

**Title:**

Legal and Ethical Accountability for Nursing Errors: Disclosure and Apology

**Susan J. Westrick, JD**

*Department of Nursing, Southern Connecticut State University, New Haven, CT, USA*

---

**Session Title:**

Nursing Ethics

**Slot:**

L 12: Sunday, 30 July 2017: 8:30 AM-9:45 AM

**Scheduled Time:**

8:30 AM

---

**Keywords:**

Apology, Error and Legal and Ethical

**References:**

1. AHRQ PSNet Patient Safety Network. Patient safety primer—error disclosure. Retrieved from: <http://www.psnet.ahrq.gov/primer.aspx?primerID¼2>.
2. Airasian v Shaak, 289 Ga. App.540, 657 S.E. 2nd 600 (GA.App.2008)
3. American Association of Colleges of Nursing QSEN Education Consortium. Graduate-level QSEN competencies knowledge, skills and attitudes. (2012). Retrieved from <http://www.aacn.nche.edu/faculty/qsen/competencies>.
4. American Nurses Association. (2015). Code of ethics for nurses with interpretive statements. Silver Springs, MD. Author.
5. Australian Commission on Safety and Quality in Health Care. The Australian open disclosure framework. Retrieved from: <http://www.safetyandquality.gov.au/our-work/open-disclosure/the-open-disclosure-framework/>
6. Canadian Nurses Protective Society. InfoLAW—legal status of an apology. [www.info@cnps.ca](http://www.info@cnps.ca).
7. COPIC. 3Rs Program- recognize, respond and resolve (2015). Retrieved from: <https://www.callcopic.com/copic-services/safety-and-risk/Pages/3rs.aspx>.
8. Davis v Wooster Orthopaedics & Sports Medicine, Inc., 193 Ohio App. 3d 581 (2011).
9. Gallagher TH, Studdert D, & Levinson W. Disclosing harmful medical error to patients. (2007) New England Journal of Medicine,356, 2713-2719
10. Harrison, R., Birks, Y., Hall, J., Bosanquet, K., Harden, M., & Iedema, R. (2014). The contribution of nurses to incident disclosure: A narrative review, International Journal of Nursing Studies, 51, 334-345.

11. International Council of Nurses, (2012). The ICN code of ethics for nurses. Author. Retrieved from [http://www.icn.ch/images/stories/documents/about/icncode\\_english.pdf](http://www.icn.ch/images/stories/documents/about/icncode_english.pdf)
12. Institute of Medicine, Committee on Quality of Health Care in America, (1999). *To Err Is Human: Building a Safer Health System*. Washington, DC: Institute of Medicine. Retrieved from <http://www.csen.com/err.pdf>.
13. Kachalia A., Kaufman S., Boothman R., et al.(2010) Liability claims and costs before and after implementation of a medical error disclosure program. *Annals of Internal Medicine*, 153, 213-222.
14. Ledema R, Allen S, & Britton, et.al. (2011). Patient's and family members' views on how clinicians enact and how they should enact incident disclosures: The "100 patient stories" qualitative study. *British Medical Journal*, 343, 1-9.
15. Merrifield, N. (2015). Nursing staff 'mistakenly believe apology leaves them liable for error'. *Nursing Times*, May 26, 2015. Retrieved from <https://www.nursingtimes.net/roles/nurse-managers/nursing-staff-mistakenly-believe-apology-leaves-them-liable-for-error/5085221.article>
16. Meyers, V. (2011). When something goes wrong: How to disclose an error. *American Nurse Today*, 6 (10), Retrieved from <https://www.americannursetoday.com/when-something-goes-wrong-how-to-disclose-an-error/>
17. Pfrimmer D.M. (2010). Nursing's role in disclosure and apology. *Journal of Continuing Education in Nursing*, 41(8), 342-343
18. Raper S.E. (2011). No role for apology: Remedial work and the problem of medical injury. *Yale Journal of Health Policy, Law, and Ethics*,11, 267-318
19. Saitta N.M., & Hodge S.D. (2011). Is it unrealistic to expect a doctor to apologize for an unforeseen medical complication? A primer on apologies laws. *Pennsylvania Bar Association Quarterly*, 82, 93-110.
20. Sorry Works! Retrieved from: <http://sorryworkssite.bondwaresite.com/apology-laws-cms-143>.
21. Weiss, P.M., & Kock S. (2012). Medical errors: Disclosure and apology. *Contemporary OBGYN*. [Contemporaryobgyn.net](http://contemporaryobgyn.net). Retrieved from: <http://contemporaryobgyn.modernmedicine.com/contemporary-obgyn/news/modernmedicine/modern-medicine-feature-articles/medical-errors-disclosure-an?page=full>
22. Westrick, S.J. (2014). *Essentials of nursing law and ethics*, (2nd ed.) Burlington, MA: Jones and Bartlett Learning.
23. Westrick, S.J. & Jacob, N. (2016). Disclosure of errors and apology: Law and Ethics. *The Journal for Nurse Practitioners*, 12(2), 120-126.

**Abstract Summary:**

Disclosure of errors and apology are areas of growing concern for nurses. The legal and ethical evidence bases and protections for accountable disclosure are foundational to responsible practice. Yet there are

barriers to disclosure, including lack of training and guidance on disclosure processes that need to be addressed.

**Learning Activity:**

LEARNING OBJECTIVES	EXPANDED CONTENT OUTLINE
Understand the legal and ethical frameworks that guide nursing practice for responsible error disclosure in the United States and United Kingdom, including the International Council of Nurses (ICN) Code of Ethics for Nurses	Professional and Regulatory Perspectives: 1- Current Landscape for Error Disclosure 2- ANA Code of Ethics 3- Quality and Safety Education for Nurses (QSEN) standards 4- U.K. law and guidelines for a “duty of candor” in error disclosure for physicians and nurses
Discuss the benefits and barriers of error disclosure and apology, and how some apology statements are protected by state statutes (laws), including case law examples	Benefits of Error Disclosure 1- Decrease losses and malpractice 2- Psychological benefits Barriers of Error Disclosure 1- Fear of litigation 2- Cultural barriers 3- Confusion about what/when to disclose Successful Disclosure Programs 1- VA Hospital 1999 2- “Michigan Model” 2007 3- COPIC Insurance program 4- Australia and Canada Responses for Error Disclosure Apology Statutes (Laws) 1- States with apology laws 2- Case Law examples- Airasian (2008), Davis (2011)
Identify programs, policies and best practices for accountable error disclosure	Facilitating Error Disclosure 1. Sorry Work! Coalition /advocacy organization 2. Institute for Healthcare Improvement (IHI) 3. Prioritized Organizational Response- patient and family; the frontline staff; the organization 4. Words of compassion, concern, empathy and regret 5. IHI open school online course 6. Malpractice carrier Disclosure Processes 1- Policies, guidelines, procedures, and practices 2- Training, ongoing support, resolution and learning Healthcare professionals, Nurses and Disclosure 1- “Second victims” 2- Education and Training 3- Learning to apologize- IHI case study

**Abstract Text:**

**Purpose** - The purpose of this session is to review the legal and ethical evidence bases for accountable disclosure of errors and apology by nurses, and to provide guidance on best practices for these disclosures.

Error disclosure and apology are evolving concerns for nurses who have increased exposure to liability. The Institute of Medicine (IOM) report *To Err is Human* brought national attention in the United States to the problem of medical errors and preventable injuries that occur every day (Institute of Medicine, 1999). According to this report, it is estimated that 98,000 patient deaths per year can be attributed to

preventable medical errors, raising concerns about patient safety. One of the tenets of communication and patient safety is the ethical obligation to promptly disclose medical errors. Transparency is an integral component of providing safe and accountable care and a critical element of transparency is disclosure of harmful errors. This practice has been recommended by United States (U.S.) accrediting organizations and professional bodies. In 2001, the Joint Commission on Accreditation of Healthcare Organization (now called The Joint Commission) issued the first nationwide disclosure standards, requiring patients to be informed of all unanticipated outcomes of care (Weiss & Koch, 2012). In 2006, the National Quality Forum endorsed a new safe practice guideline on the disclosure of serious unanticipated outcomes to patients. Although these guidelines are not legal mandates, the recommendations of these well-known health care organizations comprise professional standards that could be used as evidence in malpractice cases or other legal challenges in the U.S.

In the United Kingdom (U.K.) there is a new law and guidelines for National Health Service (NHS) doctors and nurses that requires them to apologize to patients for mistakes (Merrifield, 2015). These guidelines, issued by the General Medical Council and Midwifery call for a “duty of candor” in disclosing medical errors. The International Council of Nurses (ICN) Code of Ethics for Nurses (2012) and the American Nurses Association (ANA) Code of Ethics for Nurses (2015) provide further support for error disclosure practices.

Yet even with these mandates and guidelines, barriers to disclosure exist, and error disclosure has been a subject of debate by healthcare professionals. Errors threaten a practitioner’s competency, adequacy, and self-esteem and may lead to employer or professional discipline (Westrick, 2014). Nurses also may not be aware of U.S. state apology statutes (laws) that protect some statements from use in civil lawsuits for negligence or malpractice. Two law cases involving physicians that apply apology laws are reviewed to illustrate these protections (Airasian, 2008; Davis, 2011). Nurses would be similarly protected as “health care practitioners” under the wording of the statutes applied in both cases.

Successful error disclosure programs in the U.S. and best practices for error disclosure such as the “Michigan Model” (Kalachalia, Kaufman & Boothman (2010) have made a difference in reducing liability claims. The Sorry Works! Coalition was formed in 2005 as an advocacy group that promotes apology for medical errors and fair compensation when appropriate to patients and families (<http://www.sorryworks.net/>). The website provides training materials and toolkits to assist practitioners and organizations in the apology process. Additionally nurse educators are urged to include error disclosure content in nursing curricula as part of safety and quality education, since this is typically not a part of undergraduate or graduate courses for advanced practice nurses (Westrick & Jacob, 2016). Nurses continue to need support and guidance for specific aspects of error disclosure and apology to patients (Meyers, 2011).