The Push for Transparency in Healthcare

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"Transparency" is one of the hottest topics in the healthcare industry nationwide. This buzzword is ubiquitous among hospitals, medical schools, government healthcare agencies, pharmaceutical/medical device companies, professional medical organizations, consumer advocacy groups, medical journal publishers and other groups. What does this transparency in healthcare mean?

The Recent Origins Of Transparency In Healthcare

The recent history of transparency in healthcare can be traced back at least a decade. In 1999, the Institute of Medicine released *To Err is Human,* a controversial report which estimated that between 44,000 and 98,000 deaths each year in the United States were attributable to preventable medical errors.[1] The methodology, conclusions and implications of this study have been criticized by many groups. But, the substantial impact of the study is undeniable.

The Institute of Medicine report found that the errors were more commonly caused by "faulty systems, processes and conditions" than by the reckless act or mistake of an individual person or group.[2] It concluded, therefore, that the best way to prevent these types of medical mistakes from occurring would be by re-designing the system to make it safer at all levels.[3]

In March 2001, the Institute of Medicine released another report, "*Crossing the Quality Chasm: A New Health System for the 21st Century.*" This report presented a strategy and action plan for bringing state-of-the-art healthcare to all Americans, and recognized that accomplishing such a daunting task would require a fundamental and sweeping redesign of the entire healthcare system. The report identified ten general principles to guide healthcare systems in their efforts to design systems that were more reliable, responsive and available to patients — three of which demonstrated the commitment to change how healthcare is delivered:

- *The patient is the source of control.* They should be given the information and opportunity necessary to exercise the degree of control they choose over their healthcare decisions. The system should be able to accommodate differences in patient preferences and encourage shared decision making.

- *Knowledge is shared and information flows freely.* Patients should have unfettered access to their own medical information and to clinical knowledge. Clinicians and patients should communicate effectively and share information.

- *Transparency is necessary.* The system should make available to patients and their families information that enables them to make informed decisions when selecting a health plan, hospital, or clinical practice, or when choosing among alternative treatments. This should include information describing the system's performance on safety, evidence-based practice, and patient satisfaction.

The redesign envisioned by these reports was boosted by the simultaneous growth occurring in the communication and technology industries. Never before had it been possible to collect and track such large amounts of healthcare data and disseminate such vast amounts of information to so many interested people. By 2000, a home computer with Internet access was becoming commonplace, putting a wealth of information at the fingertips of the interested healthcare consumer.

Since the Institute of Medicine's reports, the focus on patient safety and system change for reducing errors has grown. Patient control, shared knowledge and the free flow

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of information are core principles behind the trend of transparency and accountability in the healthcare profession, where the ultimate goal is always improved patient care and safety. These trends can be seen at all levels within the healthcare system — at the patient/physician level, at the hospital/institutional level, and beyond to other industry relationships affecting healthcare. Here are just a few examples.

Transparency Regarding Medical Complications And Risk Management

"Apology laws" are good examples of legislative efforts to improve communications between patients and their healthcare providers when medical mistakes occur — in other words, to promote transparency in the provider-patient relationship. Increasingly emerging over the past decade, these laws are designed to reduce the liability risks a healthcare professional faces when talking with a patient about a medical mistake or an "unanticipated outcome." Without such protection, a physician is faced with having expressions of apology or sympathy used against them in a civil lawsuit for malpractice. Over thirty states have enacted "apology laws."

In addition to the individual patient-centered advantages identified by such apology laws, broader benefits were identified. By encouraging healthcare professionals to talk more openly about mistakes, the hope was that this would lead to the increased ability to investigate these mistakes, and ultimately, the implementation of systemic changes necessary to improve patient safety.

Not all state apology laws are alike. Some can be very limited in scope, making it important to understand the limitations of the applicable statute. The majority of states with apology statutes exclude only expressions of sympathy, *not admissions of fault.* Ohio enacted its apology law effective September 13, 2004. This apology law defines the euphemistically worded "unanticipated outcome" as "the outcome of a medical treatment or procedure that differs from an expected result." See O.R.C. §2317.43 (B)(4).

Whether apology laws have decreased the number of lawsuits filed by patients is still a topic for debate. Proponents of the laws cite statistics from the U.S. Department of Veterans Affairs, the University of Michigan and other health systems for support that these laws work to decrease litigation costs. These institutions have formal "full disclosure and apology" programs that combine apologies with early-intervention risk management and resolution efforts on a broad scale.

The debate about what happens after a medical mistake is disclosed to a patient is ongoing. Many proponents of apology laws recognize that disclosure of medical mistakes is only one step toward developing a better system and are urging institutions to adopt policies that combine disclosure with offers of compensation for failures to meet the standard of care.

Transparency In Healthcare Information, Including Quality Data

The advancements in communication and healthcare technology over the past decade, and the average consumer's increased ability to access information from the Internet, have changed the focus of the healthcare market — enabling transparency.

Numerous websites now rank healthcare providers according to how well they do in achieving certain quality measures. For example, HealthInsight computes hospital rankings by using publicly reported data downloaded from the Centers for Medicare and Medicaid Services' ("CMS") "Hospital Compare" website (www.hospitalcompare.hhs.gov). The information on the CMS website comes from hospitals that have voluntarily agreed to submit this quality information, and to have it made public. Health Grades (www.healthgrades.com) provides basic hospital ratings in thirty different procedure/diagnosis areas free of charge. More in-depth information is available for a fee.

State legislatures and administrative agencies are joining the push for transparency in healthcare quality/performance data. As of April 2007 the Ohio Department of Health requires Ohio hospitals to report semi-annual performance data with the ultimate goal of making this data available to all Ohioans. The Department is currently collecting six measures endorsed by the Joint Commission on Accreditation of Healthcare Organizations, the Centers for Medicare and Medicaid Services and the National Quality

Forum regarding heart attacks, heart failure and pneumonia. In addition, the Department is collecting five Patient Safety Indicators created by the Agency for Healthcare Research and Quality regarding surgical procedures. The information reported by the hospitals is now available in the following report: (www.odh.ohio.gov/healthstats/hlthserv/hospitaldata/hospperf.aspx). In addition, Ohio hospitals were required to start reporting average charges for their top 60 outpatient procedures by May 2007.

Some medical institutions are taking transparency a step further. Paul F. Levy, President and Chief Executive Officer of Beth Israel Deaconess Medical Center ("BIDMC") has become a strong advocate for quality, safety improvement and transparency. The BIDMC website explains its "profound commitment to greater transparency in the healthcare system" by stating that transparency means that everyone, including patients and people in the community, should be able to see appropriate information to help them judge how well the hospital is doing providing care relative to national and local benchmarks.[4] At the same time, BIDMC feels that gathering and reporting this information will help it improve the quality of the care it provides. The BIDMC website contains the following observation: "Across the country, various healthcare organizations are taking steps to make the delivery of healthcare more transparent. By becoming one of the increasing number of hospitals that are publishing their own quality and safety data, BIDMC hopes to build a safer, higher-quality health system - and encourage other academic medical centers to do the same."

Transparency in Relationships Between Healthcare Providers and Industry

Over the past several years there has been growing public skepticism regarding the relationships between healthcare providers and pharmaceutical/medical device companies. This negative perception has been fueled, in part, by the increasing cost of healthcare and certain high profile stories of alleged improprieties, including vast waves of lawsuits.

This "appearance of impropriety" has prompted new and revised guidelines and legislation intended to rebuild faith in the healthcare industry, eliminate the perceived and actual conflicts of interest and promote transparency in the relationships between providers and companies.

One significant effort to correct this "appearance of impropriety" and promote transparency has come from the pharmaceutical companies themselves. In July 2008, the Pharmaceutical Research and Manufacturers of America (PhRMA) released the updated *Code on Interactions with Healthcare Professionals*, superseding and building upon the 2002 version (www.phrma.org). PhRMA is a trade organization representing companies that develop and market new medications, primarily pharmaceutical and biotechnology companies.

The revised PhRMA Code became effective on January 1, 2009. Nearly every major pharmaceutical manufacturer has voluntarily signed off on this new Code. Changes have been made to almost every aspect of the PhRMA Code, including substantially tighter restrictions on meals, gifts, entertainment, continuing medical education sponsorship, consulting, speaker training programs, relations with providers who are members of formulary or practice guideline committees, and the availability of prescribing practice statistics to pharmaceutical sales representatives (aka detail representatives).

Conclusion

Transparency in healthcare appears to be an inevitable evolution in the information and consumer age. It has already led to widespread changes in the way that nearly all the players in healthcare operate – from healthcare consumers, to providers, to third party payers, to academia, to government, and industry. Transparency is likely a national debate that will continue to dominate healthcare policy among these groups in the coming years.

Endnotes

1 *To Err is Human: Building a Safer Human System*, Institute of Medicine; November 1999.
2 Id.
3 Id.
4 http://www.bidmc.org/QualityandSafety WhythisInformationisImportantto You/UnderstandingThisReport.

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Anne enjoys the variety her practice offers. In addition to defending cases involving a wide range of medical disciplines and topics, she counsels hospitals and health care professionals on risk management issues, and has lectured on nursing documentation. Anne's passion for work is fueled by her dedication to both the legal and medical professions. Outside the office, she enjoys spending time with her family and camping.

Anne is a member of both the Cleveland and the Ohio State Bar Associations.

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Mr. Taber belongs to several professional and community organizations including the Ohio State Bar Association, the Cleveland Metropolitan Bar Association, Defense Research Institute, the University of Michigan Alumni Association and Bay Soccer Club. Ed received his B.A. from the University of Michigan in 1993, and his J.D. from the University of Cincinnati in 1996, where he was a Director of the Moot Court Board and competed on the national insurance law and labor law moot court teams.

Ed was born in Michigan and grew up in the Cleveland area, where he lives with his wife and three children. When he is not preparing for trial, Ed may be found coaching soccer or involved in water sports, golf, skiing or home improvement.