

Avant Risk IQ factsheet

Open disclosure: how to say sorry safely

A patient's decision to take legal action or to complain against a health practitioner may be stimulated by perceived insensitive handling, poor communication or delay after an adverse clinical incident. Often, the focus of patient's hurt and anger is not the injury itself, but the failure of a health professional to 'do the right thing' in the aftermath of the event.¹

Avant's practical experience indicates that a patient's decision to take legal action or complain against you may be affected by the way you manage an incident that resulted in harm to the patient. Avant 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.

What is open disclosure?

Open disclosure describes the way clinicians communicate with patients who have experienced harm during healthcare. Open disclosure involves a factual account of what happened, discussion of the potential consequences of the adverse event, and an exchange of information. Open disclosure may take place in one conversation or over one or more meetings, and the patient should be given an opportunity to relate their experience of the event.

A key element of the open disclosure process is an apology or expression of regret, which should include the words "I am sorry" or "we are sorry".

What is the process?

The open disclosure process involves:

- ▶ acknowledging that an adverse event has occurred
- ▶ apologising or expressing regret for what has occurred (including the words "I am/we are sorry")
- ▶ outlining the facts that are known about what has happened and discussing what further steps are planned (including side effects, expected costs and any concessions you may make)
- ▶ actively listening to the patient's clinical and personal experience of the event
- ▶ providing information on what steps are planned to determine what went wrong and how similar events may be prevented in the future and agreeing to give feedback on this when details are available.²



How do I apologise?

The Australian Commission on Safety and Quality in Health Care's (ACSQHC) *Open Disclosure Framework* (states that an apology should use the words "I am sorry...")

The act of apologising is intended to help both the patient and family, and will also assist clinicians who are dealing with the experience.³

Those directly involved in the adverse event should provide the apology in a sincere manner. What is being apologised for should be clear.

In making an apology, the wording is important. The ACSQHC publication, *Open Disclosure FAQs for clinicians*⁴ provides the following examples of wording:

"I am sorry this has happened."

"I am sorry that this hasn't turned out as expected."

Does open disclosure lead to legal liability?

Avant's position, in accordance with the Australian Open Disclosure Framework, is that an apology is not intended to be, and should not be seen as an admission of liability or a statement casting blame on some other person or organisation.

All jurisdictions in Australia have 'apology' laws – statutory provisions that protect statements of apology or regret made after incidents from subsequent use in various legal contexts. An aim of the protective legislation is to create an environment where doctors can feel comfortable expressing regret to patients.

If you are involved in an incident involving an adverse outcome, you should be aware of the need to notify your insurance company in accordance with their incident notification requirements.

Is open disclosure mandatory?

Health service organisations accredited to the National Safety and Quality Health Service Standards (including public and private hospitals, day surgery units and dental clinics) must implement open disclosure in accordance with the Australian Open Disclosure Framework.

These organisations will have their own open disclosure policies and procedures, and if you practise in one of these contexts you may be required by the organisation to participate in open disclosure activity. You should ensure you are familiar with your organisation's policies and procedures on open disclosure.

For practitioners in private practice, open disclosure is good professional practice. The Medical Board of Australia's Good medical practice: a code of conduct for doctors in Australia states that:

When adverse events occur, you have a responsibility to be open and honest in your communication with your patient, to review what has occurred and to report appropriately.

What is Avant's position on open disclosure?

Avant:

Supports open disclosure by its members that occurs in accordance with the Australian Open Disclosure Framework.

Supports members who are undertaking, or wish to undertake, an open disclosure process with patients and will provide advice, information and support in what can be a stressful and difficult time.

Encourages members to seek early advice and support during this process.

Believes that for open disclosure to be effective, appropriate education and training of healthcare practitioners is essential.

Provides education and training to members who wish to participate in open disclosure.

Supports members providing apologies to patients who have suffered an adverse outcome from treatment.

This is good clinical practice, as acknowledged by the Medical Board of Australia.⁵ However, despite this professional obligation, the Australian medical profession has been slow to put open disclosure into practice.

Doctors, patient safety experts, ethicists, hospital executives and accrediting organisations all agree on the need for transparency when things go wrong, and the need to say "sorry" to the patient. However, it is often difficult for the practitioners involved to cope with the emotional burden of disclosing an error while maintaining a robust sense of professional accountability.⁶

References:

1. Bismark M, Paterson P. Doing the right thing after an adverse event. *NZ Med J.* 2005; 118:1219.
2. This section is based substantially on the Australian Commission on Safety and Quality in Health Care's *Open Disclosure FAQs for clinicians*. <http://www.safetyandquality.gov.au/publications/open-disclosure-faqs-for-clinicians/>
3. <http://www.safetyandquality.gov.au/publications/saying-sorry-a-guide-to-apologising-and-expressing-regret/wrd3521/>
4. http://www.safetyandquality.gov.au/acsqhc_program/open-disclosure/
5. Medical Board of Australia. *Good medical practice: a code of conduct for doctors in Australia*. (section 3.10). 2014. <http://www.medicalboard.gov.au/Search.aspx?q=Good%20medical%20practice%20a%20code%20of%20conduct%20for%20doctors%20in%20Australia>
6. Finlay A, Cameron S, Parker M. Open disclosure: ethical, professional and legal obligations, and the way forward for regulation. *Medical Journal of Australia.* 2013; 198 (8):445-448.

This publication is not comprehensive and does not constitute legal or medical advice. You should seek legal or other professional advice before relying on any content, and practice proper clinical decision making with regard to the individual circumstances. Persons implementing any recommendations contained in this publication must exercise their own independent skill or judgment or seek appropriate professional advice relevant to their own particular practice. Compliance with any recommendations will not in any way guarantee discharge of the duty of care owed to patients and others coming into contact with the health professional or practice. Avant is not responsible to you or anyone else for any loss suffered in connection with the use of this information. Information is only current at the date initially published. © Avant Mutual Group Limited 2015. 3537 09/15 (0389)

Where can I find out more?

The Australian Commission on Safety and Quality in Health Care (ACSQHC) has published a range of resources to guide practitioners on engaging with open disclosure at http://www.safetyandquality.gov.au/acsqhc_program/open-disclosure/.

If you would like more information or expert advice about the open disclosure process, contact Avant on 1800 128 268.

For more advice, call Avant's Medico-legal Advisory Service on **1800 128 268**.

Visit avant.org.au/risk/iq for Avant Risk IQ resources including webinars, eLearning courses, case studies and checklists.