

Is Telling the Truth Good for Patient Safety?

For years I have been critical about the secretiveness which pervades the medical system. In spite of laws assuring patient access to their own medical records, it is still extremely difficult and expensive for patients to get their own medical records and test results. Preventable medical errors are routinely covered up by healthcare professionals who do not always put the truth in the medical records or address poor medical care in the context of peer review. In Pennsylvania, as in most states, peer review cannot be disclosed even in litigation.

It is the view of many academics that telling the patients the truth about their medical care would be good for patient safety because it would reduce the number of medical errors. Currently, there are as many preventable errors in United States hospitals as the number of deaths that would occur if two 747's crashed per month, killing all aboard. The catastrophe of preventable medical errors has driven healthcare costs through the roof.

Many people falsely believe that medical errors result in medical malpractice lawsuits and enormous payouts. The statistics and the records show quite the opposite. There has been much dispute over the years as to what percentage of the total national healthcare bill goes to litigation or payouts, but even the most medical-friendly studies show that that figure is around 1%, some perhaps as high as 3% and some as low as less than 1% of the national total healthcare bill.

Defensive medicine is another canard. It is claimed that doctors send patients for unnecessary tests or provide unnecessary pharmaceuticals because of fear of being sued. The statistics and great analyses that have been done on the subject are actually quite to the contrary. The reason why there are so many medical tests and pharmaceuticals prescribed in this country is because doctors, hospitals and pharmaceuticals make money by selling their products. It is that simple. In countries where there is a clear disconnect between the providing of medical care and the earnings of the medical industry, there is a lower cost to the healthcare system. It is true that there is legislation in this country that prevents doctors from having a direct investment in diagnostic facilities where they send patients, but the exceptions to the rule make the law porous. Many studies have explored the absolutely phenomenal benefits received by doctors and pharmaceutical companies for prescribing all kinds of garbage products that the doctors know very little about. The FDA and the regulatory authorities are a turnstile through which the regulators pass before they go off to work for industry.

Recently, a peer review article was published entitled "Do Written Disclosures of Serious Events Increase Risk of Malpractice Claims? One Healthcare System's Experience."

When I was President of the Trial Lawyers, I argued vociferously for a patient safety authority, as recommended by the National Institute of Medicine. I argued that there should be no tort reform without the creation of a patient safety authority. The

Pennsylvania Patient Safety Authority was created and I served on it for 15 years as a Senate appointee.

One way in which the Pennsylvania Patient Safety Authority and the 2002 Mcare Act were ignored was in the requirement to notify patients or their families of “serious events” that take place in hospitals. That notice requirement is ignored much more often than it is followed. When hospitals do send the notices, they usually do not even use the term “serious event.” The reason for that is that the serious event notices required by the law come from a template prepared by the Hospital Association of Pennsylvania. Their agenda to protect the medical industry is transparent.

Some serious event notices do go out, although they are nebulous and normally do not explain what the event was. Serious event notices tend to be more reliable in the case of hospital-acquired infections.

In spite of the fact that the law is breached more than it is followed, doctors and hospitals frequently carry on loudly that notifying patients and their families of “serious events” will encourage injured patients to sue. In Pennsylvania, where the Pennsylvania Patient Safety Authority receives approximately one-third of a million reports per year of serious events and incidents, there are only approximately 1,400 medical malpractice cases filed. This in a state with more than 12 million people.

The healthcare systems experience which was reviewed by the article on serious event notices was UPMC Pittsburgh. In sum, there were 15,028 serious event disclosures and 1,302 total malpractice claims among more than 1.5 million patients admitted to UPMC hospitals from May 17, 2002 to June 30, 2011. We know that serious event reporting is a problem because healthcare professionals frequently do not report the serious events at all. “As the number of serious event disclosures increase, the number of malpractice claims per 1,000 admissions remains between .02 and 1.03. The conclusion by a healthcare system which has an interest in not reporting serious events but rather claiming that serious event reporting encourages litigation was as follows:

Implementation of a mandated serious event disclosure law in Pennsylvania was not associated with an overall increase in malpractice claims filed. Among events of similar degree of harm, disclosed events at higher compensation paid compared with those that had not been disclosed.

In other words, telling patients the truth did not increase malpractice claims but telling the patients the truth did result in their receiving the compensation they should.

How best to enhance patient safety and lower the cost of healthcare in Pennsylvania and the United States? The answer is to tell the patients the truth and empower them to be able to shop for good medical care by giving patients information about safety in hospitals and doctors’ offices. A patient now can go on the website of Leapfrog to find out about hospital safety, but Leapfrog only prints the information they are given by the hospitals to whom they send surveys. Information gathered by the Pennsylvania Patient Safety

Authority can only be released on a regional basis and hospital names cannot be given out. This is a serious flaw in Pennsylvania's Patient Safety Act legislation.

In America, you cannot buy a car without getting information about the safety and gas mileage. It has to be stamped on a sheet of paper which is taped to the window of the car. Yet, patients go into hospitals all the time and know nothing about the safety record of that hospital and cannot get reliable information. If patients went to hospitals that had the greatest safety records in terms of the least number of infections, for example, there would be some competition concerning safety. The medical healthcare field in the United States is big business. Hospitals regularly pay for newspaper supplements about healthcare. Hospitals sponsor events in the community and have an enormous number of employees. In many counties in Pennsylvania, hospitals and pharmaceutical companies are the largest employers who pay the greatest salaries.

Isn't it time we demanded that peer review and safety information about hospitals be transparent? Why is it that consumer rights have been enhanced in many areas in the United States, but when it comes to healthcare, disclosure has been shut down?

The CEO of UPMC and the Jefferson Healthcare System have both told me directly that they repeat one of my oft-stated mantras: "We lawyers do the root cause analysis that you should be doing. Patients come to us all the time to get answers that you should be giving them." These two thoughtful hospital heads have said to me, "We have now come to understand that patient safety is just good business." The problem is that even the CEOs live within a structure where disclosure is considered to be a dance with the devil. Doctors and hospitals love their patients and want to show them compassion but at the same time do not trust them, especially if the hospital or doctor has made a big-time mistake.

It is time for the public to appreciate that healthcare costs are highly dependent on decreasing preventable medical errors. As a trial lawyer once said to me, "Cliff, if you get your way you will put us all out of business." The best way to cut down on litigation, as the UPMC study shows, is to enhance safety in hospitals and doctors' offices.

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