

The Power of Apology in Healthcare

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It takes insight to accept that we make mistakes and that we learn from them. This is something we learn as children, struggle with in adolescence and still fail to do as adults. For healthcare practitioners, accepting that we make mistakes is easy enough but it's more important to accept that you will do some harm. It's an unpleasant reality but it's the most likely.

Patients are far more likely to sue or complain about a practitioner they don't like. Saying sorry is one of the most powerful tools you have in your communication tool-kit to placate distressed patients. Perhaps the most important thing to know about this, from the perspective of your insurance, is that saying sorry is not an admission of malpractice or guilt.

There's nothing wrong with telling your patients you're sorry and that you didn't get the outcome you both wanted to achieve. In fact, this is a key component of the [Open Disclosure Process](#) and does not create a liability.

Courts are generally more concerned with whether a practitioner's acts, errors omissions fell short of the expected standard of care.

In Australian jurisdictions, there is some protection for all professionals, not just doctors. For example, in NSW it is provided in Section 69 of the Civil Liability Act 2002 (NSW):

An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:

- does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
- is not relevant to the determination of fault or liability in connection with a matter.

Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

In Queensland, there is some similarity in [The Civil Liability Act 2003 \(QLD\)](#) where an apology which is an "expression of sympathy or regret, or of a general sense of benevolence or compassion, whether or not it admits or implies an admission of fault", may be made without risk that it will be tendered in Court as evidence of fault or liability.

Medical and dental care, especially procedures or prescriptions, carry risks that a practitioner should make a patient aware of beforehand. If one of those risks eventuates, it's wouldn't be considered malpractice, it's simply a known risk for which a patient should have provided their informed consent to accept. Saying sorry in these instances is simply a caring and dutiful way to treat your patients.

Saying sorry may also help you as a doctor to move on from an incident and feel better about your own conduct.

As a rule, we feel that saying the word 'sorry' carries the most weight compared to 'I apologise' or expressing 'deep regret'. Additionally, try to use the personal pronoun "I" as this carries more weight than apologizing for the medical team or hospital, that is saying "we're sorry" or "our apologies". If you're a little lost for words, here's some of the ways we think you can say sorry:

"I'm sorry we didn't get the outcome for which we were both hoping."

"I apologise. It's not what I expected to happen."

"I really regret what's happened. I'm sorry."

"It's not what we expected or planned for. I hope you can accept my apology."

Healthcare practice is a tough job so don't be too hard on yourself if you realise you may have done some harm. You should remember that in the course of your career you will do far more good than bad. Even where practitioners admit malpractice and are forced into a settlement, they still go on to provide good healthcare for the community.

The [Australian Open Disclosure Framework](#) refers to making an apology or expression of regret. Importantly, it stipulates that it needs to be "sincere and unprompted".

Apology and/or expressions of regret are key components of open disclosure, but also the most sensitive. 'Saying sorry' requires great care. The exact wording and phrasing of an apology (or expression of regret) will vary in each case. The following points should be considered.

The words 'I am sorry' or 'we are sorry' should be included.

It is preferred that, wherever possible, people directly involved in the adverse event also provide the apology or expression of regret.

Sincerity is the key element for success. The effectiveness of an apology or expression of regret hinges on the way it is delivered, including the tone of voice, as well as non-verbal communication such as body language, gestures and facial expressions. These skills are often not innate, and may need to be practised. Training and education in open disclosure should address this.

The apology or expression of regret should make clear what is regretted or being apologised for, and what is being done to address the situation.

An apology or expression of regret is essential in helping patients, their family and carers cope with the effects of a traumatic event. It also assists clinicians in their recovery from adverse events in which they are involved.

It is important to note that apology or expression of regret alone is insufficient, and must be backed up by further information and action to ensure effective open disclosure.”

Even though an apology may be appropriate, there are certain things you should not do in handling a complaint. This is set out in [MIPS Members' Indemnity Insurance Policy](#)

9. Consent to settlement

9.1 You must:

9.1.1 not admit liability for a claim; and

9.1.2 not agree to settle a claim; unless you have our prior written consent.

9.2 We will not admit liability for, or settle, any claim against you without your prior consent.

9.3 If you refuse to consent to us settling a claim, our liability is limited to the amount we last recommended in settlement plus defence costs incurred to the date we recommended settlement of the claim to you

You must contact MIPS in the event of a complaint and you must not admit liability until this has been agreed with MIPS.

Should members have any queries related to these issues they are advised to contact MIPS for advice on 1800 061 113.
