



6. APOLOGISING AND SAYING SORRY

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It's OK to say sorry

A key component of open disclosure is offering a sincere apology – **saying sorry** – when a patient safety incident occurs.

An apology is an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not the apology admits or implies an admission of fault in connection with the matter²³. It should also acknowledge the consequences of the situation to the patient and/or their support person(s).

For many patients and/or their support person(s), it is the most valued part of open disclosure and essential to post-incident reconciliation and rebuilding of trust.

For many health care staff, apologising to a patient may also assist them in their recovery from patient safety incidents in which they have been involved.

Each open disclosure discussion with a patient and/or their support person(s) will be unique. The exact wording and phrasing of an apology will vary for each discussion and for each health care team member. Health care staff will find their own 'right words' to use when apologising, learning from their own experiences and those of respected and experienced colleagues.

Open disclosure in clinical settings is of such importance that NSW and all other Australian jurisdictions have enacted laws to protect statements of apology or regret made after a patient safety incident from subsequent use in civil proceedings²⁴. This protection is designed to encourage open disclosure, and to prevent any unwillingness on the part of health care staff to participate in open disclosure because of fear of legal ramifications for themselves or their local health district/specialty network.

The effect of an apology on liability in NSW

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
 - (b) is not relevant to the determination of fault or liability in connection with a matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

Section 69 of the Civil Liability Act 2002 (NSW)

23. NSW Civil Liability Act 2002

24. Australian Commission on Safety and Quality in Health Care (ACSQHC) *Australian Open Disclosure Framework*, Sydney, 2013

Key points

Open disclosure is much more than apologising, but its overall success can often depend on how the apology is delivered. In this regard, the key points for those engaging in open disclosure are:

- > **Do not fear saying sorry.**
Providing you don't engage in unwarranted speculation about the patient safety incident or apportion blame to other individuals, teams or the health service, there are no medico-legal grounds for avoiding the word 'sorry'. Similarly, there is no reason to fear it from an interpersonal point of view. Remember that apologising is a natural human response after an unexpected event. Patients who have been harmed, their support person(s), families, carers and other persons affected by the incident, will appreciate and benefit from a sincere apology. Equally, you and your colleagues may also benefit from this interaction. The conversation can be difficult but, according to the available evidence, may lead to a better outcome.
- > **Acknowledge that the incident has occurred and that the patient has suffered, or may suffer, harm as a result.**
- > **Listen.**
Apologising is also about listening and ensuring that the patient and/or their support person have an opportunity to tell you how they feel, and how the incident has affected them. Practise and engage in active listening and always ensure that the patient has an opportunity to respond.
- > **Exhibit empathy with the patient and/or their support person(s).**
- > **Offer the opportunity to make amends.**
- > **Consider your delivery.**
Think about your phrasing and non-verbal aspects of your delivery. It is important to remember that what you say is not always what is heard, and that this can be influenced by non-verbal cues such as maintaining appropriate eye contact and the tone of your voice. Other aspects of delivery such as body language, positioning and potential distractions will influence the conversation. Rehearsing your words and delivery style with the open disclosure advisor or an experienced colleague may help you find the 'right words' for you.

What is empathy?

Empathy is "the ability to step into the shoes of another person, aiming to understand their feelings and perspectives and to use that understanding to guide our actions".

Roman Krznaric (2012)

To empathise is to understand how others feel, to see the situation as they do.

Empathy goes beyond sympathy and compassion because it involves an appreciation of each patient's story. You can be empathic for others even when you do not feel sympathetic toward them. For instance, you may not feel sympathy for the patient who as a drunk driver crashed his car resulting in the serious injury to a passenger, but you can be empathic when he develops depression as a result of guilt about the accident.

Empathic communication enhances the therapeutic effectiveness of the clinician – patient relationship. Appropriate use of empathy as a communication tool honours the patient, facilitates the clinical interview, and increases the efficiency of gathering information. An appropriate statement or gesture of empathy takes only a moment and can go a long way towards rebuilding relationships, re-establishing trust and enhancing rapport. Empathy enables a clinician to be with a patient and to identify more closely with how that patient and his/her family may be feeling.

Planning an apology

Plan ahead

Wherever possible, the health care staff directly involved in the patient safety incident should provide the apology. Before meeting with the patient and/or their support person(s), plan what you are going to cover in your apology.

When preparing for the clinician disclosure discussion when a patient safety incident has just occurred, the factors that may have contributed to or caused the incident may not be clear.

Chapter 4 *Clinician Disclosure – An example of appropriate wording for clinician disclosure – STARS®* offers more detail about including an apology at this early meeting.

Preparing for a discussion with a patient and/or their support person(s) also includes preparing yourself – being aware of your own feelings and emotions, including distress, guilt or anger, and the range of emotions and reactions that the patient and/or their support person(s) may have.

The open disclosure advisor and coordinator will be able to offer advice to assist you with preparing for an open disclosure discussion, including providing guidance on apologising in the particular circumstances of the patient safety incident.

Provide factual information

Patients who have been harmed whilst receiving health care and/or their support person(s) seek an honest, straightforward explanation about what happened and why. Harm should be acknowledged and an apology provided. The apology should make clear what is being apologised for and what is being done to address the situation. Only the known facts should be provided, without pre-empting the results of a review or investigation.

Go slowly and genuinely

The effectiveness of an apology depends on the way it is delivered, including the tone of voice, as well as non-verbal communication such as body language, gestures and facial expressions. The following tips will assist in communicating an apology appropriately:

- > place yourself at the level of the patient e.g. sitting if the patient is seated or is in bed
- > face the patient and maintain appropriate eye contact throughout
- > use plain, simple English – avoid medical terminology
- > take time – go slowly. Speak in sentences rather than paragraphs
- > allow time for the patient and/or their support person to think about what you have told them, and to comment or ask questions
- > don't overwhelm with information
- > listen actively to the patient and/or their support person as they recount their experience.



What to include in an apology

An Open Disclosure apology should include:

- > using the patient's name and the name(s) of the support person(s) present, after checking that you have the correct patient and checking what name(s) they would prefer to be addressed by – for example, the patient's name may be Margaret but she is known as Peggy by her family and friends
- > an acknowledgement that the patient safety incident occurred and its impact on the patient and/or their support person(s)
- > the words "I am sorry" or "we are sorry".

Examples of suitable wording for apologising

An apology needs to be suitable to the circumstances of the patient safety incident. Some examples of suitable wording follow:

- "I am/we are sorry for what has occurred".
- "This (the incident) means that you may/will... (feel some soreness around your wound), and we will... (check on you every X hours and ensure you receive appropriate pain relief)".
- "You have also told me about how this has affected you. Please let me or one of the team know if you have any further concerns, including if the pain doesn't settle down".
- "This incident occurred because the wrong label was mistakenly placed on your specimen sample".
- "We are currently investigating exactly what caused this breakdown in the process and will inform you of the findings and steps taken to fix it as soon as we know".

What NOT to include in an apology

When making an apology in the context of open disclosure, the following should be avoided:

- > any admissions of liability which are specific about the fault of the health care staff or service, either as a verbal or written statement – for example, admitting that the health facility or a clinician breached their duty of care to a patient which led to the patient suffering harm or injury
- > any speculation as to the cause of the patient safety incident – if you don't know, be truthful and explain the process which will take place to find out what happened and why
- > any attribution of blame to the patient and/or their support person(s), a clinician or health care team, the health facility or the Local Health District/Specialty Network
- > denying any responsibility before the facts about the patient safety incident are known
- > providing conflicting information – explain what will be done to verify the information about the patient safety incident
- > any attempts to minimise or rationalise the severity of the patient safety incident – saying "it could have been worse" is not helpful to the patient and their support person(s)

Examples of what NOT to say

- 'It's all my/our/his/her fault... I am liable'
- 'I was/we were negligent...'
- 'We're sorry...but the mistake certainly didn't change the outcome...'
- 'I know for you this is unpleasant, awful... but believe me, for me it's shattering'
- Any speculative statements and apportioning of blame (to the patient, their family, individual clinicians or the health service), for example:
'I would say that the night shift staff probably forgot to write down that you were given this medication...'
- So-called apologies that are vague, passive or conditional:
'I apologise for whatever it is that happened'
'Mistakes were made'
'These things happen to the best of people...'
'If I did anything wrong, I'm sorry'
'It could have been worse'

Key discussion areas and examples of an apology as part of open disclosure

Discussion areas	Examples of usage
Acknowledge	"Mr/s X, there has been a problem with your medication. I understand that you are disappointed with what has happened and probably worried about what effect it might have"
Apology	"I am very sorry that this has happened" "I realise it has caused great pain/distress/anxiety/worry"
Known facts	"We are not sure exactly what happened at present; however, we will be investigating the matter further and will give you more information as it becomes available" "We have been able to determine that..." "This occurred because the wrong label was mistakenly placed on your specimen sample"
Tell me about it – Patient story Answer questions	"I'd really like to hear about things from your point of view. What do you know about what's happened?" "Mr [patient's name], can I just summarise what you have told me?" "You may have a few questions you would like to ask, and I will try to answer them as best I can." "Is there anything you think we should do to move forward from here?"
Respond – Plan for care	"I have reviewed what has occurred and this is what I suggest we need to do next. Would you agree?"
Investigation	"We are not sure exactly what happened at present; however, we will be investigating the matter further and will give you more information as it becomes available" "We will be investigating what happened to you to find out how this incident occurred. We would like to hear from you and/or your family members who have been with you. We will also be speaking with our staff members and others who may be able to contribute to the investigation." "We will keep you informed throughout the investigation process, if that is OK with you." "We will be taking steps to learn what happened so that we can prevent this from happening to someone else"
Continuing contact	"Would you like me to contact you to set up another meeting?" "Here is my phone number if you feel you need to go over it again or if you have any other questions." "What would be the best way to contact you so we can keep you informed?" "Should we contact another person on your behalf?"