A Duty of Candour: a new era of openness and transparency?

Peter Walsh March 2014
WHAT IS AvMA?

- The independent charity for patient safety and justice
- Provides advice and support to individuals affected by a medical accident
- Works in partnership with NHS, health professionals, Gov’t departments and lawyers
- I am CEO and also a ‘patient for patient safety champion’ with the WHO
SOBERING FACTS

- FOR OVER 65 YEARS OF THE NHS A HEALTHCARE ORGANISATION HAS NOT IN BREACH OF ANY STATUTORY RULE IF IT ‘COVERS UP’ A MEDICAL ACCIDENT

- THE CURRENT SYSTEM *FROWS UPON* BUT **TOLERATES** COVER UPS
Lack of openness & honesty results in:

- Severe emotional stress and psychological harm to the patient / family
- Failure to recognise problems and improve safety
- For staff: “carrying a monkey on your back”; possible regulatory action
- Increased likelihood of complaints and litigation
Duty of Candour ("Robbie’s Law")?

SUPPORT

ROBBIE'S LAW
What exists now?

- NHS Constitution
- Being Open guidance
- GMC & NMC codes of practice
- The ‘contractual duty of candour’
The story so far:

- AvMA has campaigned for Duty of Candour for decades
- Recommended in Francis report. **Gov’t agreement with statutory Duty of Candour on organisations (in the CQC standards).** However….
- Original proposals were for duty of candour on organisations to be restricted to fatal or “severe harm” cases
- Dalton/Williams review recommends all **significant** harm covered. Decision awaited!
Effect of restricting Duty of Candour

- Legitimises cover ups of everything deemed less than “severe harm”
- Puts health professionals in impossible situation – follow professional code or employer’s instructions
- Ties up staff in assessing likely level of harm rather than getting on with explaining “something went wrong”

avma for patient safety and justice
What is AvMA pushing for?

- Include all incidents of suspected “significant” harm (i.e. “moderate harm” & worse) in statutory duty
- Include requirement to train, support & protect staff
- Include requirement to take disciplinary action or refer individuals who deliberately
WHAT NOW?

- Expected formal response from Secretary of State: any time now!
- New guidance on complaints & litigation issued 20\textsuperscript{th} March 2014
- Whatever statutory provisions are made, there is nothing stopping individual organisations developing best practice. For example:
Practical steps to take now:

- Prepare for new CQC regulations
- Raise awareness of *Being Open* guidance
- *Train staff (we can help)*
- *Audit incidents, complaints and claims (we can help)*
- *Take disciplinary action where appropriate*
- *Regulators to take firm and consistent stance*
“Apologies”

What makes a *meaningful* apology?
- Something to apologise for - more than “sympathy” or “regret”
- Ownership of responsibility
- From the right person

“*An insincere or hollow apology is worse than no apology at all*”
Biggest breakthrough in patients rights & patient safety ever? Or make things worse?

SUPPORT

ROBBIE'S LAW

[AVMA logo: action against medical accidents; for patient safety and justice]
Thank you! Any questions?

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