Disclosure of Medical Errors

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Disclosures

- No financial disclosures

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Scenario

- 55 year-old female POD#21 from kidney-pancreas transplant presents with fever, diarrhea, muscle aches
  - Diagnosed with CMV infection
- Noted to have been discharged home on valacyclovir(Valtrex) instead of valganciclovir (Valcyte)

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Scenario

- The admitting resident is informed of the error by the ED attending and he realizes that he was the one who clicked the wrong medication when doing the pt's discharge several weeks earlier.
- What do you do next?
- What do you say?

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Immediate Thoughts

- To what extent am I responsible for this?
- Should I apologize?
- Will I get sued?
- Will I get fired / not promoted?
- Is my career over?
- I am a failure.

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Overview

- History
- Definition of error
- Rationale for full disclosure
- Barriers / Overcoming barriers
- Techniques

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Never Events

- 1990-2010 9,744 Never Events w/ $1.3 billion in malpractice payments
  - Retained foreign body
  - Wrong procedure
  - Wrong site
  - Wrong patient

Mehtsun WT, Ibrahim AM, Diener-West M, et al. Surgical never events in the United States. *Surgery*, in press, 2013.

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Ernest Amory Codman

- Orthopedic surgeon at MGH
- “End Result Idea”
- Father of M&M Conference
- Outcomes should be measured to improve performance

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Table 1. Codman Classification of Operative Morbidity (1914)*

Type	Abbreviation
Errors due to lack of technical knowledge or skill	E-s
Errors due to lack of surgical judgment	E-j
Errors due to lack of care or equipment	E-c
Errors due to lack of diagnostic skill (These are partially controllable by organization)	E-d
The patient's enfeebled condition	P-c
The patient's unconquerable disease	P-d
The patient's refusal of treatment (These are partially controllable by public education)	P-r
The calamities of surgery or those accidents and complications over which we have no control	C

*"These should be acknowledged to ourselves and to the public, and study directed to their prevention."

Greene AK, May JW. Ernest Amory Codman, M.D. (1869-1940): the influence of the end result idea on plastic and reconstructive surgery. *Plast Reconstr Surg.* 119: 5. 1606, 2007.

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The M & M Conference

- M & M functions as a form of social control
- Leads to the moral development of residents

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Bosk's Error Categories

- Errors in technique
- Errors in judgment
- Normative errors
- Quasi-normative errors

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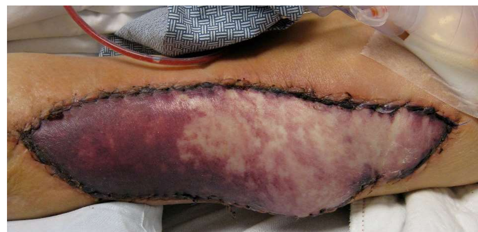
Bad Outcome

- Was the failure a result of an error?
- Was it foreseeable and preventable?
- Did the error make a difference in the outcome?



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Concept of Error

- Bad outcome ≠ error
- Near miss
- Harmless hit

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Concept of Error

- JCAHO
  - "an unintended act, either of omission or commission, or an act that *does not achieve its intended outcome*."
- IOM
  - "the failure of a planned action to be completed as intended (i.e., error of execution) or the use of a wrong plan to achieve an aim (i.e., error of planning.)"

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Concept of Error

A commission or omission with potentially negative consequences for the patient that would have been judged wrong by skilled and knowledgeable peers at the time it occurred, **independent of whether there were any negative consequences**. This definition excludes the natural history of the disease that does not respond to treatment and the *foreseeable complications of a correctly performed procedure*, as well as cases in which there is reasonable disagreement over whether a mistake occurred.

Wu AW, Cavanaugh TA, McPhee SJ, Lo B, Micco GP. To tell the truth: ethical and practical issues in disclosing medical mistakes to patients. *J Gen Intern Med* 1997; 12: 770-775.

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Policy of Full Disclosure

"Full disclosure is the right thing to do. It is not an option; it is an ethical imperative."

-Lucian Leape

Leape LL. Full disclosure and apology—an idea whose time has come. *Physician Exec* 2006; March-April: 16-18.

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Philosophical Support

- Person-based (aretology or virtue)
- Act-based (deontology)
- Outcome-based (teleology)

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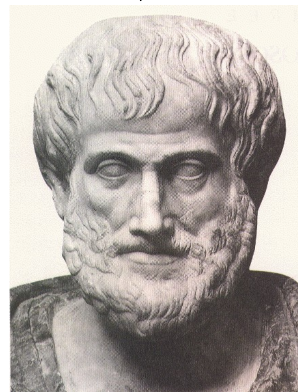
Virtue-Based Ethics

- Aristotle (384-322 B.C.)
- “We are what we repeatedly do. Excellence, then, is not an act, but a habit.”
- Virtues
  - Honesty
  - Compassion
  - Fidelity
  - Technical excellence



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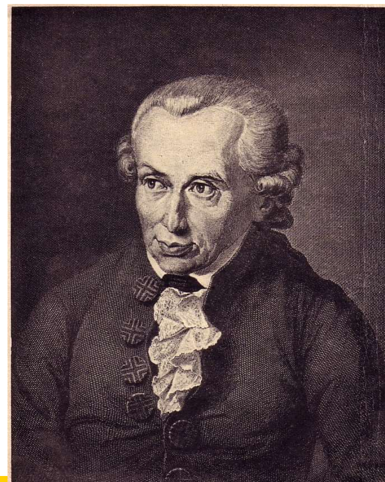
Virtue of Honesty

- Develop habit of truth-telling
- Avoid prevarication
- Policy of transparency

Act-Based Ethics

- Immanuel Kant (1724-1804)
- Duty
  - Respect the dignity of the individual
  - Honesty fundamental for trust



AMA Code of Ethics

- It is a fundamental ethical requirement that a physician should at all times deal honestly and openly with patients. . . Situations occasionally occur in which a patient suffers significant medical complications that may have resulted from the physician's mistake or judgment. In these situations, the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred. Only through full disclosure is a patient able to make informed decisions regarding future medical care

American Medical Association, Code of Medical Ethics, Ethical Opinions, E-8.12. 1981, updated 1994. Available online at www.ama-assn.org.

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AMA Code of Ethics

. . . Concern regarding legal liability which might result following truthful disclosure should not affect the physician's honesty with a patient.

American Medical Association, Code of Medical Ethics, Ethical Opinions, E-8.12. 1981, updated 1994. Available online at www.ama-assn.org.

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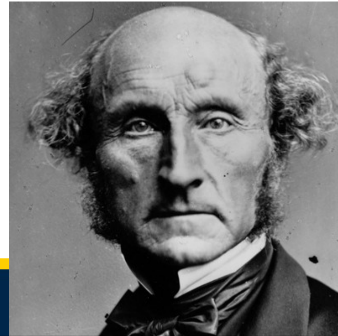
Outcome-Based Ethics

- Utilitarianism
  - Jeremy Bentham (1748-1832) and J.S. Mill (1806-1873)
- Maximize pleasure, minimize pain
- Greatest good for the greatest number



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Weighing the Consequences

- Potential benefits and harms ***to the patient*** take priority
  - Nature of pt-MD relationship mandates this
- Discussing individual errors leads to system improvement

Wu AW, Cavanaugh TA, McPhee SJ, Lo B, Micco GP. To tell the truth: ethical and practical issues in disclosing medical mistakes to patients. *J Gen Intern Med* 1997; 12: 770-775.

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Practical Reasons

- May lead to less malpractice suits
  - Pts sue when **angry**, **want revenge**, or are **suspicious of a cover-up**

Hickson GB, Clayton EW, Githens PB, Sloan FA. Factors that prompted families to file medical malpractice claims following perinatal injuries. *JAMA* 1992; 267: 1359-63.

Witman AB, Park DM, Hardin SB. How do patients want physicians to handle mistakes? A survey of internal medicine patients in an academic setting. *Arch Intern Med* 1996; 156: 2565-69.

Penchansky R. Macnee C. Initiation of medical malpractice suits: a conceptualization and test. *Med Care* 1994; 42: 813-31.

Vincent C, Young M, Phillips A. Why do patients sue doctors? A study of patients and relatives taking legal action. *Lancet* 1995; 343: 1609-1613.

Wu AW, Cavanaugh TA, McPhee SJ, Lo B, Micco GP. To tell the truth: ethical and practical issues in disclosing medical mistakes to patients. *J Gen Intern Med* 1997; 12: 770-775.

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- 2001 – Policy of full disclosure and offer of compensation
- Decrease in lawsuits and decrease in costs

Bell SK, Smulowitz, Woodward AC, et al. Disclosure, apology and offer programs: stakeholders' view of barriers to and strategies for broad implementation. *The Milbank Quarterly* 90: 682-705, 2012.

Kachalia A, Kaufman SR, Boothman RC, et al. Liability claims and costs before and after implementation of a medical error disclosure program. 2010 *Ann Int Med* 153(4): 213-222.

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Thought Experiment

- What if disclosing medical error *increased* malpractice suits and costs?
  - Would there still be an ethical requirement to disclose?

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Barriers to Full Disclosure

- Negative personal consequences
  - Poor evaluations
  - Failure to progress
  - Dismissal
  - Loss of referrals
  - Damage to reputation
  - Lawsuit

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Legislation

- 35 states have laws protecting MDs who express empathy or regret after adverse outcome
- 2012 – MA bill passed barring MD apologies, etc. from being admissible in trial.

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Barriers to Full Disclosure

- The uncertain & contested nature of errors
  - System error, individual error, variations in techniques, etc.
- Poor communication skills
- Culture of medicine
  - "medical narcissism"

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Techniques for Error Disclosure

- 1) Agree on what happened
  - Contact risk mgt (triggers investigation)
- 2) Decide who should be present
  - Attending, residents(?), pt & family
- 3) Appropriate setting
  - Quiet room, turn off pager & cell phone
  - Sit down

Banja JD. *Medical Error and Medical Narcissism*. 2005; Jones & Bartlett: Sudbury, MA. pp. 173-191.

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Content of Disclosure

- Description of error and harm
- When and where error occurred
- Consequences of harm
- An apology
- Actions taken to diminish gravity of harm

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Content of Disclosure

- Actions taken to prevent future occurrences of the error
- Who will manage the pt's continuing care
- Identify system elements of the error
- Assurance that associated costs of error will be removed

Gallagher TH, Garbutt JM, Waterman AD, Flum DR, Larson EB, Waterman BM, Dunagan WC, Fraser VJ, Levinson W. Choosing your words carefully: how physicians would disclose harmful medical errors to patients. *Arch Intern Med* 2006; 166: 1585-1593.

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Hébert PC, Levin AV, Robertson G. Bioethics for clinicians: 23. Disclosure of medical error. *CMAJ* 2001; 164: 509-513.

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Further Tips

- Avoid medical jargon and obfuscation
- **Say** "error" or "mistake" and "I'm sorry"

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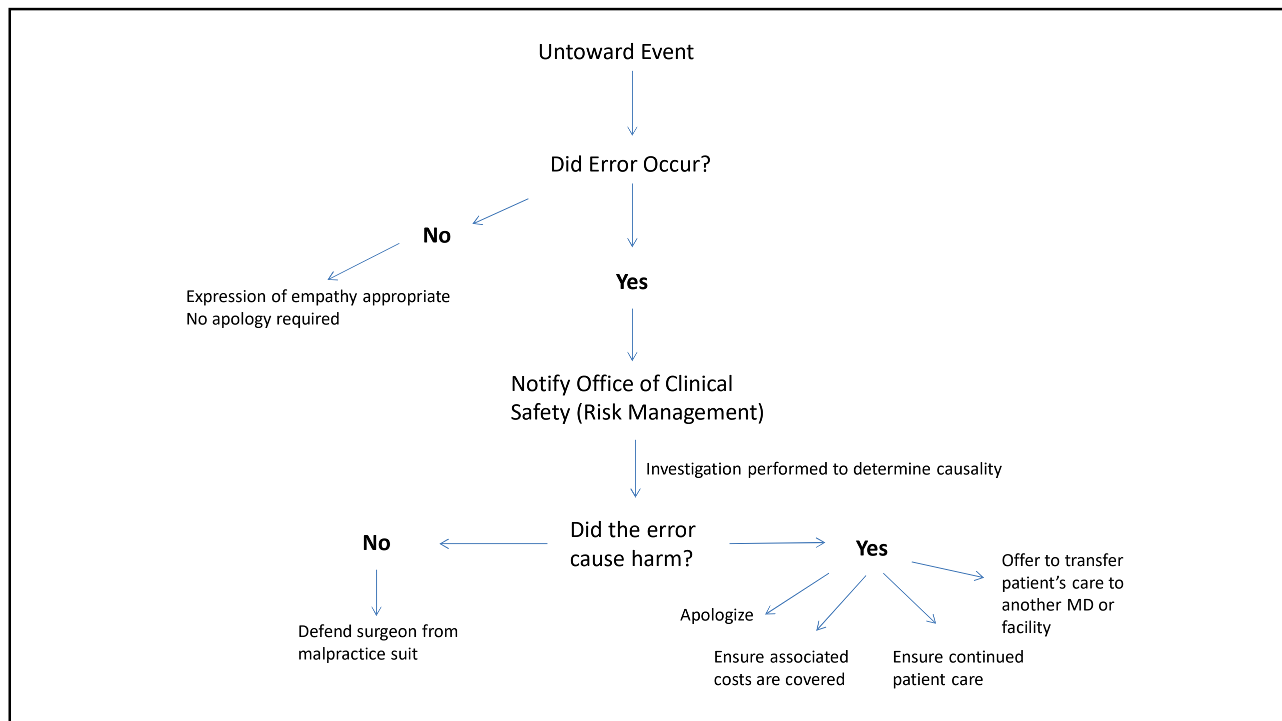

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Conclusion

- Errors happen
- Learning to minimize adverse outcomes is a lifelong process
- Full disclosure should become routine

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