Patients require knowledge of harm experienced, whether from their disease process or from events related to their health care delivery. When things have gone differently than expected, most patients want information; and an apology if mistakes were made, and if so, assurance steps are being taken to prevent similar harm to others.

While giving news of an unanticipated adverse outcome may be difficult, disclosure of harm related to health care delivery is even more so. Whatever the cause of the harm, open and honest communication is important. Physicians are encouraged to recognize the ethical and professional responsibility to engage in factual, compassionate and ongoing dialogue with a patient who may have been harmed by the care received.

The question of whether physicians should say “I’m sorry” or some other expression of sympathy to patients often arises in discussions about the disclosure of adverse events. When communicating the occurrence of an adverse event to a patient, physicians need to consider whether an apology is indicated, when to apologize and the extent of the apology.

**ADVERSE EVENTS ≠ MEDICAL ERROR**

Use of the word “error” to mean adverse event in clinical practice should be discouraged.

An adverse event does not mean there has been error or negligence. Some adverse events may, on further analysis, be found to have been unforeseeable, such as the first time a patient experiences an allergic reaction to a medication. Some adverse events are an inherent risk or recognized complication of health care delivery. Some are caused by the mistakes of individuals. However, most adverse medical events are now increasingly recognized as system failures, in which safeguards to enhance patient safety were either absent or a series of safeguards failed in sequence, resulting in harm to the patient.

Some health professionals, administrators, members of the public and the media use the term “medical error” to explain an adverse event. However, the terms “adverse event” and “medical error” are not synonymous. “Error” carries with it a sense of blame or fault that may be inappropriate, especially before all the circumstances and facts about a case are known.

Many health care institutions are currently attempting to foster a non-punitive culture to encourage the reporting of events. Many of those working to improve patient safety dislike the label “error” because it discourages the reporting of adverse events.

In the legal system, plaintiffs (patients) and their lawyers frequently allege medical error caused harm or injury. Nevertheless, the courts do not find most adverse events to be the result of negligence or, in Québec, fault.
EXPRESSIONS OF REGRET AND APOLOGIES

Your choice of words is important when discussing harm with patients. Expressing regret or concern for the patient’s difficult experience and condition is desirable. Sincere statements such as “I’m sorry to learn of all the pain that you and your family have experienced” reflect a caring nature, and are often helpful emotionally for both the patient and caregiver. It is at this time that good communication may help restore or strengthen the doctor-patient relationship.

The patient’s perception is important. Patients generally view their physicians as being in charge of their care, although this relationship in Canada is evolving as collaborative practice models become more commonplace. Patients value an explanation and, if warranted, an apology or some other expression of sympathy from the one they believe to be most responsible for their care. Patients need to feel they are not abandoned in this difficult time.

Some patients may seek or even demand an apology that includes acceptance of responsibility and blame for what has happened. An apology with acceptance of blame may or may not be appropriate, depending on whether the factors that contributed to an adverse event are sufficiently known. Many physicians possess a profound sense of personal responsibility (as “captains of the ship”) and are taught to be immediately self-critical when it comes to problems in patient care. It is not surprising that caring physicians feel responsible, even if the outcome is not related to deficient care. Physicians rushing to apologize, however, may inappropriately shoulder blame. Most adverse events are due to many contributing factors, and are beyond the control of any single individual.

It is important to remember it is difficult to withdraw an apology in which you accepted blame, even if other factors are later found to have contributed to or to have caused the adverse event. An apology in circumstances in which you were not actually responsible may not only be inappropriate, but may also prevent an investigation into all the factors leading to the adverse event.

WHEN SHOULD PHYSICIANS APOLOGIZE?

The origins of many adverse events are complex. Contributing individual and system factors are usually not immediately clear and further investigation is necessary. The patient will require information early on — the facts that are known — to guide further care decisions and to gain an initial understanding of what has occurred.

If the situation and responsibility for what has happened are not clear, it is acceptable simply to express sincere regret the adverse event has occurred. The patient will appreciate this. If

CANADIAN LAWS AND APOLOGY

Recently British Columbia became the only Canadian jurisdiction to have specific legal protection for apologies, which means apologies related to adverse events could be used in legal proceedings in all of the other provinces and territories. British Columbia passed the Apology Act in 2006 to allow governments, corporations and individuals to offer an apology without fear of adding to legal liability. It remains uncertain how the courts will interpret the new law and in which proceedings it may be applied.

Several U.S. states and all of the states in Australia have legislation protecting utterances such as apologies from being used in legal proceedings. The degree of protection provided by these laws varies. Some protect apologies only if they do not include admissions of fault. Others use a broader approach protecting all apologies, including those that include admissions of fault. Some laws protect apologies in all administrative, as well as legal, proceedings.

Such legal advances should be supported, particularly those providing protection for apologies that include admissions of fault in the setting of all civil legal and administrative proceedings. Such legislation would help reassure health professionals the words of an apology would not later be used against them.
appropriate, reassure the patient an investigation into contributing causes will take place.

Following an appropriate investigation, after all the facts and circumstances are known, and if the outcome is indisputably due to deficient care, the responsible health professional may apologize and acknowledge responsibility. The use of the word negligence or fault, or reference to failing to meet the standard of care, should be avoided. Such determinations are complex and should be left for the courts or other bodies to decide. While apologizing can have a beneficial psychological healing effect both for the patient and members of the health care team, forgiveness from the patient may not necessarily follow.

After all of the contributing individual and system factors causing an adverse event are known, hospital or institutional leaders may be found to bear some responsibility for what happened and should consider apologizing to the patient on behalf of their organizations.

The bottom line:

Following unexpected harm due to health care delivery:

- Communicate to the patient the facts to the extent they are known, in a gentle, non-rushed manner as soon as is reasonable to do so;
- Discuss the options for dealing with the medical condition as it now exists;
- Express your feelings of concern, empathy and regret, as appropriate;
- Following an appropriate investigation, after all the facts and circumstances are known, and if the outcome is indisputably due to deficient care, the responsible health professional may apologize and acknowledge responsibility;
- Members may want to obtain telephone advice from the CMPA by calling us at 1 800 267-6522, Mon. to Fri., 8 a.m. to 4 p.m. EST.