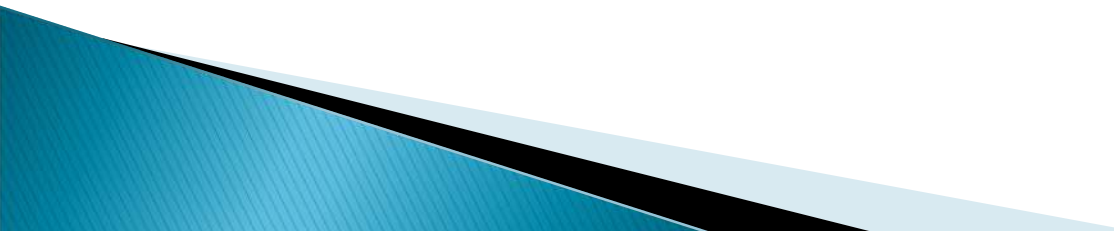
- ▶ Depending on the circumstances, the provider may want to include participants such as risk managers, a nurse with whom the patient has rapport, a member of the clergy, a social worker or others to participate in the initial discussion.

How To Make An Apology

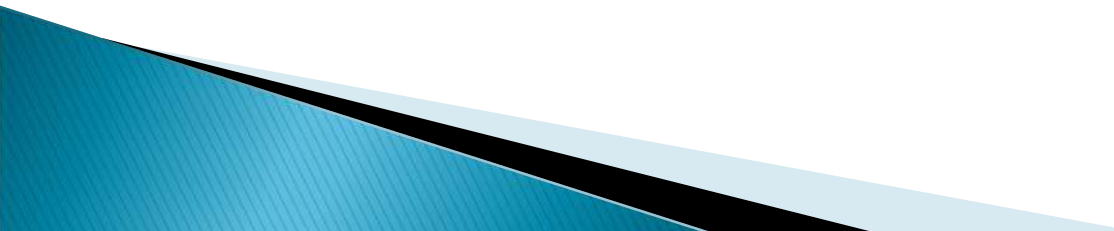
- ▶ Apology should contain
 - (1) a clear statement that an error occurred;
 - (2) a description of what happened and why;
 - (3) how a recurrence will be prevented; and
 - (4) an apology.
- ▶ Validate a patient's feelings. Tell them they are justified to feel the way they do. You need to acknowledge they are upset and have a right to be upset.
 - "While we certainly did not mean to cause any harm to you, that in no way excuses or diminishes your pain."

- ▶ Talking with patient and family always better than just writing a letter.
 - ▶ Let patient know you are disappointed as well. (mutual disappointment)
 - ▶ If true, let the patient know they did nothing personally to deserve a bad result or deserve any of the negative outcomes from a medical error or mistake.
 - ▶ There is a big difference in a **specific admission of fault and an apology.**
 - ▶ Essential for healthcare providers to show compassion when there are bad results.
- 

- ▶ We all have personal experiences of mistakes causing harm. However, not all mistakes cause litigation.
 - ▶ It is very important to know all the facts before making any sweeping statement about what occurred. For example, make sure you have done enough research to determine whether a mistake really happened.
 - ▶ Do you really know how many people or decisions were involved in this mistake throughout the system?
 - ▶ Normalize this process in your practice.
- 

- ▶ You may be in a position to have to make an apology or explanation without knowing all the facts. Remember that and inform the family and the patient that this issue is being looked into and you will get back in touch once you know the full details. Don't guess.
 - ▶ Some important techniques in an apology:
 - *Offering your hand,*
 - *Looking the patient straight in the eye;* and
 - *Sitting in an equal position* with the patient and the patient's family.
- 

- ▶ Let the patient and their families ask questions. Listen patiently and try to answer to the best of your ability. Many times, this is difficult for a healthcare provider, and they make a quick statement and leave. That may cause more harm than benefit.
 - ▶ **“Gentle honesty”** is the best answer. Honesty because it enhances trust in the relationship. Gentleness because the truth is often painful and must be brought to the patient with careful listening and empathy so as not to overwhelm him or her with what has occurred.
- 

- ▶ It is important that you *allow the patient and their family time to process the information*. Excuses and mitigation should be minimal.
 - ▶ **Understand the difference between sympathetic disclosure and admission of liability.** The explanation should not contain conjecture, speculation or blame.
- 

- ▶ “Based on the information we have today, this is what we believe may have happened, but as we investigate the situation, it is possible that we will find out that our initial assessment was inaccurate. We will keep you informed.”
 - ▶ Remember to *keep your documentation of these conversations and events as accurate and objective* as possible.
 - ▶ Licensing complaints can be dismissed more easily when we have documentation to support our actions.
- 

- ▶ Remember a benevolent apology is not considered an admission of liability, however, if a provider pointedly accepts liability – any confession of fault is admissible. For example, “I’m so sorry this happened” is not admissible, but “I am so sorry that I injured you or that I operated on the wrong limb or I prescribed the wrong medicine” all might be admissible.
 - ▶ An Artful Apology should be ethical, bring some justice to those harmed, be the correct legal choice, and can save money and most importantly, Lives!
- 

Thank You.

