When Bad Things Happen to Good Vets: Addressing Medical Errors in Your Practice
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“All men make mistakes, but a good man yields when he knows his course is wrong, and repairs the evil. The only crime is pride.”— Sophocles, Antigone

Based on 1984 data developed from reviews of medical records of human patients treated in New York hospitals, the Institute of Medicine estimated that up to 98,000 Americans died each year from medical errors. Three decades later this study was repeated and reported the number of Americans succumbing to medical errors had skyrocketed to over 400,000 each year. Medical errors had become the third greatest cause of death to Americans with cardiovascular disease and cancer being the number one and two causes of death respectively. There has yet to be an objective evaluation of the number of veterinary patients succumbing to medical errors each year; however, there is no doubt that they occur. In a veterinary study involving 105 small animals in which ultrasound diagnoses were compared to abdominal surgical findings, the findings were discrepant in 16% of the cases. Of these discrepancies, 59% were classified as cognitive errors, 29% as inevitable and 12% as a combination of perception and cognitive errors (Garcia DAA, J Small Anim Pract 2012; 53(9):514-9). A 16% error rate in diagnostic ultrasounds performed by board certified radiologist may sound staggering, but when the “transitive property of error rates” is applied to mere mortals working in extremely busy and often chaotic general practices, that error rate may increase exponentially.

An ever-growing and pressing question for the veterinary profession is the best course of action to be taken when a medical error occurs and results in patient morbidity, patient mortality, or unnecessary utilization of a client’s financial resources. Should the error be ignored with the hope no one discovers it’s occurrence? Should the error be disclosed to a liability provider, placed in their hands with a hammer clause evoked and “hope for the best”? Or, should one fully disclose the error to the client and deal with the consequences?

Our human physician counterparts find themselves in an increasingly untenable bind when deciding whether and how to disclose harmful medical errors to patients. Error disclosure is desired by patients and advocated by safety experts and ethicists and is now included in many hospital policies, state laws, and accreditation standards. Yet, as the malpractice crisis deepens, calls to fully disclose errors to patients often strikes human physicians as naïve, simplistic, and unacceptably risky. As a result, many patients receive little information about errors in their care. A relatively recent article reported only 30% of physicians who experienced an error in their own health care said that they were told about the error.

In an article entitled Disclosing Harmful Medical Errors to Patients: A Time for Professional Action (ARCH INTERN MED/VOL 165, SEP 12, 2005), Drs. Thomas Gallagher and Wendy Levinson suggested that human patients “strongly endorse error disclosure and desire a deceptively simple set of information about harmful errors: (1) an explicit statement that an error occurred; (2) what the error was; (3) why the error happened; (4) how recurrences will be prevented; and (5) a genuine apology.” Drs. Gallagher and Levinson stated that human patients “especially value knowing why an error happened and how recurrences will be prevented”, information that demonstrates that a lesson has been learned from the error. They went on to state that human patients “desire disclosure even when errors cause only minor harm”.

The concept of completely exposing one’s self to the full wrath of liability by immediately disclosing a medical error, especially those that may have caused significant harm, may seem contradictory to what we were previously advised. Traditionally, veterinarians have been counseled to report a patient management error or incident to the AVMA Professional Liability Insurance Trust (PLIT), discontinue contact with the client, and let the PLIT attorneys take it from that point forward. While this may initially seem like the “course of least resistance”, it may not prove a wise “long term” decision. The lack of open dialogue between veterinarian and client often leads to increased suspicion, anxiety, and anger on the client’s part. As the client becomes more frustrated, they often seek “redemption” more than “compensation” and subsequently utilize alternative outlets for their frustration. These may include the
Board of Veterinary Medicine, legal counsel and civil action, criminal charges, and sometimes more damaging, “the court of public opinion” via local television reporters and social media. While the PLIT may argue damages are limited to the replacement value of the patient and cost of medical care, the damages resulting from a trial in the court of public opinion can be prove devastating both economically and emotionally.

Is there any case-based data supporting the idea that immediate admission of an error with a genuine apology, palpable attempts to compensate for the family’s loss, and development of policies to assure it never occurs again, will reduce litigation? The answer is yes!

In 2001, University of Michigan Health System launched a program encouraging health workers to report medical mistakes. The program included a procedure for telling patients and their families about errors; explaining who made the error, how it occurred and what steps were taken to prevent a similar mistake in the future; making a sincere apology to the patient or their family; and offering fair compensation for harm when at fault. Later, researchers (Kachalia, et al, Annals of Internal Medicine, Aug.17, 2010) from the University of Michigan Health System, Brigham and Women’s Hospital, and colleagues analyzed records on 1,131 malpractice claims, or requests for compensation due to a medical error, between 1995 and 2007, which covered several years before and after the program was implemented.

After health care providers began admitting mistakes, apologizing and offering compensation, the monthly rate for new claims fell from just over seven per 100,000 patient encounters to 4.52 per 100,000, or 36 percent.

The average monthly rate of malpractice lawsuits filed against the hospital fell by more than half, from 2.13 per 100,000 patient encounters to 0.75 per 100,000.

The median time it took to resolve claims also dropped by several months, while the mean costs for liability, including compensating patients and paying attorneys, fell by about 60 percent. The average cost for lawsuits that were filed decreased, from nearly $406,000 to $228,000.

When errors occur during the course of a veterinary patient’s care, the patient is unable to speak for themselves. The client; however, is very capable of expressing their sense of loss, disappointment, anger, and ultimately seeking compensation for their losses. The window for decision making is subsequently, quite small. The decision to move forward with full disclosure of a medical error must be made rather quickly to assure the highest level of trust and believability. The old term “he who hesitates is lost” certainly applies to the disclosure of medical errors. The following is a proposed algorithm for moving forward with disclosure of a medical error.

1) Verify that a medical error has truly occurred. Disclosing an error that has not truly occurred could prove disastrous.
2) Document the event as completely, truthfully, and quickly as possible
3) Notify the Veterinarian in Charge of the Hospital and/or owner of the facility to make sure everyone is informed as soon as possible.
4) Contact the patient’s owner and communicate the error, consequences for the patient, and your plan for dealing with this problem for this patient.
5) Provide a sincere and unconditional apology.
6) Offer appropriate compensation. This may include cost of resolution of the problem, all medical care leading up to the event, and in the worst case scenario, replacement cost of the animal.
7) Provide the owner with your plans for assuring similar mistakes do not occur in the future.
8) Contact your liability provider at the earliest opportunity and inform them of your situation.

Conversely, if you are being accused of a medical error that simply did not occur, then contact your liability provider immediately. You have every right to protect yourself from unfounded and frivolous claims. Again, documentation is essential for defending yourself. If it is not documented, then it did not
happen. Make sure you keep your coverage updated and activated with a legitimate liability provider. It is also very important that you understand what kind of coverage you are being provided:

1) Make sure you have individual coverage. This is particularly important for employee veterinarians.

2) What are the stipulations of the “consent to settle clause”? Is there a “Hammer Clause”? (This means that if the insurance company recommends that you settle and you chose not to, you may be financially responsible for both legal expenses and judgments above the amount that the insurer could have settled the claim).

3) What court costs and legal fees are you responsible for paying? What are your maximum expenditures and for how long? Legal fees can be costly, so investigate if these expenses are included in your malpractice limits or in addition to your primary limits. Consider that claims in the legal system may take years to resolve and if legal fees deplete your policy limits, you are personally responsible thereafter.

Dealing with disclosure of medical errors is a very serious and stressful situation. All individuals involved will be filled with emotion. It is a process that requires integrity, compassion, and excellent communication skills. It has been suggested that improving the disclosure process could enhance veterinary client satisfaction and their trust in their veterinarian's integrity. Furthermore, as error disclosure becomes better integrated with patient safety activities, such disclosure could promote higher quality of patient care.