

Is it Okay to Say ‘I’m Sorry’?

"An apology is the superglue of life. It can repair just about anything."
-Lynn Johnston

From a young age, we are all schooled in the value of a sincere apology. As adults, however, we sometimes forget this most important lesson. As a physician, you may even be specifically advised to abolish the words ‘I’m sorry’ from your professional lexicon at some point in your career.

Of course, the justification for this chilly advice, often given by defense attorneys and insurers, is purely pragmatic; apologies by physicians are regularly used against them in subsequent malpractice actions and thus, by necessity, must not be made.

Pragmatism, however, is cold comfort when a physician is so seemingly indifferent to the condition of their patient that they cannot even muster a bit of sympathy. This advice is often troubling for physicians as well, who may encounter situations in which they feel compelled to offer their condolences to a patient or her family, consequences be damned. How then are physicians to reconcile the very human need to sympathize with their patients with their own need for self-preservation?

Recently, state legislatures have begun to address this concern. “I’m Sorry” laws, as they are often referred to, protect health care professionals who express sympathy to a patient for an unanticipated outcome from having those statements used against them in a subsequent lawsuit.

The primary purpose of “I’m Sorry” laws is to encourage communication and reconciliation between patients and health care providers following an unanticipated outcome in treatment. Numerous studies have shown that patients whose treatment goes awry are significantly less likely to take legal action when their provider sympathizes with the patient afterward and takes the time to discuss the matter with them.

A growing majority of states have already chosen to adopt “I’m Sorry” laws, and Kansas is poised to follow suit. On January 15, 2009, Senate Bill 32 was introduced in the State Legislature. The Bill, which has been referred to the Senate Judiciary Committee for hearing, provides that:

No oral or written statements or notations, affirmations, gestures, conduct or benevolent acts including waiver of charges for medical care provided, expressing apology, fault, sympathy, commiseration, condolence or compassion which are made by a health care provider or an employee of a health care provider to a patient, a relative of the patient or a representative

of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient as the result of the unanticipated outcome of medical care shall be admissible as evidence of an admission of liability or as evidence of an admission against interest.

“I’m Sorry” laws vary from state to state, both in the level of protection they offer the speaker and the communication itself. By extending protection not only to statements expressing apology, sympathy and the like, but also to statements of fault, the law proposed for adoption in Kansas offers a higher degree of protection than the majority of other “I’m Sorry” laws. For rather obvious reasons, the plaintiffs’ bar is roundly opposed to this added level of protection offered by SB 32, so it will be interesting to see if this provision of the bill survives the legislative process.

“I’m Sorry” laws acknowledge that oftentimes, an apology is not an admission of fault, but rather simply an expression of human compassion. This is a good thing. Physicians, who are by and large a compassionate lot, should be free to express their condolences to their patients without fear of retribution. In medicine as well as in life, saying “I’m Sorry” should be a simple proposition. Laws like the one proposed in SB 32 are an important first step toward resolving a needlessly complicated problem in healthcare today.

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