

The Need for Apology in Dentistry

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When Mr. B attends his brother's dentist (who has been highly recommended for his compassion and honesty) for the first time, he has a toothache in the upper left bicuspid area. A radiograph reveals large distal caries on both tooth 24 and tooth 25. Tooth 25 also exhibits rarefying osteitis apically, whereas tooth 24 has an intact lamina dura. The results of vitality tests are normal for tooth 24, but tooth 25 has no response to cold or electrical stimulus. Root canal treatment is recommended for tooth 25. The options and costs of the treatment, which includes a post and core and subsequent crown, are explained, and Mr. B gives consent to proceed. The patient is also informed of the possibility that root canal treatment may be needed for tooth 24 because of deep progression of the caries, and this discussion is noted in the records.

An anesthetic is delivered, and the dentist instructs his assistant to place a rubber dam on tooth 25 while he does a waiting recall exam. On accessing the chamber of the tooth, the dentist is somewhat surprised to see that the pulp is vital. However, when the trial file radiograph is taken, he realizes that the rubber dam has been placed on tooth 24, rather than tooth 25. The dentist excuses himself to his private office to call the Royal College of Dental Surgeons of Ontario (RCDSO) for advice on what to say to the patient. He feels that he should apologize and work with the patient on coming to an acceptable solution. He is surprised when the College representative says that an apology is out of the question, since it would imply fault and could negate his malpractice coverage. As the dentist returns to the treatment room, he ponders his options: tell the patient exactly what happened and say only that he regrets that the situation occurred, a choice that will likely have negative repercussions in terms of maintaining this new patient and his brother's extended family, or tell the patient that both teeth needed root canal treatment after all, as he had earlier indicated was a possibility, a choice that would be unethical and deceptive.

This dentist faces a difficult ethical dilemma, in that both choices are not entirely in keeping with his values and professional integrity. He also knows that open communication is one reason why his patients trust him. A patient's mouth is a very private part of the body, so disputes regarding mishaps in this area can cause strong feelings of anger, betrayal and vulnerability. In my opinion, it is essential to be able to say "I'm sorry" when an apology is in fact appropriate. One of the important effects of an apology is the restoration of a semblance of trust, which entails shared values and beliefs. When a dentist apologizes to a patient, he or she is acknowledging the patient's feelings of being wronged, as well as reaffirming common values of right and wrong. This can lessen the emotional injury and make the patient feel less vulnerable to future error (i.e., the same error is less likely to be repeated).¹

However, dentists are prevented from apologizing because of their perception that an apology is a sign of weakness and an admission of liability. The RCDSO's recommendation complicates the issue even further. One of the RCDSO's reasons for not offering an apology is the concern that doing so will lead to litigation. In other words, in the RCDSO's view, an apology amounts to an admission of guilt. In addition, in Ontario and Quebec malpractice insurance is administered by the licensing bodies, which raises concerns about conflict of interest. It is my opinion that an organization such as the RCDSO should not be advising dentists about whether or not to apologize for an error (and warning of the risk of losing malpractice coverage), while purporting to uphold the rights of patients. The risk of compromising one's malpractice insurance is reason enough for dentists to refrain from apologizing, but patients need to hear an apology to achieve closure after an incident such as the one described above.

Various medical associations in Canada have accepted the fact that a timely and empathic expression of sorrow, regret or condolence may be appropriate and should not be construed as an admission of liability or fault.² An empathic response such as, "This must be very difficult for

you” or “I wish things had turned out differently”³ is a step in the right direction. Expressing these feelings soon after an adverse outcome can help to promote the patient’s confidence in the dentist and prevent unnecessary feelings of distrust.

Many patients who have experienced adverse events have said they would be less upset if the health care practitioner had disclosed the error honestly and compassionately *and had also apologized*.⁴ In a *National Post* article describing a lawsuit against St. Catharines General Hospital, the parents of a missing stillborn child were quoted as follows:

We understand that mistakes are made. We just wanted someone to come before us and apologize, . . . to look us in the eyes and say, “I screwed up, it was me, I’m sorry.” We would never have pursued legal action if someone at the hospital had just explained to us what happened.⁵

This approach has been borne out by studies of medical malpractice: when physicians were honest about what had happened and accepted responsibility, patients were *less* likely to sue.⁶ An apology that is properly given and accepted can often defuse anger and even prevent litigation. In some cases, obtaining an apology is the main object of litigation. The process of suing the defendant is thus something other than an attempt to recover a loss or seek monetary compensation for pain and suffering; it may simply represent the desire for an explanation of what happened, as well as an attempt to secure some form of retribution.

Dental ethics dictates that dentists should have as their first consideration the well-being of their patients.⁷ Apologizing for errors is in the best interests of the patient; not apologizing protects the dentist’s pride and his or her malpractice insurance. Patients have a right to suitable compensation after a dental mishap, and I believe that dentists should assist patients, as much as possible, in determining and obtaining that compensation. If current laws in Canada prevent us from doing the right thing, maybe we should be working to change those laws rather than compounding the problem by not apologizing. In the United States, the Supreme Court of Vermont held that a doctor’s admission of a mistake did not automatically prove that the doctor departed from the appropriate standards of care.⁸ The states of Texas, Massachusetts and California have gone further by enacting legislation that prevents expressions of sympathy or apology from being used to strengthen a malpractice case.⁹

Dentistry is complex, people are human, and mistakes do happen. Dental students and practising clinicians need to be trained to deal with mistakes appropriately. This approach will be appreciated by our patients, will decrease our feelings of shame, will likely result in fewer complaints to the licensing bodies and the courts and, in cases like the one described above, should make our choices easier. ♦



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Response from the RCDSO

Thank you for the opportunity to comment on Dr. Barry Schwartz’s views concerning the need for dentists to apologize.

There are many circumstances in dental practice, such as the case study provided by Dr. Schwartz, where an apology not only is appropriate but also is recommended by the Professional Liability Program (PLP) of the Royal College of Dental Surgeons of Ontario.

Dentists are legally and ethically required to inform their patients whenever problems arise regarding treatment or treatment outcomes and to tell them, in very specific terms, what the next steps will be in correcting the particular problems. Such discussions must be well documented in the patient record.

“This must be very difficult for you” or “I wish things had turned out better” are not, in fact, apologies in the strict sense of the word. Such statements are merely sympathetic, noncommittal phrases that

show the practitioner's concern regarding the incident in question; they are exactly the kind of statements that the PLP often advises dentists to use when mistakes or mishaps occur.

What needs to be avoided, however, is saying anything that might be construed as an admission of liability. Such admission may prejudice an insurer's ability to defend the dentist and thereby lead the insurer to deny coverage. This is likely the position that all insurers would take, not just the insurer used by the PLP. How the courts would ultimately interpret the context of an apology is what counts, not the stated position of Canadian medical associations or experts in the area of dental ethics.

When a mishap occurs that is clearly not defensible, such as the example cited by Dr. Schwartz, the dentist should inform the patient of the problem and express genuine empathy or regret in the sympathetic, noncommittal manner outlined above. However, it would be unwise to make any financial arrangements with the patient to correct the problem without first consulting with the dentist's provider of errors and omissions insurance.

It is one thing for a dentist to show that he or she deeply regrets a mistake or mishap, but it is quite another for the dentist to jeopardize his or her malpractice coverage by making a spur-of-the-moment offer of financial compensation. A financial resolution may well be required, but it should be handled in the proper manner, with the appropriate documentation, releases, and other paperwork.

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