Disclosure of Unanticipated Outcomes and Medical Errors

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Unanticipated Outcomes: Disclosures

- Patrice M. Weiss MD, FACOG
- I have no relevant financial relationships with any commercial interest relative to the subject of this lecture.

Introduction Objectives

- **Demonstrate improved communication skills in disclosure situations**
- **List the causes of unanticipated outcomes**
- **Describe differences between unanticipated outcomes due to medical error and without medical error**

HOSPITAL MEDICAL ERRORS KILL 98,000 AMERICANS EACH YEAR. -- HEARST NEWS INVESTIGATION

Premise Disclosure of Unanticipated Outcomes is Required

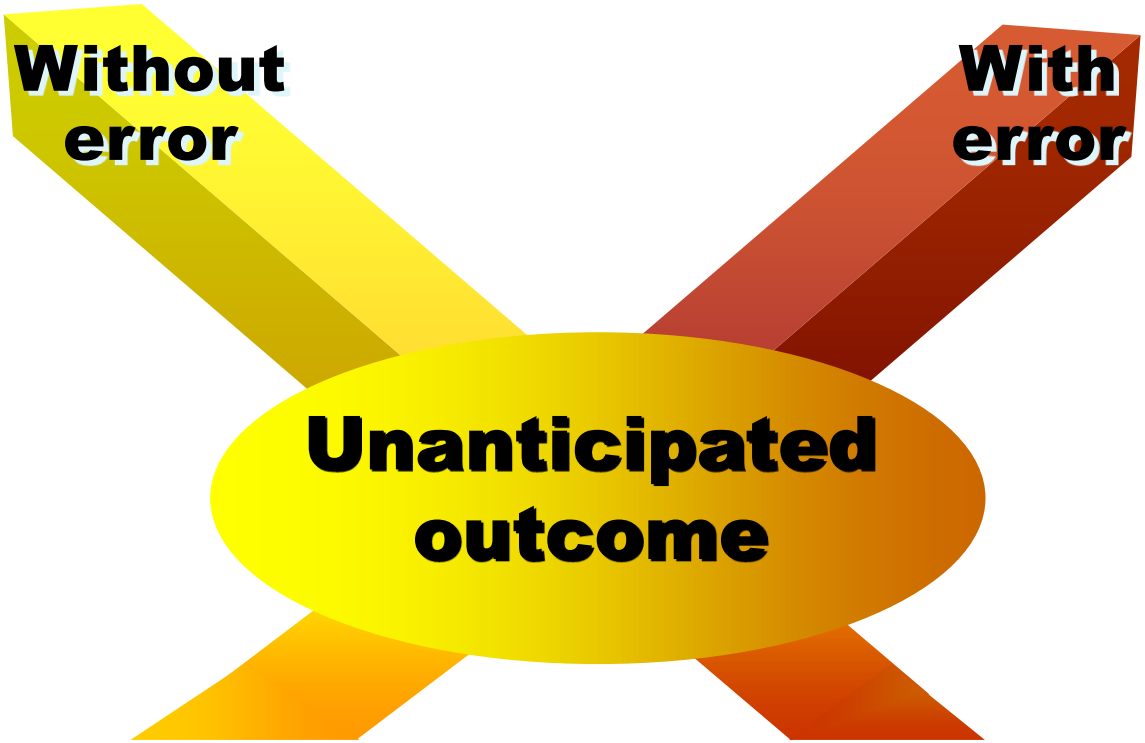
- JCAHO Standard RI.1.2.2
- *“ The responsible licensed independent practitioner or his or her designee clearly explains the outcome of any treatment or procedure to the patient and, when appropriate, the family, whenever those outcomes differ significantly from the anticipated outcomes.”*


off the mark.com
by Mark Parisi
THE OPERATION WENT WELL, HOWEVER, X-RAYS SHOW THERE'S A CLAMP STILL INSIDE YOU... NOW, DID WE LEAVE IT THERE OR DID YOU EAT IT?
offthemark.com

Premises Outcomes May Be Unanticipated Due To

- Uncorrected “unreasonable” expectations
- Biological variability
- Low probability risks and side effects
- Wrong judgments without negligence
- Medical or systems errors

Premise Unanticipated Outcomes Have 2 Origins



Premise There Is Disagreement On The Definition Of Medical Error

Medical / legal : "Act of commission or omission with consequences for the patient that would be judged wrong by skilled and knowledgeable peers at the time it occurred, independent of whether there were any negative consequences."

Patient / families: Unanticipated often is associated with error

Premise It Is Important To Determine If Medical Error Is Involved

- Unanticipated without error
  - clinicians have more experience discussing
  - can usually manage on their own
- Unanticipated with medical error
  - challenges one's integrity, courage, humility
  - requires coordination with others at every step

Technique When To Discuss Potential or Actual Disappointments?

- BEFORE: prior to treatment
- DURING: as concerns arise
- AFTER: unanticipated outcome

Technique Before Treatment Begins

- Establish partnership with patient
- Frame shared decision-making as a balancing of risks and benefits
- Make your recommendation and confirm patient's agreement or continue discussion
- Sometimes a signed informed consent form is needed but the discussion is key

Technique DURING Treatment

- Elicit and respond to concerns
- Empathize with disappointments and doubts
- Demonstrate attentiveness & thoroughness
- Decide together on best approach in light of these concerns

Technique AFTER Unanticipated Outcome Without Error

- Four aspects to address:
- The immediate clinical care of the patient
- Recognizing and constructively dealing with your own emotions, uncertainties and needs
- Developing clarity re: what happened
- Discussion with patient / family

Technique Managing Your Emotions

- Notice your own thoughts and emotions
- How is your distress expressing itself?
- What help do you need and where can you turn to get it?

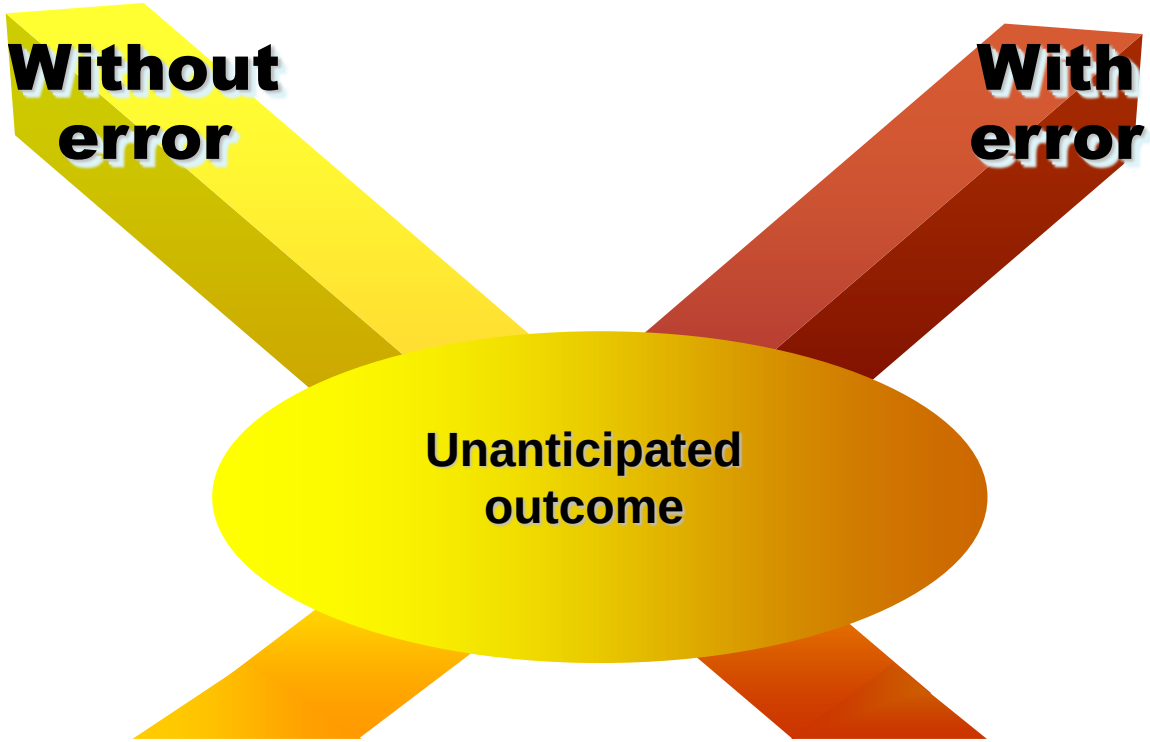
Technique How To Say I'm Sorry

- Protected: Benevolent expression of sympathy for situation
  - "*I'm very sorry that your family has been through so much pain this last week.*"
- Admissible: Apology that suggests fault
  - "*I'm so sorry that I did not have the nurse bring those lab results directly to my office when she first got them so I could have gotten you to the hospital sooner.*"

Technique When To Discuss Potential Or Actual Disappointments?

- **BEFORE**: prior to treatment
- **DURING**: as concerns arise
- **AFTER**: unanticipated outcome

Technique Differentiate Unanticipated Outcome



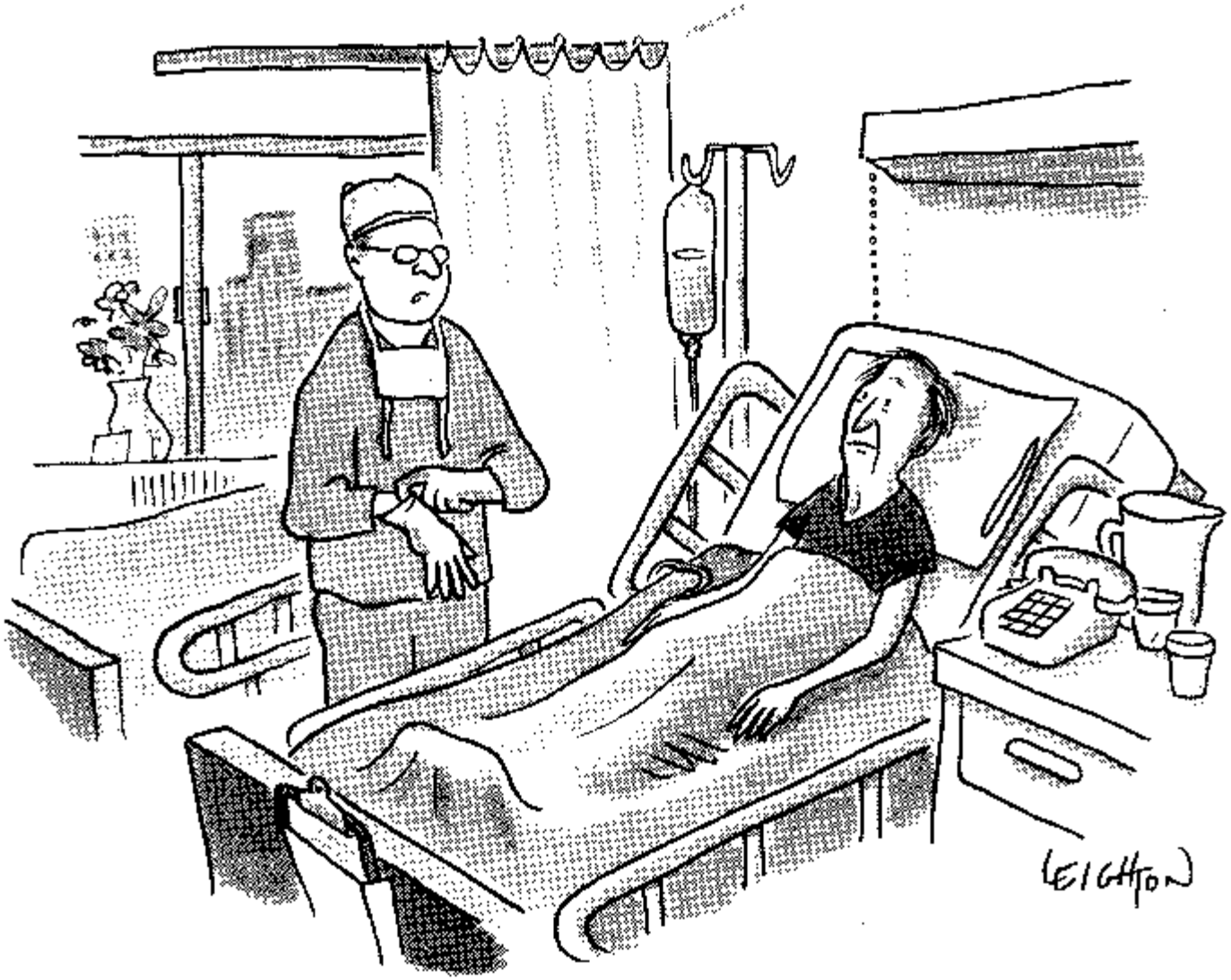
Technique Initial Discussion Of Injury Caused By Error

- Team: Who is involved and why?
- Truth: How key facts are presented?
- Empathy: Patient ventilation, clinician empathy
- Apology: offered & responsibility taken
- Management:
  - Patient care
  - Clinician emotional self manage
  - Follow-up plan proposed

Technique Team Composition

PCP or attending takes the lead

- A second person is often essential to witness, facilitate, support, and coordinate follow-up
- Decide whose presence
  - conveys concern and regret?
  - can answer clinical questions?
  - can answer administrative questions?
  - can answer financial question?



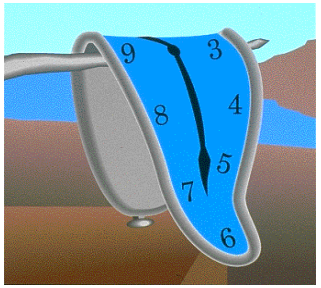
"I'll have someone come in and prep you for the bill."

Technique What Needs To Be Covered?

- Elicit questions and/or concerns
- Accept responsibility
- Make a sincere apology
- Explain changes to reduce repeating
- Offer option of transferring care
- Provide contact information for follow-ups
- Discuss with treatment team to assure consistency and support

Technique When Do I Disclose?

- The disclosure needs to be timely and prompt
  - Delaying magnifies problems
- Don't wait for all the "facts"
  - "Here is what we know now and we will keep you informed as we learn more."
- Don't wait for a complaint or questions



Summary Disclosure Requires a TEAM Approach

- Truth and transparency
- Empathy for patient and family
- Apology with accountability
  - apology
  - responsibility
- Management
  - patient care
  - emotional self management
  - situation

Technique Procedures

- Review Your facility's procedures
- Identify your resources to help analyze, advise and assist

To err is human,
To air is humane


SPEED BUMP Dave Coverly
I'M THINKING WE INJECTED YOU WITH THE WRONG STEM CELLS.

Questions?