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ERRORS IN DENTISTRY: A CALL FOR APOLOGY

Barry Schwartz, DDS

ABSTRACT

Bad outcomes occur in dentistry and sometimes these are the results of dental errors. In both cases, this essay will argue that apologies are very important in maintaining a relationship with the patient that is based on trust and mutual respect. Nevertheless, apologies are often not forthcoming in dentistry for a number of reasons that deserve careful examination. In particular, the dentist's fear that an apology will increase the risk of legal harm will be critiqued. Ethical and psychological reasons for making an apology will be discussed, and strategies to assist clinicians in making an apology will be offered.

*The only one who makes no mistake
is one who never does anything!*

—Theodore Roosevelt

*An apology is the superglue of life.
It can repair just about anything*

—Lynn Johnston

Errors occur in every health profession and are not limited to negligent practitioners. In dentistry, bad outcomes occur in spite of dentists' best efforts and even the best dentists make mistakes sometimes. Dentists are taught perfection, strive for perfection, yet are constantly challenged by imperfection (Scheirton, 2003). But dentists are often not well trained in how to deal with this paradox. An important component of this process is an apology to the patient. In fact, an apology is frequently essential to fulfilling the patient's needs when faced with a mal-occurrence. Nevertheless, the need for an apology in such situations has not

been adequately addressed in the dental literature. The purpose of this paper is to call attention to and to begin to fill that gap. The paper will address some of the ethical, psychological, and legal aspects of apologizing when maloccurrences happen, and will offer some strategies to assist dentists in offering an apology under these circumstances.

HONEST REPORTING OF BAD OUTCOMES AND ERRORS

A professional relationship that does not have honesty as one of its main underpinnings creates wary patients who hesitate to offer the dentist their trust and cooperation. Many patients enter the dental office already suspicious of persons in positions of authority, caused by stories in the news and familiarity with often grossly exaggerated or deliberately misleading marketplace advertising. The burden of communicating to the patient that the dentist-patient relationship is not a commercial relationship therefore falls chiefly on the dentist. Good dentistry depends not only on technical precision, but also on a level of cooperation by the patient. Even the technical success of dental practice can be adversely affected by actions that produce wary and mistrusting patients. How a dentist deals with adverse outcomes will



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significantly impact this relationship.

Adverse outcomes can have many causes. Patient's symptoms and diagnostic tests can be inconclusive, rendering diagnosis challenging and fraught with uncertainty. Time constraints, stress, distractions, and many sorts of unforeseen circumstances can all impact negatively on the outcomes of treatment. Consequently, adverse events happen and from time to time these involve undeniable errors on the part of the dentist.

The disclosure of error is not explicitly addressed in the *Code of Ethics of the Royal College of Dental Surgeons of Ontario*, under which the author practices, nor in the ethics documents of the American Dental Association or the American Colleges of Dentists. The closest statement about the disclosure of error in these resources is in the section on "Justifiable Criticism" of other dentists' work in the American Dental Association's *Principles of Ethics and Code of Professional Conduct*: "Patients should be informed of their present oral health status without disparaging comment about prior services" (Section 4C). This directive clearly implies that a dentist who observes a bad outcome must inform the patient about it even if the patient is not yet aware of it. But none of these documents provides guidance about how to do this properly or of the important role of apology in the process.

THE IMPORTANCE OF AN APOLOGY

One of the obvious reasons why dentists do not offer apologies to patients is their concern that an apology will lead to

litigation. According to Don McFarlane, the Director of the Professional Liability Program of the RCDSO, "While an insured dentist may regret that an untoward incident/accident occurred in the course of rendering dental treatment to a patient, an apology may be seen by some patients and/or their legal counsel as an admission of his or her liability. Such admission could have the effect of compromising his/her malpractice coverage."

But refraining from apologizing solely to protect oneself is in conflict with the dentist's general obligation to place the health and well-being of the patient above other concerns, since this obligation includes preserving wherever possible a positive dentist-patient relationship. Even in situations in which a mistake in treatment has been made, this obligation should take priority over the dentist's other concerns.

As a matter of fact, however, the College of Physicians and Surgeons of Ontario cites the view of a lawyer and former member of council in their publications that disclosure and a focus on the dentist-patient relationship is also salutary: "Patients often access legal processes because of a perception that true facts are being hidden and disclosure is denied or limited. A full and frank disclosure will often be enough response for the patient" (Samis & McNinch, 2003). Similarly, another lawyer quoted in the *Annals of Internal Medicine* argues that: "Close to half of malpractice

The fact that a bad outcome has occurred should be disclosed to the patient as soon as possible after it is discovered. Delay in addressing the matter could compound the situation and subject the patient to further harm.

cases could have been avoided through disclosure and apology...What the majority of patients really wanted was simply an honest explanation of what happened, and if appropriate, an apology. When they were offered neither, they felt doubly wronged and then sought legal counsel" (Wu, 1999).

In such situations, the fact that a bad outcome has occurred should be disclosed to the patient as soon as possible after it is discovered. First of all, delay in addressing the matter could compound the situation and subject the patient to further harm. But it is also essential to address the potential impact of the situation on the dentist-patient relationship right away, whether dental error is involved in the bad outcome or not. Finally, if the matter did come to include legal action, delay might also increase the dentist's liability.

A proper reaction to a bad outcome must begin with the relevant facts. The first step should be a clear explanation of what has happened to this point, what is problematic about it for the patient's oral health, and the potential for further adverse effects if nothing is done to reverse the situation. Second, the patient will often want to know why this happened. If the dentist honestly believes that the procedure was completed fully within the standard of care and that no dental error is involved, then an explanation of the fallibility of the technology or the limits of diagnostic information would be the ethically appropriate reply. If the dentist believes that result is a consequence of dental error or if this is unclear to the dentist, an honest answer would include this (Ozar & Sokol, 2004).

Third, the patient will ordinarily inquire, and in any case needs to be involved in determining, what the dentist believes should be done about the situation now and also who will be paying for these interventions. The dentist should therefore be prepared to either discuss these matters with the patient on the spot or explain when they will be discussed. And fourth, the central focus of this essay, is the apology.

Obviously, the way an apology is worded will depend on the dentist's honest judgment of whether the bad outcome has derived from an instance of bad clinical judgment or substandard treatment by the dentist. If so, as indicated above, an honest apology must include this in some way. But the dentist may sincerely judge that the bad outcome was not the result of dental error, but "one of those things" that sometimes happen, within the range of bad outcomes associated with every treatment modality regardless of the dentist's skill and care. In that case, the apology should be worded accordingly.

THE ROLE OF APOLOGY IN THE PROFESSIONAL-PATIENT RELATIONSHIP

When a professional apologizes to a patient, it is a very significant way of showing respect for that person. The process of being involved in a treatment maloccurrence or error unleashes many emotional responses for both the health care practitioner and the patient. An apology can help bridge some of those emotions by demonstrating to the patient that the dentist can take responsibility for his or her actions and that the dentist has compassion for the inevitable negative feelings of a patient caught up in such a situation. In many instances, an apology can even reverse the injured patient's feelings and bring the patient to view the dentist as an empathetic

friend rather than someone who may cause the patient yet more hurt (Engel, 2001).

Ethically and practically, successful treatment is not entirely a matter of outcomes. In a well developed dentist-patient relationship, there exists good interactive communication and proper informed consent, which in turn promotes mutual trust. In such relationships, patients often understand that not every treatment is totally predictable and not always entirely successful. For instance, in these cases, unless the enormity of the error itself fractures that trust and communication, patients do not look for unreasonable compensation. But when communication and trust are not attended to, the patient's sense of having been harmed is increased, and legal redress is going to be more likely as well.

Dentistry involves a personal interaction of some intimacy and most patients consider their mouths to be a very private part of the body. This vulnerability is the reason why treatment-related maloccurrences have such significant repercussions, including anger, a feeling of betrayal, and the potential for a loss of trust. On the positive side, this is why trust is such an integral component in the dentist-patient relationship, and even in the face of a bad outcome or dental error, the dentist who responds wisely with sympathy for the patient and an appropriate apology for what has taken place can maintain trust and even enhance the relationship to the patient.

One of the important effects of an apology is its communication of the professional's willingness to offer it, even if no dental error is involved. If people are to have confidence in one another, there has to be some predictability that the principles which guide each other's conduct are similar. Therefore, an apology in this kind of situation is both an affirmation of the human relationship that

exists between dentist and patient and an affirmation of shared values and beliefs. Both the dentist and the patient want and expect the patient to simply benefit from the combination of appropriate technology and the dentist's expertise. The maloccurrence, whether from a failure of a fallible technology or from the fallibility of the dentist, disappoints and saddens them both. When a dentist apologizes to a patient he or she acknowledges the patient's feelings of being wronged and reaffirms the validity of those feelings in the light of their shared values and a shared understanding of what ought to have happened. In the best of situations, this can have the affect of lessening the emotional injury of the patient, as well as the patient's feeling of deep vulnerability, by placing it in a broader, shared context. Moreover, in the situation in which dental error is involved, a proper apology can lessen the patient's anxiety that the same error might be repeated by the dentist (Hoffman, 1999).

These same points can be made in another way. There are psychological phenomena that occur between people when there are conflicted personal values at stake. One is cognitive dissonance, or sometimes called litigation hypnosis. This occurs when one of the parties is so convinced that he or she is right that it becomes impossible to accept information and conclusions that are not congruent with these deeply held beliefs. An apology by the dentist can defuse the patient's hurt by acknowledging the harm that the injured party experienced, helping the patient view the situation from a broader point of view that includes them both.

The second phenomenon is reactive devaluation, which occurs when an offer made by one party appears less attractive because of the proposal's source. This

can occur when an offer is made too quickly and the other party feels that much more is available to them or where there is willingness for the settlement to have a punitive impact in order to ensure recognition of the harm that was caused (Golan, 1996). This possibility reinforces the importance of apologizing for the bad outcome not only sincerely, but promptly, putting the healing of the dentist-patient relationship ahead of the questions of cause and possible blame, follow-up, and determination of who will pay.

Patients experience numerous emotional responses upon learning of a bad outcome, including sadness, anxiety, depression, anger, and frustration, especially if they think that the bad outcome was the result of dental error and or was preventable. Patients who judge that the dentist's explanation of the outcome is incomplete or, worse yet, evasive will have their level of distress increased.

BARRIERS TO APOLOGY

The dentist's own emotional response to the bad outcome, and especially to bad outcomes that occur as a result of dental error, may strongly hinder the dentist from offering a sincere apology to the patient. It may move the dentist to focus on his or her own feelings instead of focusing on caring for the patient and addressing the needs of the relationship. A study of physician error, for example, found that physicians typically felt upset and guilty about harming the patient as well as experiencing disappointment in failing to practice medicine to their own high standards. While they were also fearful regarding a possible lawsuit and anxious about the negative repercussions to their professional reputation, the most difficult challenge for many physicians was forgiving themselves for the error that occurred. The study found, however, that the need to tell patients about the errors, their cause, and their prevention

can create stronger links between doctors and safety programs, as well as build better relationships with the patients themselves, thus not only reducing future errors, but improving communication and the ensuing level of trust with patients (Gallagher, 2003).

Many dentists may believe that anything they say can be used against them in a court of law and they are sometimes taught to "offer regret that an untoward incident occurred and not

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the acceptance of responsibility of the outcome” (McFarlane, 2003). In a similar way, physicians are sometimes advised to accept responsibility for outcomes, but avoid attributions of blame (Hebert, 2001). Consequently, there is a tendency for the dentist or physician to become cold and indifferent to the patient at precisely the time when the patient needs emotional support the most.

But the Harvard Medical Practice study in 1991 found that only 2% of negligent maloccurrences ever lead to malpractice claims. In a further qualitative study involving injured patients who sued their doctors, the plaintiffs were “disturbed by the absence of explanations, a lack of honesty, the reluctance to apologize, or being treated as neurotic” (Vincent, 1994). In fact, many patients who have experienced adverse events have said they would be less upset if the health care practitioner had disclosed the error honestly and compassionately and had also apologized (Gallagher, 2003). In a *National Post* article describing a lawsuit against St. Catharine’s General Hospital, the parents of a missing still-born child were quoted as follows: “We understand that mistakes are made. We just wanted someone to come before us and apologize,...to look us in the eyes and say, ‘I screwed up, it was me, I’m sorry.’ We would never have pursued legal action if someone at the hospital had just explained to us what happened” (Owens, 2004).

This approach has been borne out by studies of medical malpractice. When physicians were honest about what happened and accepted responsibility, patients were less likely to sue. A study by Daniel Shuman, found that in the medical malpractice arena, when physicians were honest about what had happened and accepted responsibility, patients were less likely to seek legal redress. An apology that is properly

given and accepted can often defuse anger and even avoid litigation (Shuman, 1994). There are also times when simply obtaining an apology is the object of litigation. Consequently, the process of suing the defendant can be more than a mere attempt to recover a loss, or even to seek monetary compensation for pain and suffering; it may simply represent the desire to seek an explanation of what has happened as well as an attempt to secure some form of retribution.

In any case, it is worth stating that the tort system allows the defendant to mount a vigorous defense in order to establish that an injury may not have been due to incompetence but rather an unfortunate outcome to a difficult procedure (Merry, 2003).

In a similar vein, many dentists may think that an apology is an admission of liability. But consider the following medical case. In a 1982 decision, *Senesac v. Associates in Obstetrics and Gynecology*, the Supreme Court of Vermont held that a doctor’s admission of a mistake did not automatically prove that the doctor departed from the appropriate standards of medical care. The plaintiff, armed with an apology, must prove his or her case just as if the apology did not exist. In this case when a physician apologized for “inadequate surgery,” it was not an admission of guilt according to the court (Deese, 1992). An apology by itself does not prove any of the elements of the case for malpractice (Phinney, 1992). Because an apology pertains to a doctor’s/dentist’s self-image and his feelings, it is not evidence of any particular medical fact or event. This leaves the plaintiff legally in the same position as someone who did not receive an apology (Rehm & Beatty, 1996). The state of Massachusetts in 1986 enacted

a law making evidence of expression of sympathy or benevolence relating to pain, suffering, or death of a person involved in an accident inadmissible. A plaintiff, in Massachusetts, should be aware that the expression of sympathy cannot be relied upon to strengthen his or her case. Subsequently, Texas and California enacted legislation that bars the accessibility in court of benevolent gestures or any communication of sympathy in connection to accident-related injuries. These laws pertain to civil accidents (motor vehicle accidents) as well as to medical situations when a patient has suffered a poor result or a mal-occurrence (Bettman & Bullock, 2001).

It should be noted that there is a major difference in saying “I’m sorry” and offering an admission of guilt or fault. An expression of sympathy may avert a malpractice action whereas a confession of fault could have negative repercussions in court (Demorest, 2001).

But an honest explanation of the relevant facts, an expression of sympathy, and a sincere apology may avert a malpractice action. And since courts often have a difficult time in distinguishing between unavoidable mishaps and faulty behavior, the risk of an unjust verdict can then be avoided.

FURTHER ETHICAL REFLECTIONS

In addition to the strong reasons from professional ethics that have already been noted, there are also ethical grounds for an apology in the principle of justice. Justice concerns giving to each what he or she is due. One aspect of this concerns the rights of patients to proper acknowledgment of wrongs committed and, though the details are more complicated here, proper restitution as well. But as has been noted, quite often a proper apology is deemed even by the patient to fulfill that requirement when there is a strong relationship of trust between patient and dentist and no significant negligence of professional

duty has been involved. But even when dental error is not involved and this reality has been accepted by the patient, the patient still has not received what he or she believed (with the dentist) was his or her due. The fallibility of the technology has taken its toll and the dentist’s apology is an acknowledgment of this injustice, even though it has not had a human cause other than humans’ inability to create infallible technologies. In other words, there are important reasons to apologize as a matter of justice towards the patient, even when no dental error is involved.

Another way to make the same point is to see an apology as an affirmation of the social contract between the dentist and the patient, enabling them to maintain a common moral ground in the face of adverse circumstances. Thus an apology can be a sign of the strength of a relationship, because it is not easy to admit a mistake when pride is at stake. It is an act of honesty and solidarity in the face of adversity, especially if it needs to include an admission by the dentist that he or she did not perform up to standard.

Viewed from another perspective, an apology is an important act of beneficence toward the patient because it restores the self-concept of someone who has lost something expected or, in the case of dental error, who has been offended (Lazare, 1995). One might also formulate the ethical obligation to apologize for a dental error as deriving from the obligation to respect patient autonomy. For patients to be totally autonomous, they must have complete information regarding their condition (Beauchamp & Childress, 2001). An apology can also be understood as flowing directly from a proper ethics of care, since it encompasses honesty, integrity, and empathy for the position of the patient. In all of these ways, the point

TEN GUIDELINES FOR SPEAKING WITH THE PATIENT

Speak directly towards the problem and not in an obscure manner.

Sit close to the patient, not on the other side of a desk, so as to share in the problem with them.

Touching their arm is not inappropriate.

Speak in an empathetic manner with humbleness in your tone.

Give the patient ample time to assess the information, and regain composure before continuing with the next points.

By looking uncomfortable with the process you will look more human and demonstrate that this is not an every-day occurrence.

Apologize: Admit that a bad outcome has occurred and, if appropriate, that a mistake in judgment or treatment has been made and not that it was an “unfortunate complication.” “I am sorry about what has happened” is appropriate to a bad outcome not involving dental error. But in the case of dental error, “I am sorry that you were harmed by this error” expresses more direct ownership of the problem and is a more sincere apology.

Explain to the patient clearly what steps can be taken to rectify the situation as best as possible. Included in this is informing the patient of their right to legal recourse.

Explain to the patient what steps you will take to ensure this does not happen again.

Give the patient the opportunity to get a second opinion or to transfer to another dentist if that is what the patient would require. This is essential if the patient has lost trust in you to perform any future work, including the reparative treatment.

made earlier in terms of professional ethics is reinforced: An apology is an integral part of the ethics of the dentist-patient relationship.

CONCLUSIONS

Obviously, proper informed consent prevents unrealistic patient expectations and raises patient awareness and acceptance of potential risks. But bad outcomes occur in the best of dental practices and sometimes these are the result of dental error. When bad outcomes occur, effective communication skills are essential for healing and maintaining or restoring trust within the dentist-patient relationship. But merely providing the patient with appropriate information without acknowledging the patient's sense of loss and injustice in the situation will rarely resolve it adequately. What is needed, if the mutuality of the dentist-patient relationship is to be restored, is an apology for what has gone wrong.

The most difficult challenge for many physicians was forgiving themselves for the error that occurred.

The precise character of this apology will depend upon the dentist's honest judgment of whether dental error was involved or not. But without an appropriate and sensitive apology for the maloccurrence, the dentist will be asking the patient to repair their relationship alone and at the worst of times. Experience indicates that failures in this area often have other bad consequences, including recourse to the courts. But the most effective way to maintain or restore trust and a strong dentist-patient relationship is to be prepared to explain the relevant facts honestly and apologize sincerely for what has happened.

Giving patients what they need and deserve continues to be an integral part of dentistry, especially if it means saying "I'm sorry" when it is indicated.

Finally, because of the importance of this lesson for daily dental practice, dental educators must also make a point of incorporating it into the training of dental students. Educators in dentistry need to remember that errors will occur, and consequently students need to be prepared in how to deal with their mistakes appropriately and to the well-being and satisfaction of the patient as their first priority. ■

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