OPEN DISCLOSURE NATIONAL POLICY AND GUIDELINES

Kevin Dunne, Associate
kdunne@hayes-solicitors.ie

In a welcome development for both patients and hospital staff, the Health Service Executive (HSE) together with the Clinical Indemnity Scheme have recently launched National Policy and National Guidelines 2013 documents on open disclosure. Kevin Dunne outlines the issues.

The quality of work carried out – including pilot projects and interviews – is clearly reflected in the final publications. The key objectives of these guidelines are to establish a standardised approach between healthcare professionals and patients in relation to the communication of information following an adverse event, and to ensure that communication with patients occurs in a supportive and timely manner.

Open disclosure is described as “An open, consistent approach to communicating with patients when things go wrong in healthcare. This includes expressing regret for what has happened, keeping the patient informed, providing feedback on investigations and the steps taken to prevent a recurrence of the adverse event”. An adverse event is “an incident which results in harm to a person that may or may not be the result of an error”.

The Medical Council’s Guide to Professional Conduct and Ethics for Registered Medical Practitioners obliges doctors to disclose adverse events to patients. However, doctors are often reluctant to engage in this type of communication with patients for fear of attracting litigation. This is specifically addressed in the new documents, with numerous excellent examples and advice in relation to the process of engaging in open disclosure.

An apology, for example, is described as “a genuine expression of being sorry for what has happened. It is an expression of regret”. It is not, nor intended to be an admission of liability.

The HSE and the Clinical Indemnity Scheme recognise that adverse events affecting a patient are also very distressing for the doctor or nurse involved in that patient’s care – and have reiterated the importance of providing an environment in which staff feel supported in the identification and reporting of adverse events. The HSE will also provide and facilitate training.

Importantly, the State Claims Agency and the Medical Protection Society fully support open disclosure and the launch of the National Policy and National Guidelines.

There is currently no protective legislation to assist the open disclosure process. Legislation is expected in the upcoming Health Information Bill in relation to this process and it has been recommended that “a statutory provision be considered which would allow medical practitioners to make an apology and explanation without these being construed as an admission of liability in a medical negligence claim”.

It should also be observed that open disclosure is not only about an apology or an expression of regret but includes issues of openness and timeliness of communication, an acknowledgment and professional support following an adverse event between doctors and patients, investigations, errors and the importance of confidentiality.

In summary, even in the absence of legislation seeking to provide legal protection/privilege for the open disclosure process, doctors are reminded that expressing regret for a patient’s experience is not, nor is it intended to be, an admission of liability. Issues of liability or blame should not be projected or accepted unless this has been investigated and agreed to in advance.

Doctors and healthcare providers should familiarise themselves with the new national policy and guidelines. It is worth noting the World Health Organisation’s views: “Disclosure is not about blame, either apportioning blame or accepting blame. It is about integrity and being truly professional. Accepting responsibility and embracing accountability are part of that professionalism”.

The two HSE documents Open Disclosure – National Policy and Open Disclosure – National Guidelines, Communicating with service users and their families following adverse events in healthcare, were published in November 2013 and are available at www.hse.ie