CAP CARES

The Cooperative of American Physicians'
Early Intervention Program

800-252-0555

The Physician's Guide to Handling Adverse Outcomes

A Publication for Members of the
Cooperative of American Physicians, Inc.

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CAP Cares is an exclusive benefit for members of the Cooperative of American Physicians, Inc. (CAP).

Handling an Adverse Outcome

When a patient experiences an adverse outcome, many questions may arise about your next moves. What should your first steps be after identifying an adverse outcome? What should you not say to a patient who has experienced an adverse outcome after being treated? How should you go about documenting observations or facts surrounding the case?

This booklet has been compiled from the collective experiences of physician members of the Cooperative of American Physicians, Inc. (CAP). It will take you through recognizing the adverse outcome, contacting CAP Cares, discussing the case with the affected patient, and beyond.

The information contained in this publication should not be considered legal advice applicable to a specific situation. Legal guidance for individual matters should be obtained from a retained attorney. Always consult CAP after an adverse outcome.

An Adverse Event Has Just Occurred … Now What?

Immediately after you recognize an adverse outcome, your first step should be to contact the CAP Cares Hotline at ***800-252-0555***.

During the first call, the CAP Cares team member will help you:

- Conduct the initial fact gathering
- Thoughtfully analyze the occurrence
- Anticipate discussions with the patient and family
- Prepare for questions likely to be raised
- Determine appropriate patient disclosure – both initial and ongoing
- Coordinate discussions among hospital personnel and other involved providers

Preparing for the Call

When calling the CAP Cares Hotline, be prepared to provide as much of the following information as possible:

- Patient information, such as name, date of birth, insurance, Medicare status, and Social Security Number
- Date and approximate time of the adverse outcome
- Location where the treatment was delivered
- Names of other physicians involved
- A clinically detailed description of the adverse outcome

Following an adverse outcome, an investigation may take place that can span days, weeks, or months. Effective communication with the patient and family members throughout this process may reduce the likelihood of a lawsuit and improve your chances of preserving the physician-patient relationship.

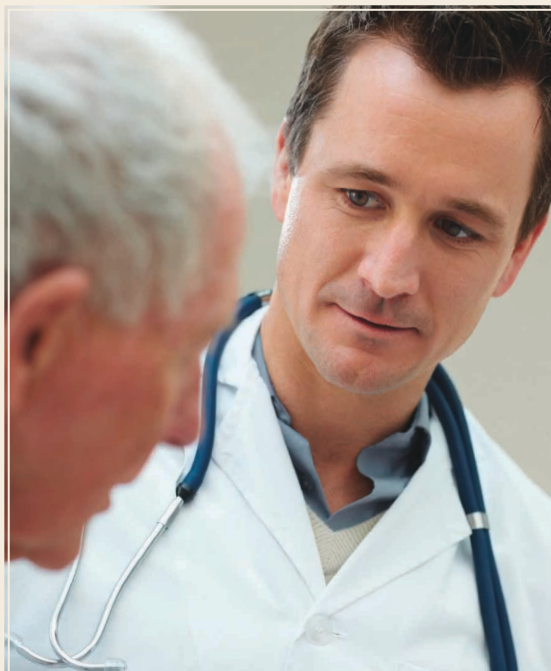
The Initial Discussion

Once the patient is stabilized, the patient or family member needs to be told of the adverse outcome as soon as possible. The physician often becomes aware of the unexpected outcome before the patient does. Thus, it may be the physician who controls the timing of the initial acknowledgment of the adverse outcome. The discussion will be different with each situation. For example, a physician may need to:

- Call a patient into the office to reveal a missed abnormal CT finding.
- Explain to a parent that the wrong vaccine was given to his or her child.
- Go to the patient's bedside to explain that a nerve block was given to the wrong leg.
- Explain that an intraoperative complication occurred.

Universally, patients need the same basic questions addressed after the unexpected occurs:

- What happened?
- How did it happen?
- What will be done to prevent this from happening again?



To address these questions, the response should reflect the information presently known. If the immediate cause is not known, the best information to provide is exactly that.

> *"While we do not know the cause at this time, we are working to understand what happened and will keep you informed as information is learned."*

Speculation is never helpful. Do not guess. That maxim applies to every physician, nurse, medical assistant, and provider who interacts with the patient. Incorrect information is worse than incomplete information. With shifting explanations, one will lose credibility. One cannot "un-ring the bell."

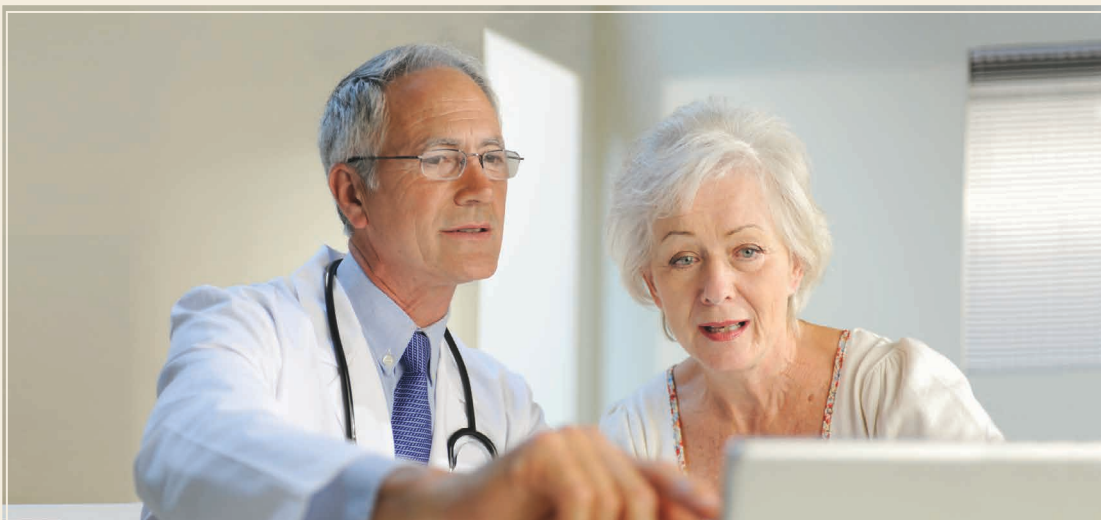
Simultaneously, the physician should be aware of his or her own state of mind. Physicians in these situations later relate that they experienced complex emotions ranging from anxiety to self-doubt.

If the adverse outcome involves a treatment risk, the patient may have poor recall of the informed consent discussion, including the risks involved. While the informed consent discussion may have been supplemented with a comprehensive informed consent form, patients never expect an adverse outcome. Regardless of the detail in the consent conversation and form, patients never expect to be injured by their physician.

Best Practices Immediately After an Adverse Event Is Recognized

The recommendations below are appropriate after any adverse outcome:

- Give the patient or family your contact information. Be available to answer questions by returning phone calls in a timely manner. This defuses the perception of avoidance or aloofness. With a complex injury, a series of follow-up encounters will occur and should be expected.
- Share what information is factually known at the time. The absence of information allows the patient to speculate – usually in the negative. Perceptions drive human behavior, and misunderstandings are more difficult to correct later.
- Timely interaction with the patient after an unexpected outcome prevents the assertion, *"No one told me what happened; no one talked to me about this."*
- Be patient and listen. The patient may have an emotional need for communication and wish to talk with the physician more frequently than the physician feels is necessary.
- Follow up and stay in touch with the patient and family during this time. Review the treatment plan, update it as needed, and discuss changes with the patient and family.



Be Aware of the Patient's Emotions and Expectations

A patient who has experienced a complication or medical error has been impacted physically, emotionally, and, likely, financially. The patient will have a markedly different perspective from that of the health care provider. Be prepared for a range of complex emotions and reactions, including fear, anxiety, depression, anger, frustration, and loss of trust.

Awareness and recognition of the patient's emotional state at this time are the first steps in mitigating an adverse outcome.

Try to understand the situation from the patient's point of view. Defensiveness and/or avoidance will be perceived as insensitive, incompetent, or worse – a cover-up. The patient needs a compassionate and confident leader at this time. This is an opportunity to reinforce the relationship and rebuild the patient's trust.

If the patient responds with anger, do not reciprocate, and do not be defensive. Acknowledge his or her feelings with responses such as:

> *"It is perfectly normal to be upset about this."*
>
> *"I'm so sorry that you had this complication. As we discussed, we knew this was a risk, and this is what we're doing about it …"*

A heartfelt *"I'm sorry you are going through this"* can go a long way toward preserving the physician-patient relationship.

The Power of Empathy

In the initial conversation with the patient and/or family after the adverse outcome, **what is said** and **how it is said** set the stage for the quality of all discussions that follow. Empathetic communication, which reflects the physician's innate humanity, is always appropriate after an adverse outcome. Empathetic communication shows recognition and understanding of the psychological impact this outcome has on the patient's physical and mental well-being.

Expressions of empathy and acknowledgment of bad or unfortunate occurrences reflect the human value of compassion and are globally recognized. Health care is no exception. Acknowledging the patient's emotions is encouraged. This also lets the patient see the physician's compassionate side.

It is important to understand the difference between **empathy** and **apology**.

Under California law, benevolent gestures of **empathy and compassion** cannot be used against a physician in a professional liability lawsuit. However, statements that **reflect fault** are admissible.

The following statements reflect an **empathetic** interaction with the patient:

- *"I'm sorry you are experiencing this."*
- *"I'm sorry this happened."*
- *"I'm sorry you are going through this."*
- *"I'm sorry this complication occurred."*

In contrast, the following statements reflect **admittance of fault**:

- *"I'm sorry;* ***this was my fault****."*
- *"This was* ***my mistake****."*

If a thorough investigation suggests that a true medical error occurred, there are multiple paths that may be taken. However, in the immediate aftermath of an adverse outcome, empathy is the best communication tool. The physician should use it wisely to reflect understanding of the patient's feelings at the time.

Thus, an **apology** is only offered *after* an investigation proves a true medical mistake has occurred. The disclosure to the patient and the apology are done in a coordinated manner, and as the conditions dictate.

Remember, patients expect the situation to be taken seriously. Although physicians may have seen this outcome before, this is an unfamiliar and serious experience for the patient. Perception management is vital at this time, and it is important that the patient does not perceive his or her physician as insensitive to the situation. This includes using comedy to "lighten the mood" in an attempt to defuse tension. The patient may not remember the discussion but will certainly remember a flippant or disrespectful comment that may obstruct further open communication.

Disclosure Is a Continuum

Disclosure is a conversation continuum with the patient that evolves over the clinical course of the case. Hospital-based events will involve risk managers or other specialists. If involved in an adverse outcome at a hospital, the physician needs to know what the hospital has disclosed. The patient should receive consistent information. Equipment may need to be sequestered to preserve evidence. As the hospital conducts its analysis, the physician may be asked to participate in a root-cause-analysis process.

Some adverse outcome events may require the hospital to report to a public health agency. The agency may perform an independent investigation and physician interview. Physicians should notify CAP Cares before participating in such an investigation.

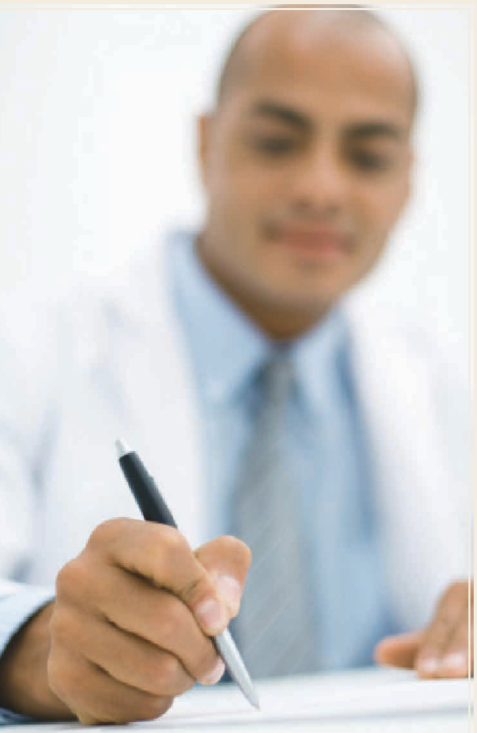
At the end of the investigation, a meeting may be scheduled with the patient and all involved persons to review the case and disclose findings of the investigation. Be sure to notify CAP Cares prior to such a meeting.

Documentation - Write It Right

Good medical record documentation preserves the facts. The following are some guidelines for documentation of an adverse outcome:

- Document only *objective* observations or known facts.
- Complications that were manifested during care should be reflected.
- Document specifically what the patient/family was told.
- Do not blame other professionals or facilities in the medical record.
- Do not *change anything* previously written. An addendum may be included as facts become available by dating the addendum on the day it is actually written.
- Do not document the call to CAP Cares or the CAP Hotline.

Members are also invited to call the CAP Cares team when necessary to document an adverse outcome.



It is hard to argue that good medical care was provided when the medical record is poorly documented.

Set Appropriate Expectations with Good Informed Consent

Informed consent is a process by which a fully informed patient can participate in choices about his or her health care. It originates from the legal and ethical right of a patient to direct what happens to his or her body and the physician's ethical and legal duty to involve the patient in the health care decisions. A physician should not delegate the informed consent discussion, except as allowed by law, to a nurse practitioner or physician assistant pursuant to the physician's written instructions.

The goal of the consent process is to align the patient's expectations with medical reality. Failure to provide a good informed consent may allow unrealistic expectations to develop. These expectations may cause the patient to perceive that he or she received substandard care.

Comprehension on the part of the patient is as important as the information provided. Assess the patient's understanding along the way, and document it thoroughly in the medical record. Include the following elements in any discussion about a procedure or treatment:

- Nature of treatment
- Expected benefits or effects
- Specific risks of the treatment
- Possible complications
- Alternative treatments
- Specific risks and benefits of alternative treatments
- Alternatives, including doing nothing