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U-M docs say sorry, avert suits

Practice credited with cutting malpractice attorney fees from \$3 million to \$1 million yearly

By Sheri Hall / The Detroit News

ANN ARBOR — The University of Michigan Health System has adopted an unorthodox strategy to head off malpractice lawsuits: Doctors admit when they've made a mistake and apologize to the patients before a suit is filed.

While it's too soon to tally settlement costs, the health system says it has cut its annual tab for attorney fees from \$3 million to \$1 million since initiating the policy in 2002, said Rick Boothman, assistant general counsel for the U-M Health System and architect of the new policy.

Instead of spending years fighting medical malpractice lawsuits, the health system resolves complaints in an average of 12 months.

The collection of hospitals and clinics based in Ann Arbor faces 125 pending complaints and lawsuits.

"We're inviting plaintiffs and their lawyers to talk to the very doctors they're threatening to sue," Boothman said. "If someone in our system did make a mistake, we want to compensate for that fairly and quickly."

The issue of medical mistakes was pushed to the forefront in 2001 by a national Institute of Medicine report showing 98,000 Americans die in hospitals yearly due to errors. Malpractice insurance rates have skyrocketed in recent years, driving some doctors out of business.

With the threat of huge verdicts looming, doctors at most hospitals are wary of admitting errors.

In one case, U-M averted a court battle after a child died of a drug overdose. An automatic pump dispensing painkillers to the child was improperly programed and caused the overdose, Boothman said.

"Our medical director (Dr. Darrell Campbell), was on the spot apologizing to the mother even though she was angry and had a tape recorder running," Boothman said.

Within two months, the hospital negotiated an undisclosed settlement. The mother's attorney advised that she could get more money by pursuing a lawsuit, but the mother refused, Boothman said.

"The best thing is to be error-free and the next best thing is to make it right as quickly as possible and make sure it doesn't happen again," Boothman said. "That's what we did."

To address the malpractice issue, the Michigan State Medical Society is drafting a new system that would use an administrative board instead of the courts to compensate injured patients. The new system would require approval of the state Legislature, and faces opposition from trial attorneys.

U-M said its new policy is yielding positive results without the political battle that would come with adopting a new system.

In fact, some trial attorneys are commending U-M for its openness.

“A lot of people come to lawyers because they don’t get answers from their doctors,” said Michael Cunningham, a malpractice attorney with Sommers, Schwartz, Silver, Schwartz P.C. of Southfield. “They want to know, ‘What happened to mom? Why did she die?’ ”

For the policy to work, Boothman said the U-M has to make it clear to plaintiff’s attorneys that it will fight illegitimate complaints.

“We will not pay for cases that don’t have medical merit,” he said. “You have to stand up for your principles both ways. If the care was reasonable, I owe it to the doctors and the nurses in the trenches to be there for them.”

Boothman tells the story of a patient who suffered blurry vision after his corneal tissue wrinkled during Lasik eye surgery. The patient hired an attorney and notified the hospital he planned to file a lawsuit.

But the doctor maintained the blurry vision was a standard surgical risk and unavoidable. So Boothman set up several meetings between the doctor and patient.

“The doctor expressed his personal feelings and told the patient he was sorry it happened, but firmly said he didn’t think he did anything wrong,” Boothman said.

In the end, the patient decided to drop the lawsuit and even allowed the same doctor to perform corrective surgery, Boothman said.

Such cases save the hospital expensive attorney fees. But more important, a truthful discussion makes a difficult situation more fair for the doctor and the patient, Boothman said.

“Essentially, we’re saying to patients, ‘Whether you have a lawyer or not, we owe you an honest explanation of what happened.’ ”

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Malpractice initiative

1. The University of Michigan Health System launched its policy for dealing with medical malpractice lawsuits in 2002. Since then:

- * The average time to resolve complaints dropped from 1,000 days to 300 days.
- * Attorney fees were reduced from \$3 million annually to just more than \$1 million annually.
- * There are 125 pending complaints and suits, down from 260 in 2001.

Source: U-M Health System

<http://www.detnews.com/2004/business/0405/12/c01-150576.htm>

Doctors Urged To Say 'I'm Sorry'

CHICAGO, Nov. 11, 2004

It's a lesson children learn even before their ABCs - say you're sorry when you hurt someone. But it's now being taught in the grown-up world of medicine as a surprisingly powerful way to soothe patients and head off malpractice lawsuits.

Some malpractice-reform advocates say an apology can help doctors avoid getting sued, especially when combined with an upfront settlement offer.

The idea defies a long tradition in which doctors cultivated a Godlike image of infallibility and rarely owned up to their mistakes.

The softer approach, now appearing in some medical school courses and hospital policies, is drawing interest as national attention has turned to reducing both medical errors and the high cost of malpractice insurance, which has been blamed for driving doctors out of business.

Doctors' often-paternalistic relationship with patients is giving way to an understanding that "it's OK to tell the patient the whole story," said Dr. Paul Barach, an anesthesiologist and patient safety researcher at the University of Miami. It is "a huge sea change as far as our relationships with patients."

The hospitals in the University of Michigan Health System have been encouraging doctors since 2002 to apologize for mistakes. The system's annual attorney fees have since dropped from \$3 million to \$1 million, and malpractice lawsuits and notices of intent to sue have fallen from 262 filed in 2001 to about 130 per year, said Rick Boothman, a former trial attorney who launched the practice there.

Bob Vogt, a retired Cadillac dealership employee from Belleville, said an apology might not have stopped him from suing over the misdiagnosis of a brain aneurysm in 1990 that he contends left his wife severely disabled. But it might have saved his relationship with the doctor, once a close friend, he said.

"If he had come forward and not tried to conceal the thing, I probably would have had a lot better feeling," Vogt said. "You don't want them to be Godlike. They have to be willing to step up to the plate and say, 'I made a mistake.'"

Dr. Michael Woods, a Colorado surgeon and author of "Healing Words: The Power of Apology in Medicine," said his own experience a decade ago illustrates the impact of the traditional way doctors have handled mistakes.

Woods was overseeing surgery to remove a patient's appendix. A medical resident accidentally punctured an artery, which led to a more extensive operation. The patient was unhappy with how Woods handled the aftermath; during one visit, Woods propped his feet up on the desk and, in her opinion, acted as if he didn't care.

Woods said he wanted to apologize, but legal advisers recommended breaking off contact with the patient when she threatened to sue.

Now a consultant to doctors and the malpractice insurance industry, Woods said his research has shown that being upset with a doctor's behavior often plays a bigger role than the error itself in patients' decisions to sue.

The say-you're-sorry movement has been prompted in part by emerging evidence about the scope of medical errors. An Institute of Medicine report in 1999 said mistakes kill as many as 98,000 hospitalized Americans each year.

Supporters of the strategy want the Illinois Legislature to adopt a program called "Sorry Works" that recommends apologies and settlements when mistakes occur. Under the proposed pilot program, two Illinois hospitals would be recruited to see if the policy saves money.

While the number of settlements would probably increase, lawsuits and sky-high jury awards would decrease, said Doug Wojcieszak, a public relations consultant whose victims' rights group proposed "Sorry Works."

Apologies and upfront financial offers could mean the difference between settlements costing thousands of dollars and drawn-out malpractice lawsuits costing millions in attorney fees and jury awards, Wojcieszak said.

The idea for "Sorry Works" came from an honesty policy the Veterans Affairs hospital in Lexington, Ky., adopted in 1987 after two big malpractice cases cost the hospital over \$1.5 million.

Dr. Steve Kraman, then the hospital's chief of staff, said he helped create the policy as an alternative to the traditional "shut up

and fight" strategy. The center's liability costs subsequently dropped below those of comparable VA hospitals, he said.
"Not only was it the right thing to do, but over the long haul, we were saving money by doing things this way," he said.

By Lindsey Tanner

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Interview: Rick Boothman of University of Michigan hospitals discusses reducing malpractice lawsuits

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SCOTT SIMON, host: For a great many physicians, being a doctor means never having to say you're sorry. As a matter of fact, you'd better not. Acknowledging an error could assist a patient in filing a medical malpractice suit, but with lawsuits growing more common and more expensive, some hospitals across the country are rethinking how their doctor should handle mistakes in patient care. Rick Boothman is the architect of the program at the University of Michigan hospitals that encourages doctors to acknowledge mistakes to patients and even apologize. They've discovered that a doctor saying I'm sorry can actually reduce litigation. Rick Boothman joins us from member station WUOM in Ann Arbor.

Mr. Boothman, thanks very much for being with us.

Mr. RICK BOOTHMAN (University of Michigan): Well, thank you for having me.

SIMON: Now you're a trial lawyer by trade, right?

Mr. BOOTHMAN: That's right. I represented small hospitals and major academic centers like ours for 22, 23 years in the trenches.

SIMON: And as I understand it, the apology is just one aspect of this program, a protocol in a sense.

Mr. BOOTHMAN: It is. I'm glad you brought that up because it's part of an overall ethic I think to just be honest both ways, whether we made a mistake or whether we didn't.

SIMON: What does an apology do?

Mr. BOOTHMAN: I think it deflates the animosity, the scenario that people have built up in their minds when they think they've been wronged. Surprisingly, where appropriate, it actually relieves the doctor of a lot of stress because most doctors I think become doctors 'cause they genuinely want to help someone. And when things go wrong, they feel it, too. So it's pretty cathartic sometimes.

SIMON: Can you give us a case?

Mr. BOOTHMAN: Yeah.

SIMON: I realize maybe you can't use a name but...

Mr. BOOTHMAN: We saw a patient who was self-employed, was in a car accident and his hand was quite mangled in that accident. And when the surgeon and the resident were doing the tendon repair, they injured a nerve and they should not have injured that nerve. The patient had a nerve graft operation, but when he came to us with his lawyer, we didn't know how that nerve graft was going to turn out and what functionality would return. We stepped up in that case and we gave him a provisional settlement so that he could run his business while we were

all waiting to see how his nerve graft would come out. He had some return of functionality. We regrouped in a year and we settled the case.

SIMON: What kind of, if we might ask, statistical decrease have you seen in medical malpractice or liability suits since this program came in?

Mr. BOOTHMAN: In June of 2001, we were running pretty consistently about 250 to 260 claims at any given time. We are now running consistently 120 to 130. A statistic that I'm really more proud of is the fact that prior to doing this, our open to closing elapse time, so from the moment we received the claim to the moment we disposed of it, was running an average of 1,100 days. We're down to 320 days which means that I can say to both patient and staff, 'This is not going to hang over your head any longer than it needs to.'

SIMON: An apology could conceivably, however, increase what they call legal exposure for a physician, couldn't it?

Mr. BOOTHMAN: It can, and I've been guilty of this myself in my career. Lawyers have been telling doctors and hospitals not to talk about this for years, and as a consequence, you don't have that discussion. Once you're resolved to do what we think is right, then who cares about the consequences. We want to get that discussion going so no other patient experiences the same things.

SIMON: To ask one of these persnickety questions: If an apology is made, is the patient sometimes asked to sign a form saying he or she won't sue?

Mr. BOOTHMAN: No. No. We don't condition that discussion on anything because if we are true to our principle that we are determined to do what's right under those circumstances, then we're only apologizing in cases in which we truly believe we made a mistake and that that's not going to change when we get into a courtroom.

SIMON: Mr. Boothman, thank you very much.

Mr. BOOTHMAN: Well, thank you very much.

SIMON: Rick Boothman at the University of Michigan hospitals speaking with us from Ann Arbor.

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