

MANITOBA HAS AN APOLOGY ACT – LEARN MORE ABOUT IT!

THE IMPORTANCE AND IMPACT OF AN APOLOGY

An Information Sheet from the Manitoba Institute for Patient Safety and the Manitoba Alliance of Health Regulatory Colleges

Patients^a and their families expect to be told when something has happened that has harmed them or had the potential to harm them. Patients have a right to know this information. Informing them honestly and fully is the right thing to do.

Disclosing and apologizing go hand in hand.

After advising a patient of a harmful event, including a critical incident^b, it is natural to follow with a sincere and honest expression of regret (an apology).

Why patients need to hear an apology.

An apology, given sincerely, can help lessen the emotional impact of the harm, be therapeutic for the patient and health professional as well as lead to healing, regaining trust, and a greater possibility of reconciliation^{2,3}. Apologizing – demonstrating our humanity and the concern we feel makes it possible for the patient and family to forgive.

By apologizing am I admitting liability?

No. An apology can't be admitted as evidence of fault or legal liability. The majority of Canadian Provinces and Territories, including Manitoba⁴, have enacted apology legislation which prohibits apologies from being used in court.

Why do we have Apology Legislation?

A significant number of patients want a sincere apology for what has happened to them. Health professionals may be afraid that apologizing to a patient will create legal liability, or will negatively affect their malpractice insurance coverage. This is not the case in Manitoba. The Apology Act allays these fears and concerns. Allowing health professionals to apologize freely, without creating liability, provides an opportunity to begin making amends.

Why apologizing can also heal the practitioners involved.

After a patient is harmed, health professionals often feel fear, remorse, guilt, shame, self-anger and depression for

what has happened. They “are the second victims, devastated by having been the unwitting instrument that seriously harmed another”⁵. Apologizing, expressing remorse, and a desire to make amends, can lead to forgiveness and healing for health professionals as well.

How to apologize / What you can do.

Talk with your team about who will apologize and how the apology should occur. The words “I’m sorry” should be part of any apology². Apologize as soon as possible. Be compassionate, honest and sincere in your apology. An apology will not be as easy to accept if the patient feels you are forced to apologize or are not genuine in your apology^{2,3,6}. The following may take place over several meetings. These are guidelines. Check your organizational policies for further information.

- Acknowledge that something (e.g. a critical incident) has happened.
- Explain the facts of what has happened without accepting or assigning blame.
- Explain how the incident will affect the health of the patient.
- Make a genuine apology for the incident that shows remorse, humility and compassion. Consider using words like “I feel badly for what happened.” “We are sorry.” “We know that what happened has caused you unnecessary pain/anguish/health complications....”
- Explain what can happen to help remedy the situation.
- Document the conversation with the patient and family.
- If possible, explain what will change so this same situation is less likely to happen to other patients in the future. People usually want to know that some good may come about as a result of the situation that has caused them emotional or physical pain.
- Once the event has been reviewed, follow-up with the patient to see how they are doing and advise them on what progress has taken place to reduce the likelihood that it does not happen again to others.

^aThe term “patient” includes any recipient of care by a health professional in any setting

^bA critical incident¹ is an unintended event that occurs when health services are provided to an individual that result in serious and undesired effects such as death, disability, injury, harm, an unplanned admission to hospital, or an extension of care in hospital. The unintended event is not as a result of the patient's illness or the risk in treating the illness, but from the healthcare provided.

Under Manitoba's Apology Legislation⁴ ...

- apologizing does not create legal liability
- an apology does not void, impair or affect your malpractice or liability insurance coverage
- an apology is not admissible in court, including "a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity"⁴ such as disciplinary and grievance hearings, and civil litigation
- it does not apply to criminal offences, such as sexual or physical assault, which fall under federal jurisdiction

Where can I get reliable, confidential advice about apologizing?

Review your regional health authority or health facility policies and procedures or consult the regulatory body governing your profession. You may also consult your professional insurer or protective association.

References

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3. College of Occupational Therapists of Ontario (COTO). *Guide to the Apology Act (2009)*. Toronto, ON: COTO; 2011. http://www.coto.org/pdf/guide_to_the_apology_act.pdf
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6. Lazare A. *On apology*. New York, NY: Oxford University Press; 2004.

Download MIPS' resource "The Facts about Critical Incidents and their Disclosure: Frequently Asked Questions for Healthcare Providers" at www.mips.ca



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