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CONTENTS

"WHO IS THE VICTIM?" - THE EFFECT OF MEDICAL ERROR ON PHYSICIANS AND PATIENTS

Jadesola O. Lokulo-Sodipe

ABSTRACT

Medical error is an adverse event that could be prevented, given the current state of medical knowledge. It has been defined as the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim. Medical errors can occur in any health care setting in the form of an 'adverse drug event, improper transfusion, surgical injuries and wrong site injuries, suicide, restraint-related injury or death, falls, burn, pressure ulcers and mistaken patient identity. When errors occur, ethics, professional policy and the law suggest that timely and candid disclosure be the standard practice. Disclosure however raises a number of ethical, legal, and psychological issues which will be discussed in this study. The study further examines the philosophical basis for disclosure and non-disclosure; the duty owed by the physician to the patient; the effect of disclosure on patients and physicians. In discussing the effect of medical error on patients and physicians, the benefit and harm of disclosure and its effect on patient/physician relationship will be examined.

Key words: *Medical Errors, Effect, Disclosure, Patient/ Physician Relationship.*

INTRODUCTION

To err, they say is human. Even the smartest and most caring of humans make errors. In clinical medicine sometimes, errors result in serious patient harm. The subject of medical error is however not a new one. Medical error is an adverse event that could be prevented[1] given the current state of medical knowledge Brennan, 1999. It has been defined as "the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim" IOM,1999.

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Medical errors can occur in any health care setting in the form of an 'adverse drug event, improper transfusion, surgical injuries and wrong site injuries, suicide, restraint-related injury or death, falls, burn, pressure ulcers and mistaken patient identity. It is, however, more likely to develop in an emergency department, an intensive care unit or an operating room.

When errors occur, ethics, professional policy and the law suggest that timely and candid disclosure be the standard practice. Studies have shown that patients expect disclosure of errors (Gallagher *et al*, 2009). Disclosure however raises a number of ethical, legal, and psychological issues which will be discussed in this study. The study further examines the philosophical basis for disclosure and non-disclosure; the duty owed by the physician to the patient; the effect of disclosure on patients and physicians. In discussing the effect of medical error on patients and physicians, I will look at the benefit and harm of disclosure and its effect on patient/physician relationship.

Medical Errors- The Need For Disclosure

Everyone makes mistakes. Human fallibility can be moderated, but it cannot be eliminated. In the same vein, adverse events and medical errors are not uncommon. Medical errors as noted earlier are considered to be "preventable adverse medical events" Brennan, 1999. Patients are harmed as a consequence of either what is done to them- errors of commission; or what is not done but should have been done to prevent adverse outcome- errors of omission. Unlike honest mistakes, negligent actions are preventable, harmful errors that fall below the standard expected of a reasonably careful and knowledgeable practitioner acting in a similar situation.

It has been argued that not all errors are truly preventable Gawande, 2002. Gawande noted that 'no matter what measures are taken, medicine will sometimes falter, and it isn't reasonable to ask that it achieve perfection. What is reasonable is to ask that medicine never cease to aim for it' (Gallagher *et al.*, 2009).

However, there is no place for mistakes in modern medicine (Medical Error, 2003). Society has entrusted physicians with the burden of understanding and dealing with illness.

Developments in medical technology, the apparent precision of laboratory tests, and innovations that present tangible images of illness have created an expectation of perfection. Medical errors do occur, although they are not admitted publicly and very often are swept under the carpet.

Before the 1990s, "perfect performance was expected and was felt to be achievable through education, professionalism, vigilance and care (ISMR, 2006). This led to fear of retribution, ranging from undue embarrassment, employment and/or licence termination and drove errors underground.

The mid 1990s however, brought about a change; health care providers were starting to acknowledge human fallibility and the impossible task of perfect performance. Medical errors were starting to be seen as the result of mental slips or lapses or honest mistakes that were rooted in system, process, technical, or environmental weaknesses that lay dormant in the organization until errors or proactive assessment efforts brought them to light (ISMPR, 2006). Mistakes made in the care of patients, especially in the hospital settings, have drawn a great deal of attention since the 2000 Report of the Institute of Medicine (IOM).

According to that report, as many as 98,000 people die every year in the United States of America because of mistakes by medical professionals in hospitals. The IOM Report noted that more people die annually from errors than from motor vehicle accidents, breast cancer or AIDS – 3 causes of death that receive far more public attention (To Err is Human, 2000). Medical errors can be categorised into two, namely; (a) system errors which are derived primarily from flaws inherent in the system of medical practice. In this instance, the physician shares responsibility with other elements of the health care delivery system, and (b) individual errors arise from deficiencies in the physician's own knowledge, skill or attentiveness. In this, for instance, the physician has the primary responsibility.

Examples of medical error include transfusion of HIV infected blood, mis-match of blood at transfusion, leaving foreign bodies like sponge or instrument in surgical wounds; extravasations of drugs into necrosis; forgetting a tourniquet in the upper arm resulting in arm gangrene and amputation, and medication errors. The causes of medical errors are complex. Some causes are; communication error; the increasing specialization and fragmentation of health care; human errors resulting from overwork and burnout; manufacturing errors; equipment failure; diagnostic errors and poorly designed buildings and facilities.

The occurrence of a medical error has a ripple of effects. The error can affect the family of the patient, friends and even the co-workers. The patient faces a lack of productivity, loss of quality of life, depression, traumatisation and increase in fear of an error re-occurring in the future. A health care provider goes through the same issues after an error and equally powerful emotions are felt. According to Gallagher (2009), "physicians felt upset and guilty about harming the patient, disappointed about failing to practice medicine to their own high standards, fearful about possible lawsuit, and anxious about the error's repercussions regarding their reputation" (Gallagher, 2003).

When errors occur, disclosure, apology and restitution are expected. When medical errors occur, physicians should take the lead in disclosing error to patients and their families (Herbert, 2009). Full disclosure to the patient is the ethically and professionally responsible course of action. Disclosure of error is consistent with ethical advances in medicine toward more openness with patients and the involvement of patients

in their care (Herbert, 1996), advances on informed consent and truth telling (Etchells *et al*., 1999). Disclosure is vital for the improvement of patient safety and quality of care. By not disclosing adverse events, the physician fails the patient in terms of honesty, openness and respect. Furthermore, nondisclosure may put the patient at risk for future harms because he or she does not know what happened. Disclosure provides the patient with potentially vital information for making future health care choices and decisions. Disclosure is also expedient out of respect for patients as persons. Thus, they have a right to know about critical incidents even if they are not physically harmed by them. Furthermore, by the principle of justice or fairness, patients when harmed, should be able to seek appropriate restitution or recompense. This ethical rationale for disclosure, based on a strong notion of autonomy, goes beyond what the law might require one to do.

On the other hand, failing to disclose errors to patients undermines public trust in medicine because it potentially involves deception and suggests preservation of narrow professional interests over the well-being of patients. This failure can be seen as a breach of professional ethics (a lapse in the commitment to act solely for the patient's best interests).

Similarly, patients may be cause avoidable harm if they are injured further by the failure to disclose. Non disclosure of error may undermine efforts to improve the safety of medical practice if the error is not reported to the appropriate authorities. When practitioners witness errors made by other health care providers, they have an ethical and legal obligation to act on that information.

Disclosing errors can be challenging for practitioners (Hilfiker, 1984). Medical professionals have high expectancy of themselves; therefore, they find it difficult to admit errors openly (Finkelstein *et al.*, 1997). The physician should however, be the one to reveal the error. It is not proper for the patient to take the lead in disclosure. The patient and family must be informed in an objective way and must be permitted to express any concerns that they may have. An open or transparent approach will help strengthen, rather than weaken the doctor-patient relationship (Herbert *et al.*, 2009). Where the adverse effect requires medical attention, doctors ought to disclose and offer help. It is reassuring to patients to know that their doctor is also trying to set the harm right by a clearly defined course of action. All relevant information regarding the sequence of events leading to the adverse outcome is presented as clearly as possible. Disclosure should, take place at the right time, when the patient is medically stable enough to absorb the information, and in the right setting (Kalantri, 2003).

Disclosing medical errors to patients is a long way from being the norm. There are certain barriers to disclosure. These include physician embarrassment, personal anxiety, and legal concerns. The physician faces the possibility of a legal action, more so in a society where medical errors are classified as a tort which could result in punishment

and financial devastation. There is a significant conflict between ethical considerations and self preservation (Constantine *et al.*, 2009).

Arguments have been put forward for disclosure and non disclosure of medical errors. I go on now to discuss the philosophical basis for both arguments. Aristotle's Nichomachean Ethics (Aristotle, 1954) were based on the moral virtues of courage, temperance, prudence and justice. Moral virtue is the habit of choosing the golden mean between extremes as it relates to an action or an emotion. It is the learned ethical choice, through teaching and experience that has evolved into a conditioned response to do the right thing in different circumstances.

The moral virtues of courage, temperance, and prudence generally pertain to one's control of inner emotions and thoughts as well as reacting to environmental situations. Justice, however, involves two or more humans whose interests must be considered, according to societal mores and laws, if there is to be a just outcome. By Aristotle's argument, the physician and the patient entered into an agreement, based on the moral virtue of justice. The physician would treat the patient in the same manner that he would want to be treated had he been the patient. Consequently, the physician is duty bound to disclose the truth in all aspects of care to the patient.

Plato on his part suggested that lying in certain circumstances is not immoral (Plato, 1937). Furthermore, according to Plato, intentional deception when done in the patient's best interests is considered by him to be morally justified. The fundamental issue is "when done in the patient's interests", and who will decide what is best for the patient. Plato's sense of personal and societal moral virtue would support the idea that full disclosure between humans who are involved in a solemn trust is expected.

On the other hand, he has considered that the physician has responsibilities to his patient and could be expected to make moral judgements on what is best for the individual in question. It would be consistent with Plato's philosophy for a physician to intentionally deceive a patient with inoperable lung cancer in order to make his last moments on earth tolerable. One can distinguish this scenario with that of the patient involved in medical error. The latter has an active agreement with his physician. This gives rise to a trust situation between the two. This in turn demands open communication. The physician's deception in this instance would be to protect him from litigation and does no service to the patient. In the former situation, the relationship is between the cancer patient and the disease. The physician is acting as an interpreter of the situation. The physician is gaining nothing from the deception.

Kant's moral theory (Kant, 1996) is considered to be the foundation of modern bioethics (Bernstein & Brown, 2004). His theory is based on the autonomy and dignity of the individual. According to Kant, morality can exist only by virtue of our autonomy as rational beings. The moral worth of an action is not related to the beneficial outcome but whether it is done from a sense of duty or obligation. Kant's moral law or categorical

imperative states that every act has to stand on its moral virtue and be judged as if it were to become a universal law of nature. For Kant, there is no reason to lie because to do so violates the principle of the 'categorical imperative'.

Consequently, under Kant's moral theory, the physician has no option but full disclosure of his error to the patient. By lying, he violates the categorical imperative against lying and deprives the patient of his moral dignity as human being. Similarly, by seeking to protect himself, he also violates the principle of humanity in one's own person as well as in the person of any other, never merely as a means, but as the same time as an end.

Utilitarianism based it moral theory on the 'utility' or outcome of an act rather than its motive. To act morally was to act in such a way that the amount of benefit or pleasure achieved was maximized and the harm or 'gain' minimized the greatest good for the greatest number. Mill, used Bentham's theory of utility to emphasise that the quality of the good achieved mattered. According to Mill, the good, broadly construed, was not just the good of the individual, but the good of society as a whole.

Furthermore, in his principle of equality, every person must be considered to count for one and only one. According to the utilitarian, what ultimately gave happiness was the sense that one was a good person who acted according to his conscience in treating others well. In this instance, the patient, though he will be upset, will benefit by having accurate medical information upon which he can base his further treatment decisions and choice of doctor. Other patients will also benefit as disclosure of his error may force the physician to examine the system in which he works and to make changes which will help prevent errors in the future.

In the utilitarian framework the medical profession as a whole is also served by the openness; to confess error and apologise is a courageous and honourable act that reflects well on the profession and serves to increase public confidence in its integrity (Constantine *et al*., 2009).

From the foregoing, when errors occur, the physician should disclose the entire incidence as it occurred in a straight forward manner, showing that it was indeed a mistake. He is obliged to give the best explanation as possible, in a way the patient and family will understand and should say the steps he/she intends to take to prevent future occurrence and apologise. In my opinion, the Kantian theory best supports full disclosure of medical errors. A physician must respect the patient's dignity and act with beneficience, sympathy, and conscience and without arrogance. He is under an obligation to place the patient's interest and his profession above his own.

There is however another side to this argument and that is that these philosophical theories do not provide adequate guidance for the 21st century physician. This argument is based on the notion that, modern day practice of medicine has evolved to the point that only perfection is acceptable. Nowadays, errors are viewed as being the result of

negligence as opposed to honest mistakes. Consequently, disclosing medical errors to patients will only lead to a never-ending series of litigation which in turn could lead to bankruptcy of a number of health care facilities.

The consequentialism theory, determines whether an act is morally right based on the net results of that action- does the good outweigh the bad? Consequentialism suggests that one ought to do that act which realizes the best overall net consequences when one considers both the harm and the benefit to all those involved.

With regard to disclosure of medical errors, one must consider the harm and the benefit to the patient and his family. It also appropriate, to consider the harm and potential benefit to the physician. The decision made with regards to disclosure, should be the best one with regard to the overall net consequences to both the patient and his as well as to the physician. Consequently, reasons to disclose medical errors would include any significant benefit to the patient and his family as well as any benefit to the doctor that comes secondary to disclosure. Reasons not to disclose would be those that cause patient or family harm as well as harm to the physician.

While admitting that disclosure carries potential benefits to both the patient and the physician, it also carries potential harm to both parties. The potential benefit to the patient is the opportunity of fair compensation through litigation. To the physicians, it is the strengthening of physician/patient relationship.

In general, acknowledging mistakes could potentially harm patients in a couple of ways. Firstly, it can inhibit patient/doctor relationships or patient family relationships. Secondly, it could incite greater anger or emotional distress in a patient who has been harmed or in the family of a patient who has been harmed.

Physician harm must also be considered in consequentialism when considering reasons not to disclose. The doctor could be harmed by inducing anxiety and severe emotional distress during and after disclosure. In addition, the physician runs the risk of losing respect, patient referrals, hospital privileges and contracts. There is therefore, a significant potential economic loss. There is also an exposure to physical attack from the patient and family.

When utilising the consequentialist approach therefore, it would appear that the only reason for disclosure is to allow for 'appropriate' compensation for the patient. However, in a society like ours, appropriate compensation for the patient will almost impossible, considering the challenges of litigation in Nigeria. Potential reasons not to disclosure would include creating emotional distress and physical attack for the physician.

The option of non disclosure is more attractive where the patient is dead. This is because, disclosure in that instance does not help the patient – it cannot bring him/her back to life. From an emotional stand point, disclosure will not impact positively on the grief of the family neither will the physician find a great deal of consolation following an act of contrition. Here the patient/doctor relationship has ceased to exist as the patient is dead.

CONCLUSION AND RECOMMENDATIONS

By combining Aristotelian teleological and Kantian deontological approaches, we can conclude that full disclosure of medical error to the patient and patient's family is the best option. However, if we apply the consequentialist approach, after weighing the benefit and harm that will occur to both the patient and the physician, we would arrive at the opposite conclusion.

Professional codes enjoin physicians, while caring for patients, to regard responsibility to the patient as paramount. Be that as it may, the physician is also responsible to his family, hospital, colleagues and wider community. He is not expected to place himself in a position whereby his ability to continue to care for current and future patients is jeopardised or his personal life is endangered.

Disclosure of medical errors can be beneficial to both the physician- maintaining a virtuous character, which in turn leads to trust and a good patient/doctor relationship and to a patient- the power to exercise the right of self determination, which can be done only with the accurate knowledge of the relevant details of treatment. Conversely, significant harm may come to the physician if he fully discloses errors to the patient through litigation, jungle justice, physical attacks etc, which may impede his ability to continue providing professional services. In deciding to disclose, the physician needs an accurate measurement of the probability that disclosure of an error will seriously harm him and his other patients.

In a study (Gallagher *et al.*, 2007) carried out on the attitude of patients and physicians to disclosure of medical errors, it was found that both patients and physicians had unmet needs following errors. According to the study, patients wanted disclosure of all harmful errors and sought information about what happened, why the error happened, how the error's consequences will be mitigated, and how recurrence will be prevented. Physicians on their part, agreed that harmful errors should be disclosed but 'choose their words carefully' when telling patients about errors. Physicians however, worried that an apology might create legal liability. The study showed that physicians were also upset when errors occur but were unsure of where to seek emotional support.

Medical errors are an unfortunate but inescapable part of medical practice. It is therefore necessary to derive a mechanism for dealing with them when they occur. Full disclosure is vital for improvement of patient's safety and quality of care. I am of the opinion that if we adopt a system of blame free reporting of avoidable, not culpable mistakes, disclosure will be the order of the day. Steps should also be taken to make provisions for caring for the emotional outcome of these errors for both the patient and physicians.

Offering an apology with disclosure is an important component of addressing medical errors. An apology would include an acknowledgement of the event and

one's role in the event, as well as a genuine expression of regret for the patient's predicament. An apology can have profound healing effects for all parties. For the physician, an apology can help diminish feelings of guilt and shame. For the patient it can facilitate forgiveness and provide the basis for reconciliation (Lazare, 2006). Patient's safety and physician welfare will be well served if the latter can be more open and honest about mistakes to their patients, colleagues and themselves.

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