Cpt. Kirk’s Kobayashi Maru

- Today’s Med-Mal Environment
- You can’t win....unless you change the rules of the game!
- Sorry Works! does change the rules of the game!
- Change rules of game from legal context to customer service framework
Key Points for Today

- Disclosure Success Stories
- 5 FACTS EVERY PROVIDER (Docs, nurses, front-line staff, etc) SHOULD KNOW ABOUT DISCLOSURE!
- Disclosure is a Program (3 Step Disclosure Process)
Tragic Medical Error at Park Nicollet Hospital...

“We are saddened to tell you that Park Nicollet has made a tragic medical error for which we accept full responsibility. We have apologized to the family....”

- Excerpt from Park Nicollet memo, March 2008
Florida Hospital Apologizes for Toddler’s Death

“To his mother, father, younger brother, and other family members, we extend our prayers, thoughts, and deepest sympathies...We take full responsibility for Sebastian’s death and are very, very sorry.”

- Dr. Donald Novak, Vice Chair, UF College of Medicine, Dept. of Peds, Fall 2007

http://www.sebastianferrero.org/
Nebraska Hospital Produces Video With Family About Deadly Mistake

“In the video, initiated by Methodist, the hospital’s doctors acknowledge the mistakes that Methodist made in diagnosing the medical problem that caused his death.”

Tyler Kahle Story:
http://www.bestcare.org/mhsbase/mhs.cfm/SRC=MD010/SRCN=newsdetail/GnavID=71/HLNewsItemID=239

“It was a way to memorialize Tyler, and we hope to prevent this from happening again,” Sara Juster, VP, Nebraska Methodist Health System, Summer 2007
7 month-old Tressel Meinardi died after alcohol was put in his IV instead of saline solution following surgery in August 2010.

Children's Hospital President Michael Fisher has already sent a memo through the hospital saying: "Where ever there has been an error, we accept responsibility, admit the error, apologize for it and explain what happened."

Parents’ pastor says couple is forgiving and wants to move forward.
Apology Ends Med-Mal Lawsuit...

- Lawsuit filed by Actor James Woods’ and family settled after apology (December 2009)

- And he (Actor James Woods) wondered aloud whether the suit would have been filed "if somebody had just said 'I'm sorry.'"
Do you need a law to say such things?

NO!
“I would never introduce a doctor’s apology in court. It is my job to make a doctor look bad in front of a jury, and telling the jury the doctor apologized and tried to do the right thing kills my case.”

- President, South Carolina Trial Lawyers Assoc.
“Classic” Disclosure
Success Stories

- Sorry really does work!
  - Lexington VA hospital/all VA hospitals
  - University of Michigan
  - University of Illinois Medical Center
  - Stanford University and Harvard Teaching Hospitals
  - Minneapolis Children’s
  - Catholic Healthcare West (40 hospitals)
  - Catholic Health Initiatives
  - New Jersey Hospitals & Insurers!
  - PLICO and other physician insurers...
Challenges for Disclosure...

- Having consistent ethics for all cases...not just “big ones.”
- Pushing disclosure message down to all front-line staff.
5 Key Disclosure Facts for Doctors & Staff

#1 – Disclosure is good for patients, families and YOU!

#2 – Customer Service, Respect, Informed Consent, etc lay ground work and build loyal relationship pre-adverse event

#3 – Empathetic *I’m sorry* always appropriate

#4 – Call Somebody!

#5 – Train your nurses and staff
5 KEY FACTS....

#1 DISCLOSURE IS GOOD FOR PROVIDERS!

• REDUCE LAWSUITS AND LITIGATION
• NATURALLY IMPROVES QUALITY AND SAFETY
• CLOSURE AND HEALING
5 KEY FACTS

#1 Disclosure is Good for Providers

- **Reduction in lawsuits and litigation expenses**
  - Success stories abounding....from University of Michigan Healthcare System to Central PA Physician Risk Retention Group to two New Jersey Hospitals...and the list is growing.
  - Disclosure reduces anger, maintains doctor-patient relationship, and even helps relationship transcend the event.
  - Anger – not greed – is what produces most lawsuits!
5 KEY FACTS

#1 Disclosure is Good for Providers:

- **Naturally improves quality and safety**
  - Patient safety initiatives *can* be burdensome for doctors.
  - Deny and defend hinders learning due to fear.
  - By embracing mistakes and owning them, quality and safety improvements will naturally flow without being cumbersome or producing fear.
  - Quality and safety improvements further reduce litigation exposure.
5 KEY FACTS

#1 Disclosure is Good for Providers

- **Closure and Healing**
  - Providers are often 2\textsuperscript{nd} victims of medical errors.
  - Sometimes providers suffer more than patients/families!
  - Deny & Defend isolates suffering providers, leading to depression, more mistakes, and worse....
  - Sorry Works! lets providers get mistakes off their chest and receive forgiveness as well as emotional support from colleagues and friends.
5 KEY FACTS

#2 Five-Star Customer Service, Good Behavior and Respect, Informed Consent, lay ground work for disclosure

....are you credible when trying to say “I’m sorry?”

......have you built a loyal relationship with patient/family pre-adverse event?
# 5 Key Facts

## #2 Five-Star Customer Service

Good Behavior and Respect, Informed Consent, lay groundwork work for disclosure

- **Five Star Customer Service**
  - How are patients/families greeted over the phone and in-person?
  - Ask appropriate personal questions?
  - Apologize for being late and other service lapses?
  - Spend enough time with them?
  - Are customers treated well??
5 KEY FACTS

#2 Five-Star Customer Service, Good Behavior and Respect, Informed Consent, lay ground work for disclosure

- **Good Behavior and Respect**
  - Is there drama – shouting/yelling – in your office, or quiet decorum of professionalism?
  - Doctors/nurses greet each other by name?
  - Do you *look* like you like each other??
  - **Do you say “sorry” to each other??**
5 KEY FACTS

#2 Five-Star Customer Service, Good Behavior and Respect, Informed Consent, lay ground work for disclosure

- **Informed Consent**
  - Can help with disclosure – especially if no error!
  - Involve family members
  - Procedure specific
  - Sending nurse in five minutes before procedure doesn’t count
  - Can be used during disclosure process!!!
#3 Empathetic I’m sorry

- Empathy: “I’m sorry this happened... I feel bad for you...”
- Apology: “I’m sorry I made this mistake.... it’s my fault.”
- Empathy appropriate 100% of time; apology appropriate only after investigation
"Mrs. Jones, the surgery is over and I know you were looking forward to taking your mom home in a few days...you have that big birthday party with grandkids this weekend. But, I’m sorry to tell you she is in the ICU.....the surgery didn’t work out the way we expected. I’m so sorry..."
#3 Empathetic I’m sorry

(quote continued)

“I can only imagine how upsetting this must be for you. Please know we are doing an investigation and will have some initial answers to you by 3pm tomorrow afternoon....”
#3 Empathetic I’m sorry

(quote continued)

“Please understand your mom is receiving the best care possible and we are going to keep you posted on her progress.....
#3 Empathetic I’m sorry

In the meantime, is there anything I can do for you? Food or transportation? Can I help making phone calls? Do you need a minister? Here’s my business card… don’t hesitate to call me. I feel so bad for you….I’m sorry.”
#3 Empathetic I’m sorry

- **What was said...**
  - Speed: “I’m sorry” should be provided as soon as possible after adverse event.
  - Empathy personalized and feelings of patient/family acknowledged
  - Date/time specific – no “mush” statements
  - Said “sorry”
  - Taking the situation seriously
  - Customer service elements
  - Staying connected!
5 KEY FACTS

#3 Empathetic I’m sorry

• **What was NOT said:**
  - No Admission of fault – yet! Do NOT prematurely admit fault or play retrospection game:
    - Only admit fault *after* investigation has proven a mistake occurred *and* error has causation to the injury or death.
    - Need to PAUSE!!
    - Connecticut surgeon
  - No jousting or speculation – not time to throw colleagues under the bus!
#3 Empathetic I’m sorry

- What was offered?
- Validation and leadership!!
  - Mere act of validating can defuse many situations...plus buys you time to figure out what to say!!!
  - Leadership --- it’s what patients and families need post-event.
5 KEY FACTS

#3 Empathetic I’m sorry

- **How do you document after empathy?**
  - The truth, the whole truth, and nothing but the truth!
  - Write down what you said, anything the patient or family said, and promised next steps.
  - No emotional statements or speculation & no derogatory remarks about patient, family, or colleagues.
#4 Call Somebody!

- Immediately after empathetic “I’m sorry” call somebody:
  - Risk Manager
  - Attorney
  - Somebody!!

- Don’t sit on it! Get help conducting investigation.
- Continue to stay connected with patient/family.
#5: Train nurses/staff on disclosure

- Five-Star Customer Service
- Respect among colleagues
- Setting reasonable expectations with patient and family
- Empathy
- Staying engaged post-adverse event
- No jousting, speculation, or throwing colleagues – you - under the bus!
5 Key Disclosure Facts for Providers

#1 – Disclosure is good for patients, families and YOU!

#2 – Customer Service, Respect, Informed Consent, etc lay ground work and build loyal relationship pre-adverse event

#3 – Empathetic *I’m sorry* always appropriate

#4 – Call Somebody!

#5 – Train your nurses and staff
3 Step Disclosure Process

- Step 1: Validate problem, empathetic. I’m sorry, and then call somebody (#3 & #4 of Key Facts) – no admission of fault – yet! No speculation or jousting.

  - PAUSE! -

- Step 2: Investigation

- Step 3: Resolution
Step 1: Initial Disclosure

- Adverse events/unanticipated outcome
- Program snaps into action...
- With customer service frame work patients/families are approached and event is initially disclosed, including apology....
- Empathy – not true apology!
Step 1: Initial Disclosure

- Very important points: Empathized for event, but did not accept blame or spread blame. **Empathy only! No apology given!**
- Said only what we know.
- Promised a thorough investigation and pledged to communicate and keep patient/family in the loop.
- Fix initial problems & concerns such as phone calls, food, lodging, etc.
Step 2: Investigation…

- Involve outside experts...don’t want to look like you’re grading your own papers!
- Move quickly – UI Medical Center in 72 hours or less.
- Stay in close contact with patient/family
Step 3: Resolution – Investigation shows error...

- Root cause analysis shows standard of care not met = error(s) or negligence
- Set meeting with patient/family and attorney
- Apologize and admit fault
- Explain what happened and fix
- Discuss upfront compensation
Step 3: Resolution –
Investigation shows no error...

- Root cause analysis shows standard of care was met = no error(s) or negligence
- Still meet with patient/family and attorney
- Empathize, answer questions, open records – prove innocence
- “Honesty Dividend”
3 Step Disclosure Process

- Empathy and good customer service: initial disclosure/initial apology
- Investigation
- Resolution:
  - Error: Apologize, Admit Fault, Compensate
  - No Error: Empathize, Answer Questions, Open Records, Prove Innocence, Never Settle
Three main principals:

- Compensate quickly and fairly when inappropriate medical care causes injury
- Defend medically appropriate care vigorously.
- Reduce patient injuries (and therefore claims) by learning from mistakes.

- source: Univ. of Michigan Disclosure Program
Sorry Works! – ultimately – must be housed in a program!

- More than a disclosure policy!
- Trained disclosure team runs the program -- *hopefully found some team members today!*
- Coordinated among insurers; train staff
- Help guide investigation + help providers with difficult conversations
- Help providers on personal level too!
Good things happen when you change the rules...

- For you – lower liability exposure + healing and closure when things go wrong, and a safer hospital!
Thank you for listening

- For more information visit our website: www.sorryworks.net
- Or contact Doug Wojcieszak at 618-559-8168 or doug@sorryworks.net
- Thank you!