



# DISCLOSURE OF ADVERSE EVENTS IN IDAHO

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# Ethical Obligations re Disclosures

- “It is a fundamental ethical requirement that a physician should at all times deal honestly and openly with patients. Patients have a right to know their past and present medical status and to be free of any mistaken beliefs concerning their conditions. 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....
- “Concern regarding legal liability which might result following truthful disclosure should not affect the physician’s honesty with a patient.”

(AMA Code of Medical Ethics, Ethical Opinions E-8.12, available at <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinions-disclosing-diagnoses-patients/2011-12>)

# Legal Requirements re Disclosures

- Physicians must comply with standard of care. (IC 54-1814)
- Effective patient consent requires disclosure of facts relevant to the subject care. (IC 39-4506)
- Physicians are subject to adverse licensure action for:
  - Engaging in a pattern of unprofessional behavior that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient.
  - Obtaining any fee by fraud, deceit or misrepresentation.
  - Failing to report a violation of the Medical Practices Act to the Board.  
(IC 54-1814; IDAPA 24.33.01.300)
- Malpractice statute of limitations is tolled “when the fact of damage has, for the purpose of escaping responsibility therefor, been fraudulently and knowingly concealed from the injured party by an alleged wrongdoer ...” (IC 5-219(4))
- May be civilly liable for negligent misrepresentation, fraud, or fraudulent concealment.
- May be civilly or criminally liable under the False Claims Act, Medicare or Medicaid fraud, or insurance fraud, e.g., submit claims for substandard care.

# Practical Considerations

- Timely accurate disclosure through appropriate channels may help avoid or mitigate injury and liability.
- Disclosure may help improve the system and avoid future adverse outcomes.
- Several studies indicate that timely and complete disclosure to the patient may reduce chances of litigation.
- It may be the right thing to do.
- Other?

## *But...*

- *Make sure you have the facts and ensure any disclosure is accurate.*
- *Ensure disclosure is handled through appropriate channels to maximize protection, including:*
  - *Idaho Peer Review Privilege (IC 39-1392a)*
- *Consult with and/or involve others as appropriate, e.g., risk managers, supervisors, patient liaison, insurer, attorney, etc.*
- *Document disclosure appropriately to avoid misunderstanding or disclosure.*

# Idaho Apology Law

- (1) “[A]ll statements and affirmations, whether in writing or oral, and all gestures or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence, including any accompanying explanation, made by a health care professional ... to a patient or family member or friend of a patient, which relate to the care provided to the patient, or which relate to the discomfort, pain, suffering, injury, or death of the patient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence for any reason including, but not limited to, as an admission of liability or as evidence of an admission against interest.
- (2) “A statement of fault which is otherwise admissible and is part of or in addition to a statement identified in subsection (1) of this section shall be admissible.”

(IC 9-207)

# Idaho Apology Law

## INADMISSIBLE

- *"I'm so sorry this happened to you."*
- *"I feel terrible about your pain and suffering."*
- *"I'm sorry your recovery has been so difficult."*
- *"Our thoughts are with you and your family during this time."*
- *"I wish things had turned out differently for you."*

## ADMISSIBLE

- *"I'm sorry — I should have ordered that test sooner."*
- *"I apologize. I made an error during the procedure."*
- *"I'm sorry. We gave you the wrong medication."*
- *"I feel terrible. The nurse wasn't properly supervised."*

**Caution: The patient or family may misinterpret what you said. Consider ensuring patient is in appropriate state for the discussion, have witness present and/or document communication accurately.**

# Questions?



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