

Medical Error Disclosure and Risk of Malpractice Litigation

September 10th, 2010 by [Tricia Pillitteri](#)



An analysis of "Liability Claims and Costs Before and After Implementation of a Medical Error Disclosure Program," by Kachalia et. al, *Annals of Internal Medicine*, 2010; 153:213-221. [Patient summary and abstract available [here](#).]

Two weeks ago, I was invited to speak to a group of family medicine residents about patient safety. I gave what I thought was a heartfelt appeal for greater openness in communication between physicians and patients. Afterwards, one faculty member approached me privately and remarked that, although many physicians would agree in theory that honesty, transparency, and disclosure are all good and right things to do for patients in the aftermath of a serious adverse event, it was unlikely to happen unless a business case could be made and it could be shown that such an approach would not put hospitals and clinicians in further financial or legal jeopardy. His comment got me thinking and digging to see if there was indeed any cold, hard evidence in the literature supporting open disclosure. I didn't have to dig long before seeing the headlines from USA Today...

The screenshot shows the USA Today website header with navigation links for Home, News, Travel, Money, Sports, Life, Tech, and more. The main headline is "Malpractice suits drop when doctors admit mistakes, apologize". Below the headline, it says "Posted 8/20/2010 9:30 AM | Comments 59 | Recommend 7" and "By Jenifer Goodwin, HealthDay". There are also links for "E-mail", "Save", "Print", "RSS", and "Share".

In August, an article published in *Annals of Internal Medicine* took a close look at the relationship between disclosure of medical errors and liability risk. The authors conducted a retrospective analysis comparing legal claims made and costs to a major academic medical center and health system, over a roughly 12-year period before and after implementation of a medical error disclosure program. Since 2001, the University of Michigan Health System (UMHS) has practiced a comprehensive claims management program emphasizing honesty, transparency, and disclosure—sometimes with compensation—to injured patients and encouraging reporting of errors by staff.

The results of the study challenge current medical malpractice paradigms. All of the study's measures—number of new claims for compensation, number of claims compensated, time to claim resolution, and claims-related costs—decreased in the period after program implementation compared with the period before. (Note: the authors defined a claim as "any request for compensation for an unanticipated medical outcome whether initiated by the patient or by disclosure." Although some claims did end up as lawsuits, the vast majority both before and after program implementation did not). Specifically,

- Number of new claims for compensation decreased** from 7.03 claims per 100,000 patient encounters before initial program implementation to 4.52 after full implementation. This decrease was due almost entirely to a drop in the number of lawsuits filed, and there was no change in the rate of claims that did not result in a lawsuit.
- Median time to claim resolution decreased** from 1.36 years before program implementation to 0.95 years after.

- **Total liability costs decreased** after full program implementation and were attributable to decreases in both legal and patient compensation costs. Again however, although the total costs associated with lawsuits decreased (from \$405, 921 to \$228,308 per lawsuit) after full implementation of the UMHS Disclosure-with-Offer Program, the total costs for nonlawsuit claims did not.

Like any ambitious study, especially one of this size and duration, the UMHS study has limitations. Among them:

- How much of the decrease in claims litigation is due specifically to UMHS program efforts as opposed to other variables in the healthcare climate during the study period? The authors noted that, during the same time as implementation of the UMHS program and study period, the entire state of Michigan also experienced an overall drop in liability claims and costs thought to be attributable to state-wide malpractice reform instituted in 1994.
- What are the implications of a disclosure program that results in a decrease in the number of lawsuits filed, but no change in the number of claims that do not proceed to a lawsuit and an overall decrease in patient compensation? Many patients lack the resources to file a lawsuit and only a very small proportion of injured patients ever receive compensation, let alone in sufficient amounts, for medical negligence and harm that they have suffered.
- What about caregivers practicing outside of a large medical center setting? The physicians in this study were all covered by the university under a group malpractice insurance program. The UMHS systems approach also meant that reporting of individual practitioners to the National Practitioner Data Bank was rare, a policy without which healthcare professionals and staff might be discouraged from reporting errors. For practitioners who purchase their malpractice insurance separately or who are engaged in private practice, it's not clear whether the findings from this study are applicable. Despite the study's limitations, what is clear is that a **medical error disclosure program does not automatically open hospitals or health systems up to more lawsuits and higher legal costs.** The implications could be significant for a "high-risk" field like obstetrics where medical malpractice is no stranger and in which one wrong move during a short window of time can have enormous and lifelong medical, financial, and psychological consequences for a mother, her baby, and her family. Under the traditional "defend and deny" risk management strategy that has been in play for decades at most large hospitals and birthing centers, lawyers and practitioners operate on assumptions that admitting error is an invitation to a lawsuit and would open the floodgates to vengeful patients seeking large payouts for frivolous claims. These assumptions, grounded and perpetuated in fear, misunderstanding, and incomplete information, are major barriers to sound patient safety and ethical principles that support open disclosure of harmful medical errors.

The UMHS findings also confirmed what many patients, patient safety advocates, and healthcare professionals have long known about the mitigating effects of open disclosure on litigation. Paul Levy, CEO of the Beth Israel Deaconess hospital in Boston and author of the popular blog "[Running a Hospital](#)," wrote recently:

The literature on the topic of disclosure and apology suggests that patients and families are not interested in having the doctor or nurse be punished when a medical error occurs, if (and this is an important *if*), the clinician makes clear that he or she is clearly regretful about the error, is empathetic with the patient, *and* if the clinician and hospital show that they plan to learn from the error to help avoid repeats with other patients.

So it looks like full disclosure is not only good medicine, but good business too.