STATEMENTS

Professional Apology: Dilemma or Opportunity?

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Society uses the apology, an expression of remorse, as a means to address wrongs. The legal system may view the apology as an admission against personal interest, and as a result, some states’ legislation now limits the admission of an apology in determining guilt. Ethically, the apology may be a necessary tool to reestablish a relationship. The action of an apology involves not only legal and ethical issues, but also the practical issue of effective delivery. This article explores issues surrounding the apology in the current pharmacy practice and legal environment.

Keywords: professionalism, apology

INTRODUCTION

During the course of their career, the professional pharmacist may have multiple opportunities to say “I’m sorry” or “I apologize,” yet may never do so. Though these phrases may appear benign on the surface, certain aspects of society may construe them as an admission of guilt or as a suggestion of liability in the instance of a medication error, for example. Offering a sincere, effective apology at the appropriate time should be the goal of both the legal system and of pharmacy education.

With this in mind, the future pharmacist should expect to deal with both a legal and a moral dilemma: wanting to offer an apology but fearing the possible legal repercussions. This article affirms the position that pharmaceutical education should encourage and teach students that attitudes of sympathy and remorse need to be incorporated into the professional life as it relates to patients.

HISTORY OF THE APOLOGY

Society has historically placed a high value on an apology in resolving disputes.1 Situations ranging from minor altercations to significant atrocities beg for reconciliation so that emotional healing and renewed relationships may occur. Typically, one of the first “life lessons” that parents teach their children is how to apologize for a wrongdoing, thereby helping children to take responsibility for their actions. Organizations such as the Cub Scouts, Brownies, YMCA, and religious groups continue to reinforce this parental teaching of “doing the right thing,” while civic organizations, such as Rotary International, encourage adults to extend goodwill and to foster friendships and positive relationships which may occasionally include the use of the apology. Perhaps, the pharmacy profession needs to take a lesson from these foundational groups.

For example, consider the apology made by President Clinton in 1997 to the survivors of the Tuskegee experiments. The “Tuskegee Study of Untreated Syphilis in the Negro Male” occurred in 1932 with 399 indigent Southern black men who were recruited by health researchers to chart the progress of the disease. The study’s purpose was to withhold treatment and compare the health of those individuals with syphilis to the health of those without the disease. Because government health workers recruited them, the participants believed they received free medical treatment. At the conclusion of the study in the 1940’s, 100 men had died of syphilis, 40 wives had been infected, and 19 children had contracted the disease at birth.2-5

In the 1970s, the US Government began compensating participants with a $10 million out-of-court settlement and provision of free medical care. However, the government never admitted any prior wrongdoing until 1997 when President Clinton, at a White House ceremony said, “The American people are sorry – for the loss, for the years of hurt. You did nothing wrong,

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but you were grievously wronged. I apologize and I am sorry that this apology has been so long in coming." Though nearly 65 years had passed since the beginning of the study, response to the apology by the survivors of Tuskegee was one of relief and gratitude.

LEGAL VIEW OF THE APOLOGY

Legally speaking, few methods presently appear to offer a “safe” apology. Thus, a lawyer’s admonition to “keep your mouth shut or your words will be turned against you in court” seem to be pretty sound advice. Furthermore, almost any trial attorney would counsel a client against such expressions of remorse if the case appeared to be headed for the courtroom.

Most defense lawyers would have legitimate concerns about recommending an apology except under those circumstances where liability was clearly an issue. Unfortunately, if a pharmacist errs and a patient experiences harm, liability becomes an issue, and the defense attorney will commonly recommend against offering an apology to prevent creating or reinforcing liability. Furthermore, most lawyers will focus on how best to deny any pharmacist responsibility and will look to assert what defenses the pharmacist may have against a charge, even considering potential counterclaims against the injured party. While it may be good for the soul to make an apology, the usual modus operandi has been to avoid any statement of contrition as it may be considered tantamount to an admission of guilt or liability.

LEGISLATION AND THE APOLOGY

Fear of the apology being used as an admission of guilt might prevent pharmacists from openly and freely offering one. However, Massachusetts, Texas, and California have enacted legislation prohibiting the introduction of apologetic expressions of sympathy into evidence. Georgia and Vermont have case law to the same effect. The 3 states mentioned earlier that have enacted legislation prohibiting evidence of an apologetic nature have all adopted fairly similar language. For example, the California legislation states in relevant part:

The portion of statements, writings or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault, however, which is part of or in addition to, any of the above shall not be inadmissible pursuant to this section.

Note the importance of the fact that the legislation adopted by these states protects only “partial” apologies and expressions of remorse, that is, statements that do not admit liability or fault. In these states, a “partial” apology, an expression of contrition, and an acknowledgement of blame (eg, “I’m sorry about this”) would all be inadmissible as evidence of negligence, wrong doing, or impeachment.

This type of legislation demonstrates that at least a few states value a policy of promoting reconciliation instead of self-recrimination by medical professionals. Superior Court Judge Quentin Kopp, the moving force behind the California legislation, aptly conveyed this when he wrote “that an entire school of jurisprudential scholars, commentators and teachers has alerted us to the merit and calming value of permitting human, natural sentiments to be uttered by human beings without fear of use against them in litigation... [T]he Law should do no less to promote tranquility rather than hostility...”

POTENTIAL BENEFITS OF THE APOLOGY

Although most attorneys would advise against using the apology, the Veterans Affairs (VA) Medical Center in Lexington, Ky, started a policy of proactively assuming responsibility for medical mistakes after they lost 2 major malpractice cases. Their policy encourages employees to report all mistakes and to immediately investigate the incident. The hospital contacts the patient and informs him or her of the error regardless of whether the patient is aware of the error. Hospital personnel then meet with the patient, encouraging him or her to bring counsel and anyone else he or she wishes to the meeting. The patient receives a verbal apology at the meeting and, if desired, a written apology. The hospital also discusses with the patient the steps it intends to take to insure the incident does not occur in the future. Hospital personnel assist the patient in obtaining further medical care and benefits. Furthermore, when the risk management committee determines the hospital to be at fault, hospital personnel offer a settlement.

The Lexington VA’s policy represents a decided change from the adversarial combination of little disclosure and much opposition. Yet, this new approach appears to be reaping unexpected dividends – the hospital’s malpractice costs are at an all-time low compared with those of 36 comparable VA hospitals. This policy appears to bring about rapid and satisfactory conclusions to unfortunate incidents of health care error.
A 1994 study showed that 37% of the patients and families who filed medical malpractice suits might not have done so if they had been given a complete explanation and apology, factors they considered to be more important than monetary compensation. Offering the apology affords the patient the opportunity to see the human side of the pharmacist and to respond in a similar manner. In those instances where individuals did receive an apology, the victims claimed the apology “was the most valuable part of the settlement.” Could it be that an apology actually mitigates errors and their propensity to litigation? Litigation and trials can be expensive, frustrating, and fraught with uncertainties. Preventing both should be a high priority.

Given the previous findings, logic presumes that the “admit and apologize” response may mitigate the prescription error while the “deny and agitation” mentality may have more of a tendency to instigate litigation. Obviously, the apology is certainly not expected to be a panacea in every situation, but in the appropriate case, apologizing is clearly an option that should be considered.

Rarely do regular customers of a business seek to litigate an issue if they feel comfortable and at peace with the employees they routinely encounter and who take appropriate action in resolving a problem. With this evidence in mind, one would think that the pharmacist-patient relationship should foster understanding, acceptance, and forgiveness in an even more positive fashion. The offering of an apology says to the patient that even though our relationship may be damaged, I, the pharmacist, want to see it repaired and you, as a person, made whole again.

On the other hand, one must consider the possibility that the patient may not accept the apology, resulting in the case going to trial. In that event, the attorney’s position of defending a pharmacist who appears compassionate and remorseful is much more advantageous than defending a pharmacist who appears cold and heartless. The plaintiff’s counsel will invariably ask at some point, “Did you call the patient, inquire of his/her recovery, send a get-well card or flowers, or did you ever say, ‘I’m sorry’?” Offering an apology allows the pharmacist to appear humane. In such a case, the apology can actually be beneficial when observed from the jury box because the jury members see a compassionate individual whose only crime is that of being an imperfect human.

Although well-respected pharmacy educators, as well as pharmacy risk managers, may be skeptical to embrace a system like that adopted by Lexington’s VA Medical Center, this illustration should serve as an example of success in limiting risk associated with potential pharmacy malpractice actions. Furthermore, studies have shown the importance an apology can have in structuring a complete and viable resolution.

**EMOTIONAL COMPONENT OF THE ERROR**

Daniel W. Shuman of Southern Methodist University states, “[A]n apology has the potential to help people who have suffered serious emotional harm through the wrongdoing of others in ways that monetary damages alone cannot.” Pharmacists practice “espouses caring and an emotional commitment to the welfare of patients as individuals who require and deserve pharmacists’ compassion, concern, and trust.”

The American Pharmacists Association Code of Ethics directs pharmacists to act with a caring attitude and a compassionate manner and, thus, implies that apologies are appropriate. Part of this call is to alleviate fears, to provide reassurance, and to assist in healing not only the physical but also the emotional state of the patient. Indeed, where the “emotional and moral dimension” of a medication error is ignored, the result can be at worst, a stalemate, or at best, a less than satisfactory settlement. Emotional healing begins to take place when the pharmacist says, “I’m sorry.”

Pharmacy students need to realize that emotional healing may come not only by the passage of time but also by the utterance of words with the purpose of setting a soul at ease. While most individuals want to take responsibility for a committed wrong, society suggests adults should avoid offering an apology for fear of reper- cussion, which may limit the pharmacist’s willingness to apologize. The resulting moral dilemma complicates and clouds the issue for the pharmacist. If a personal relationship exists between patient and pharmacist, and the pharmacist does not foster the relationship post-injury, both parties suffer. The patient feels deserted; the pharmacist feels guilty. Just as the patient needs relational healing, so does the pharmacist. The pharmacist’s offer of an apology allows healing to take place for both parties. The pharmacist addresses the guilt complex by participating in the apology, which offers an opportunity to extend a helping hand to the patient, thereby reestablishing some measure of patient trust in the pharmacist.

**ETHICAL NEED TO APOLOGIZE**

Just as parents encourage children to “do the right thing,” pharmacy educators should strive to teach their students to likewise “do the right thing” for their patients.
Acts of compassion are a virtuous goal that all educators should strive to instill. As pharmacists, we must ask whether we are pursuing an action because it is legally the best course of action to take or because it is the right thing to do. Are we more concerned about doing the correct ethical action or the correct legal action? Ultimately, it boils down to this: if an apology is right for the patient, an apology should be pursued. In applying this standard, the pharmacist maintains the highest professional code of ethics.

Although attorneys are also governed by an exhaustive code of ethics, they often remain more concerned about the correct legal action as opposed to ethical action. Since the pharmacist’s decision often rests on attorney’s counsel, pharmacists should exercise wisdom in remembering the perception of the legal profession’s ethical standing. Consistently, the Gallop poll confirms that the public perceives the legal profession at or near the bottom in rankings of ethics and honesty. Pharmacists should never forget whose advice they are taking when they consider the ethical decision of whether to apologize. When faced with this difficult decision, pharmacists must look deep within themselves to determine the right thing to do. Pharmacy has long been viewed as an ethical, honest, and compassionate profession whose members see those in need and respond appropriately. Offering an apology, when needed, can strengthen this high ethical standard.

**HOW TO SAY “I’M SORRY”**

Considering the potential legal ramifications, students need to be instructed how to respond to a medication error. The question is not a matter of “if” the student will need to respond to an error, but rather “when.” As long as the human component is involved with the prescription-filling process, errors will occur—even under the most careful and cautious eye of the best-trained pharmacist. Assuming only a 0.05% error rate, a pharmacist filling 125 prescriptions per day will commit one error per month. The reasons why a patient received a 0.1 mg versus a 0.2 mg tablet may be obvious, but explaining why a patient received amoxicillin versus tamoxifen may be more difficult. As a matter of fact, the pharmacist may never know how or why the error occurred. In this instance, the pharmacist should indicate to the patient that an investigation will attempt to determine how the error occurred and that someone will inform them of the findings. If such a promise is made, then follow-up is critical. Credibility of the pharmacist and pharmacy will be further compromised if the pharmacist does not take post-error statements seriously.

Since errors are inevitable, students need instruction in the “how to” of an apology as well as in the “need to” of the apology. When an error occurs, every patient needs to hear three specifics: (1) an explanation of what happened, (2) an apology from whomever is responsible, and (3) an assurance that changes have been made to prevent the harm from occurring again. The apology begins with the simple statement of “I’m sorry.” As a practical exercise, a classroom of pharmacy students should say in unison, “I’m sorry.” This exercise will expose the motivation of “I had to say this” (because the professor required it) as opposed to “I wanted to say this.” Students should then repeat the apology but with feeling. This will emphasize the monumental difference between a token apology and a credible one. A “canned” or less-than-sincere apology may only serve to solidify the injured individual’s desire to strike back in the form of litigation. Instructors should also add the subject of nonverbal response to the classroom discussion. Nonverbal actions in sync with verbal actions will help to avoid the appearance of providing a faked apology. This situation can be very comparable to a sibling being forced by parents to say “I’m sorry.” Students should be taught to avoid the appearance of offering a forced apology.

Instructors should stress that the apology need not be lengthy. Most apologetic encounters will last less than 1 or 2 minutes. However, it is not the length of the apology that is important, but rather the perception of sincerity. This remains crucial as it provides the assurance that the problem is recognized as important, that an investigation will occur, and if need be, that compensation to the injured party will be made. At this point, the pharmacist can emphasize that the pharmacy will implement methods to prevent the same or similar mistakes from happening again.

Of equal importance is the need for the pharmacist to convey to the patient their continuing worth to the pharmacy. The pharmacist should make special effort to get the patient back into the pharmacy. The patients’ re-entry into the pharmacy will help to ensure their continued use of the pharmacy and their ostensible forgiveness of the pharmacist’s unfortunate action. Finally, maintaining the view of the pharmacist as a health provider and not as a businessman can be accomplished by refunding the price of the prescription while providing the correct prescription free of charge. All of this is a small price to pay for reestablishing the relationship.
PRACTICE SCENARIOS

Once the basic guidelines have been established for the apology, instructors need to incorporate examples of errors in class discussion. Scenarios should begin with errors that resulted in no harm and culminate in errors that resulted in serious harm or even death. The examples given below illustrate the levels of potential harm that may result from pharmaceutical errors.

Error Example 1: No Harm
A patient returns to the pharmacy shortly after they received their prescription. They share with the pharmacist that the tablets, which are normally round and blue, are now green and oblong. Suddenly, the pharmacist realizes that glyburide 5 mg was dispensed in place of oxybutynin 5 mg.

Error Example 2: Moderate Harm
A patient appears at the pharmacy counter with a tube in hand. The patient shows the pharmacist that the topical product has left a greasy spot on the individual’s suit pants. The pharmacist soon realizes that the product dispensed was an ointment instead of the prescribed cream.

Error Example 3: Potentially Significant Harm
A patient calls the pharmacy complaining that the medication has caused a burning sensation in the affected eye. The patient confirms the pharmacist’s fear that an otic suspension was dispensed in place of an ophthalmic solution.

Error Example 4: Disastrous Harm
The pharmacist receives a request from an attorney to supply a copy of a prescription. From the poorly written prescription, the pharmacist dispensed methylphenidate. However, upon closer review, the order actually dictates terbutaline. Upon inquiry, the pharmacist discovers the patient has delivered an infant 14 weeks early.

Class discussion should include special consideration of each scenario. Students need to realize that no 2 situations involving errors are alike, and each individual may have special needs. The first example above resulted in no harm; however, had the medication been consumed, significant injury may have occurred. The pharmacist should employ the typical apology process in this event. In Example 2, clearly harm has occurred, albeit small. In addition to the typical apology process, the pharmacist should include an offer to have the clothing cleaned. Example 3 has the potential for serious problems. After giving the apology, the pharmacist should encourage the patient to seek emergency medical treatment and simultaneously offer to pay for such treatment. The last example represents the pharmacist’s nightmare – serious complications resulting from an error. In this situation, the pharmacist, if confronted by family members, should only apologize and ask for a phone number where the patient or family can be reached. The pharmacist should then contact corporate risk management or an insurance representative in order to explain the situation with the encouragement of immediate intervention on behalf of the pharmacy. This situation warrants more than a simple apology.

While an apology may not help achieve the best outcome in every case, the pharmacist should at least consider the prospect of an apology as well as other necessary actions. Instructors may need to encourage students to question whether their place of employment has a policy regarding the issuance of apologies. If not, perhaps the students should participate in the drafting of such a policy to ensure consistent corporate procedures.

CONCLUSIONS

An article in a recent pharmacy journal commands pharmacists, without exception to never admit they are wrong or responsible for an error. However, ethics teaches individuals the importance of doing the “right thing.” Pharmacists may tend to avoid the apology because the legal implications appear to outweigh the ethical obligation. While an apology admittedly may not solely replace the need for compensation for medication errors, it may serve to heal hurt feelings or avoid adding “insult to injury,” at the very core of the dispute. In any event, a pharmacist should explore all the possibilities in pursuing the best resolution for the patient. Pharmacy academia should take the lead in encouraging this type of response. The ability to provide an effective apology really separates the master pharmacist from the average pharmacist. The responsibility for creating the master pharmacist rests in large part with faculty, preceptors, and employers who prepare students to succeed by equipping them to deal with the difficult issues they will face in everyday pharmacy practice. This great responsibility also affords educators the tremendous opportunity to help shape the future of the profession.

REFERENCES


8. California Evidence Code, Division 9, Chapter 3, §1160(a).


