

ETHICS

ETHICS IN ACTION

ERROR AND DISCLOSURE

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A 17-month-old female patient has been transferred in from a community hospital after suffering a cardiopulmonary arrest. She had arrived there with severe respiratory distress and was intubated, following which she went into cardiopulmonary arrest. The critical care transport team that brought her tells you they discovered an esophageal intubation upon their arrival, and, after re-intubating the patient, obtained ROSC. The patient has a pulse but also has fixed and dilated pupils and no spontaneous respirations. As you are awaiting a PICU bed, you wonder: Should you address the esophageal intubation with the parents, since it may well have been the proximate cause of cardiopulmonary arrest?

Error disclosure has become more widely accepted in recent years, with several institutions establishing progressive error disclosure policies. It has also been accepted as a fundamentally ethical practice: if there is an error, even one that may not have resulted in direct harm, the patient has a right to know, and surveys have indeed shown that most patients would want any error disclosed, even if there was no untoward result. However, error disclosure still remains a source of discomfort for many physicians and hospital administrators.

The reasons for concern around error disclosure are multiple. Chief among them is fear that disclosure of error may result in litigation, and may even be construed as an admission of guilt in terms of malpractice. This opinion is frequently shared by risk management and insurance companies, and as a result full disclosure is discouraged in many cases. Most physicians receive little formal training in having conversations regarding error disclosure, and fear that disclosing an error may damage the trust inherent in the physician-patient relationship. There is also the fact that when errors occur, particularly if they result in significant harm, there is a negative psychological effect on the provider as well.

Despite these concerns, there is little doubt that error disclosure is the ethically right thing to do, and there is growing acceptance

of this practice in both academic and non-academic settings across the country. However, there is an area that is still seen as ambiguous: disclosing someone else's error. Physicians have long been reluctant to disclose each other's mistakes outside of rarefied settings such as M&M rounds. There is also the lesson ingrained in childhood, and maintained throughout adulthood to a greater or lesser degree, against "telling on" someone. Thus, when confronted with a patient who has clearly suffered as a result of someone else's error, there is a moral conundrum about when and how to disclose the error.

The ethical answer remains unchanged—the error needs to be disclosed to the patient and/or their family. There is no consensus about the best way to do this. In general, it is felt that, out of fairness to the responsible clinician, they should be notified of the discovery of the error and allowed to consult with their own administration/risk management as to the best way to disclose the error, and should take the lead in the disclosure process. In the event that they either deny responsibility for the error or refuse to disclose the error to the patient, then the physician who discovered the error should make the disclosure, ideally after consulting either risk management or the ethics committee at their own hospital. The disclosure should not be made carelessly or in the heat of the moment: disclosure of another's error should be made with all the concern and consideration you would give disclosure of your own error to the patient.

In the case presented at the beginning of the article, the ED providers discussed their concerns with hospital risk management, the referring facility was contacted and, after speaking with all parties involved, the referring hospital spoke to the family of the patient and disclosed the esophageal intubation. A confidential settlement was subsequently made on behalf of the referring hospital. ▸

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