

OPEN DISCLOSURE OF MEDICAL ERRORS – NECESSITY MEETING VIRTUE

By Dr Jeremy Lim, Editorial Board Member

Dr Chan Lai Gwen's account of her experiences with open disclosure and her disappointment with her professional colleagues is a painful reminder of just how far we have to go before we can truly say we are living up to all the noblest traditions of our profession.

A few years ago, a public hospital in Singapore deliberated and ultimately decided against enacting a formal open disclosure policy. The fear then was that it would encourage claims for compensation and litigation. Jim Conway of the Dana-Farber Cancer Institute, cited in 'Quality and Safety in Healthcare', explains it succinctly: "People believe that you tell a patient about error and they make two phone calls. One is to the press, the other to their lawyer." However, he went on to say this was erroneous: "It does not work that way" (Lamb, 2004).

Open disclosure can be defined as "open discussion of incidents that result in harm to a patient while receiving health care". It should be a natural extension of our cherished concepts of informed consent, patient autonomy and justice. Advocates for open disclosure cite benefits including lowering malpractice claims through diminishing anger and the desire for revenge which are often motivators of litigation, improved milieu for patient safety, and "goodwill and maintenance of the caregiver's role". In fact, some writers emphasise the maintenance of the professional relationship and regard any reduction in claims as "unanticipated financial benefits" (Kraman and Hamm, 1999).

Somewhat disappointingly, the anecdotal experience of patients both in Singapore and elsewhere suggests that open disclosure is the exception rather than the norm. Fears of adverse publicity

and litigation still dominate.

Are these fears well founded? A review of the evidence for the Australian government revealed a paucity of high quality empirical evidence (Allan and Munro, 2008). Nonetheless, the review noted anecdotal accounts that open disclosure encourages patients and their lawyers to seek only calculable monetary losses instead of punitive damages which can be substantial in American jurisdictions. A New York Times article titled 'Doctors say "I'm Sorry" before "See You in Court"' reported that the

"People believe that you tell a patient about error and they make two phone calls. One is to the press, the other to their lawyer. It does not work that way".

University of Michigan Health System, one of the pioneers in open disclosure saw existing claims and lawsuits drop from 262 in 2001 to 83 in 2007. The institution's Chief Risk Officer was quoted as saying: "Improving patient safety and patient communication is more likely to cure the malpractice crisis than defensiveness and denial."

Why then are we so afraid of open disclosure in Singapore? We know it is the right and ethical thing to do and the concerns seem unjustified. Legal claims are relatively stable, physicians enjoy

good standing in the community and every hospital openly embraces 'patient safety' and lauds the airline industry's open reporting of near misses without fear of penalty. Perhaps it is time for the profession to take a public stand on open disclosure. Will we rise up to what our British brethren call our "duty of candour"? **SMA**

References

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