Open Disclosure / Duty of Candour: a worldwide push for openness and honesty when things go wrong

Peter Walsh April 2014

AVMA
action against medical accidents

for patient safety and justice
WHAT IS AvMA?

- The independent UK charity for patient safety and justice
- Provides advice and support to individuals affected by a medical accident
- Works in partnership with NHS, health professionals, Gov’t departments and lawyers
- I am CEO and also a ‘patients for patient safety champion’ with the WHO
“Patients for Patient Safety”

- International movement of patient safety champions under the umbrella of WHO
- Providing the patient perspective on patient safety and inspiring improvement
- Need for openness and honesty when things do go wrong a consistent priority
Sir Liam Donaldson

“To err is human… to cover up is unforgiveable”
SOBERING FACTS

● FOR OVER 65 YEARS OF THE NHS A HEALTHCARE ORGANISATION HAS NOT IN BREACH OF ANY STATUTORY RULE IF IT ‘COVERS UP’ A MEDICAL ACCIDENT

● THE CURRENT SYSTEM *FROWNS UPON* BUT *TOLERATES* COVER UPS
Lack of openness & honesty results in:

- Severe emotional stress and psychological harm to the patient /family
- Failure to recognise problems and improve safety
- For staff: “carrying a monkey on your back” ; possible regulatory action
- Increased likelihood of complaints and litigation
What exists or is planned internationally?

- PfPS to run project to collect information on Open Disclosure worldwide and share good practice. For example:
  - Doctor & Nurse codes of practice in most countries
  - Particular initiatives on Open Disclosure in Canada, USA, Australia, Ireland, England………Elsewhere? What works?
“Duty of Candour”

- Statutory (legally enforceable) duty to tell patients / their families when things go wrong and cause harm
- To be distinguished from ‘guidance’ or ‘codes’
Duty of Candour ("Robbie’s Law")?
The story so far (England):

- AvMA has campaigned for a statutory “Duty of Candour” for decades
- Fiercely resisted by some. Only guidance or codes
- Recommended in “Francis report” following Mid Staffordshire Public Inquiry.
- **Gov’t in England has agreed to statutory Duty of Candour on organisations: NOT JUST DOCTORS**
- Will be one of the ‘Fundamental Standards’ regulated by the national regulator: Care Quality Commission
However….

- Original proposals were for duty of candour on organisations to be restricted to fatal or “severe harm” cases only
- We argued that all significant harm should be covered.
- NOW ACCEPTED BY GOVERNMENT!
Effect of restricting Duty of Candour

- Legitimises cover ups of everything deemed less than “severe harm”
- Puts health professionals in impossible situation – follow professional code or employer’s instructions
- Ties up staff in assessing likely level of harm rather than getting on with explaining “something went wrong”
WHAT NOW?

- CONSULTATION ON DRAFT CQC DUTY OF CANDOUR REGULATIONS NOW OPEN
  Deadline 25th April
- Guidance from Care Quality Commission to follow
- Whatever statutory provisions are made, there is nothing stopping individual organisations developing best practice. For example:
Practical steps to take now:

- Raise awareness of *Being Open* guidance
- *Train staff* (we can help)
- *Audit incidents, complaints and claims* (we can help)
- *Take disciplinary action* where appropriate
- *Regulators to take firm and consistent stance*
What else is AvMA pushing for?

- Confirm that duty applies to misdiagnosis / delayed diagnosis (definition of harm)
- Include requirement to train, support & protect staff
- Include requirement to take disciplinary action or refer individuals who deliberately breach
- Adoption across UK (Scotland, Wales and Northern Ireland all now showing interest)
Should Open Disclosure be left to guidance or be MANDATORY? “Frown” on ‘cover-ups’ or outlaw them?
Thank you! Any questions?

Send in your questions / comments!

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