Disclosing and Resolving Adverse Events and Outcomes

Daniel O'Connell, Ph.D.

Seattle, WA

danoconn@uw.edu

206 282-1007

Disclosure and Resolution

- Disclosure is telling the patient and family what happened
- Resolution is the feeling that the situation has been addressed as well and as completely as possible to everyone’s satisfaction

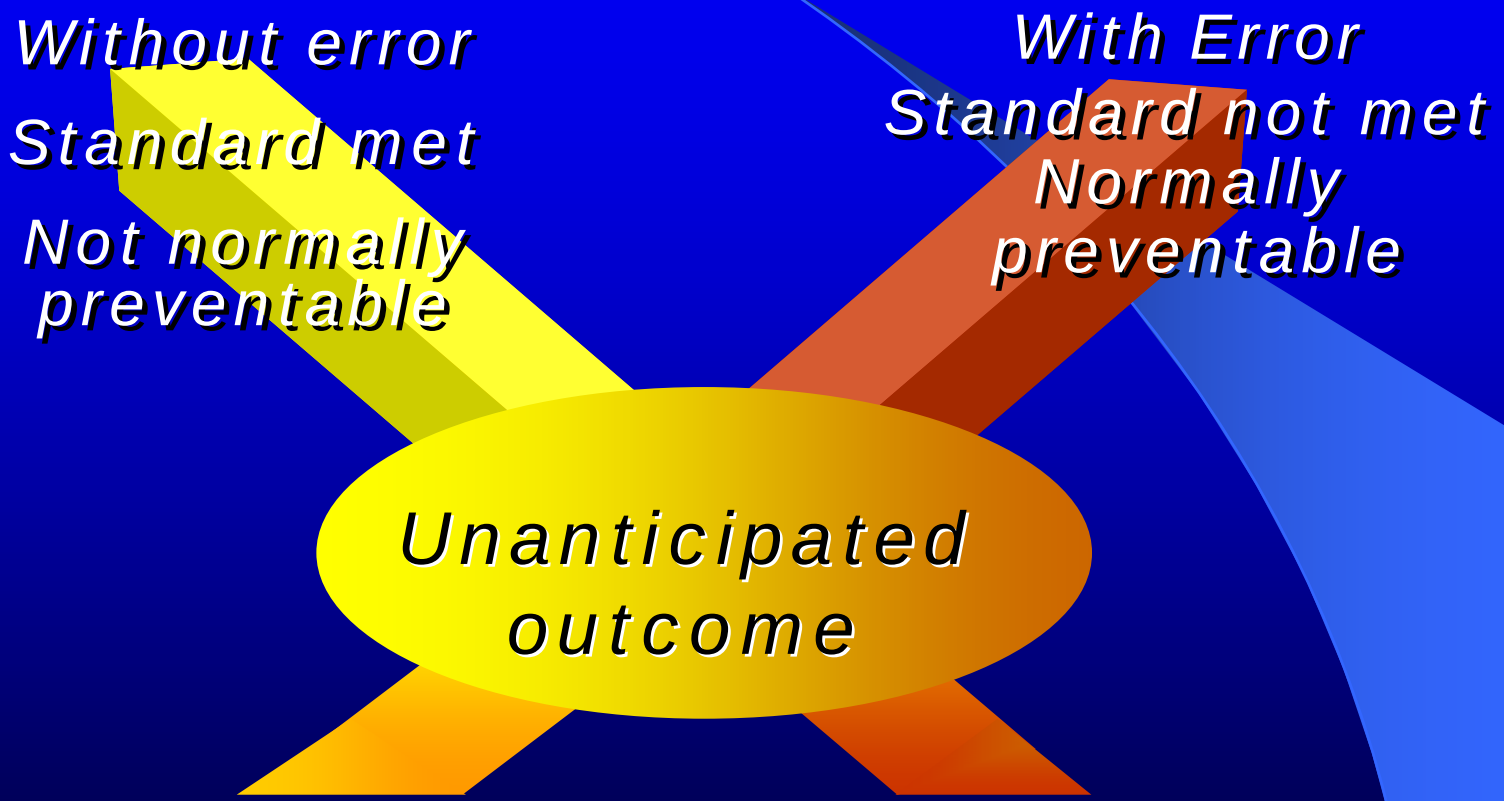
Qualities of an effective resolution

- Ethical
- Psychologically healing
- Legal
  - Washington Apology Law
- Economical

Malpractice suits are not an inevitable result of unanticipated outcomes

- We can reduce the impetus for the patient and family to sue by proactively addressing needs for info, apology and resolution
- Experience of U of Michigan & Illinois, Stanford, VA, Catholic Healthcare West, Children's Hosp of Minn., COPIC etc.

Unanticipated outcomes have 2 origins



What do we mean by medical/systems error?

- Medical / legal :

  “Act of commission or omission with potential consequences for the patient that would be judged wrong by skilled and knowledgeable peers at the time it occurred.” (Wu, 1997)

- Failure of a planned action to be completed as intended or the use of an incorrect plan to achieve an aim (IOM)

- deviation from the standard of care

Patient's Rights and Organization's Confidentiality Privilege

- Confidentiality privilege not intended to hide the facts of their care from patients
- Confidentiality privilege allows organization to protect the deliberation process
- Once the facts and their most likely causes are determined, the "licensed independent provider" (JC) is expected to take the lead in disclosure and resolution (AMA, ACP, legal, accred)
  - Informed consent before hand implies full disclosure after the fact

“AID” to disclosure and resolution

- Acknowledgment of adverse outcome by care providers
- Investigation and conclusions
- Disclosure
  - telling the patient what happened and following through until resolved
  - Using either ALEE or TEAM models depending on causation

Team composition for initial discussion with patient

- PCP or attending present if medical error and/or significant harm
- Nursing or pharmacy and a supervisor if minor error
- If serious injury, a second person is essential to facilitate discussion, witness, support, and follow-up
- Consider need and value of involving a disclosure facilitator to oversee and guide the process

Initial acknowledgment or disclosure care was reasonable

- ANTICIPATE start with expression of sympathy
  - an “apology” for the situation
- LISTEN to understand the patient & family's upset thoughts and feelings
- EMPATHIZE and normalize without defensiveness
- *And then offer to EXPLAIN*

Anticipate

- Anticipate emotions and questions
  - How did this happen?
  - What can be done about it now?
  - What does it mean for the future?
- Begin with an expression of sympathy
  - "I am very sorry that your family has been through so much this week."
  - "I was sorry to learn that you had to return to the emergency room."

Saying I'm sorry (know which one you intend)

- Expression of sympathy for situation.

  "*I'm very sorry that your family has been through so much pain this last week.*"

- Admission of responsibility/causation

  "*I'm so sorry that I did not have the nurse bring those lab results directly to my office when she first got them and I might have gotten you into the hospital sooner.*"

Listen and Summarize Questions, Emotions and Concerns

- Invite their story
  - *"Tell me what happened after I…"*
  - *"How can I be most helpful to you now?"*
- *Learn about other discussions*
  - *"And what have you been told already…"*
- *Make short summaries to pace the conversation and assure understanding*
  - *"So you are most concerned now about what this means for your son's recovery?"*

Empathize in words, voice tone and body language

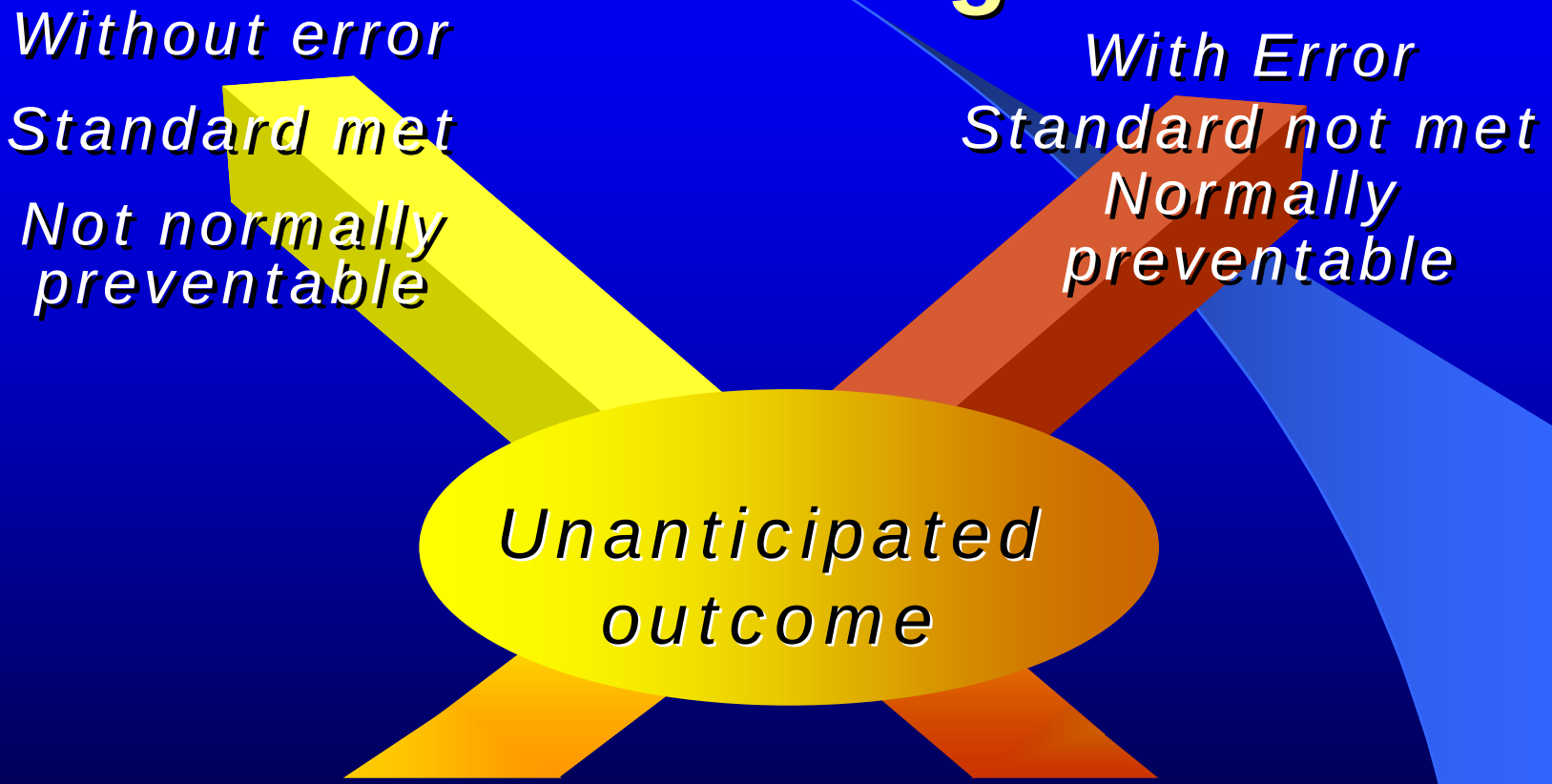
Empathy means seeing the situation from their perspective and conveying that.

- *"It is natural to be upset when something like this happens."*
- *"I can understand how it would appear that way given how this has gone."*
- *"This is very different from what we were all hoping for and expecting."*

Explain and answer questions

- Ask before explaining
  - *Would it be helpful for me to explain …?”*
- Describe facts and answer questions willingly and as often as needed
- Avoid being drawn into controversies that suggest liability by others
  - The clinicians who provided the care should be explaining their care
  - *“I will make Dr. X aware that you have questions about his care and ask him to get in touch with you to discuss this with you directly.”*

Unanticipated outcomes have 2 origins



If investigation concludes individual, team, procedural, equipment or system error

Truth, and transparency about harm and it's most likely cause

Empathy for impact on patient and family

Apology and accountability to prevent in future

Management of all aspects until resolved

- Exemplary patient care
- Emotional support for all involved
- Ongoing communication
- Practical and financial help in recovery

Formal/post investigation disclosure of significant harm

- Disclosure facilitator helps prepare staff and invites and orients patient and family
- Either the TEAM or ALEE track is followed depending on investigation's conclusions re: liability
- Individuals present to explain, demonstrate empathy, accept accountability and apologize in proportion to their contribution to the harm
- Clinician involvement should be largely concluded
- Compensation issue may remain

Who attends formal disclosure

- from facility side:
  - disclosure facilitator, attending physician, other staff whose behavior contributed to the harm, more senior administrator, risk manager and possibly attorney
- from patient side:
  - patient, patient's family and others as requested by patient
    - advocate, attorney, tape recorder?

Summary

Standard met or Investigation in process

- Anticipate, Adjust,
- Listen
- Empathize
- Explain
  - What we know
  - How we will investigate and meet again

Standard not met

- Truth & Transparency,
- Empathy for impact
- Apologize and Accountable
- Manage until resolved
- Medical Care
- Emotional Support
- Ongoing communication
- Practical and financial