



Dr. Barry Schwartz

Apology Legislation: The Time Has Come

iatrogenic harms have become all too common in health care and dentistry is no exception. Although some occurrences are the direct result of practitioner negligence, many errors are due to the complexities of modern therapies.¹ Dental treatment errors have a twofold effect on patients: there are the physical harms, but equally important are the psychological harms that result when someone in a position of trust lets you down.

In another article,² I outlined appropriate actions that dentists can take after an error occurs, including speaking directly to the problem using appropriate body language, giving the patient time to analyze the information, explaining necessary steps to rectify or prevent reoccurrences, and finally — one that may get overlooked — providing an apology.

An apology is a basic need for anyone who has been wronged and has been described as “one of the most healing interpersonal social interactions.”³ Across Canada, recent provincial legislation seems to indicate that governments are beginning to formally recognize the importance of apology. In April 2009, dentists in Ontario joined their counterparts in British Columbia, Manitoba and Saskatchewan in being legally protected in civil actions when offering an apology to patients in most circumstances.

The key principles of Ontario’s Apology Act⁴ are that an apology, unless offered while testifying at a civil proceeding, does not constitute an express or implied admission of liability by the person making the apology. An apology does not — despite any contrary wording in an insurance or indemnity policy and despite any other legislation or law — void, impair or otherwise affect insurance or indemnity coverage for any person in connection with the matter to which the apology relates. Furthermore, an apology shall not be taken into account in any deter-

mination of fault liability in connection with that matter.

Much research has been performed on the subject of apologizing for error. Susan Alter writes that the purpose of apology is primarily to help an injured party heal.⁵ She believes that providing an apology indicates a show of remorse for any harm done and suggests that the courts should factor an offer of apology when determining the outcome of a defendant in litigation or any potential monetary award. Independent studies by American malpractice insurers have shown that a full apology made an offer of settlement more acceptable for plaintiffs and resulted in lower costs and decreased malpractice premiums.⁶

Caring about patients and demonstrating appropriate compassion are directly related to patient trust and the maintenance of long-term professional relationships. I believe dental schools have a responsibility to assist their students in better managing dental errors through hands-on, integrated ethics and interpersonal communications programs. For example, dental students at the Schulich School of Medicine & Dentistry at the University of Western Ontario receive 3 hours of lectures, along with simulated patient encounter scenarios, to learn how to ethically manage the outcomes of a dental error.

The profession can take further actions to help support apology education and legislation. Dental students can request more training in ethics and interpersonal communication, while dental alumni can consider greater financial support to their alma mater, to ensure that students receive the best education possible. Dentists practising in jurisdictions that have yet to enact apology legislation can encourage their provincial or territorial dental associations to advocate for similar laws.

All Canadians deserve to receive the most ethical dental care possible in the event of an error or unforeseen negative outcome. With the legal support of apology legislation, dentists are able to better serve their patients ethically, regardless of treatment outcomes. Such apology legislation is long overdue and will be a welcome relief to dentists and patients alike when implemented on a nationwide basis.

A complete list of references can be found online at: www.cda-adc.ca/jcda/vol-75/issue-9/621.html.

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