



16. The ethical obligation of the physician to disclose to the patient that a mishap has occurred in his treatment

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Background

The report of the Institute of Medicine, published in the US in 1999, created waves throughout the world. The report states that more people die in hospitals in the US from mistakes during their medical treatment than from road accidents, cancer, or AIDS. The public interest aroused in the subject was tremendous and medical mistakes became a "hot" subject from the social, legal, administrative, and ethical points of view. It is not surprising that the involvement of the regulatory authorities was sweeping and rapid and led to the commencement of a deep and fundamental, if slow, change to the way in which medicine is conducted in the US. In the wake of American medicine, medicine throughout the western world has also changed.

Medicine is not a precise science, and it cannot guarantee the absolute success of every treatment. Mishaps in medical treatment are sometimes unavoidable, and not every error or malfunction in the medical treatment necessarily constitutes medical negligence. Extensive research indicates that the great majority of patients wish to know about every error and malfunction, even those of a minor nature, which occurred during medical treatment. However, other research, no fewer in number, indicates that we, the physicians, tend to conceal information from our patients, and do not tend to disclose the mistakes we have made.

This gap between the patient's desire and the reality on the ground becomes rapidly apparent to the patient and seriously harms the trust between him and the physician and forms the basis for most medical negligence actions filed against physicians. Most patients who sue express feelings of anger, bitterness, betrayal, and humiliation, when they feel that vital information has been concealed from them. Most are even ready to admit that they would not have sued the physician if he had treated them in real time with fairness and integrity, while giving a full and reliable explanation and an honest apology for what had occurred.

Every person has the right "to know what treatment he is about to receive and what treatment he has already received – events, acts or omissions, and instructions that led to the situation in which he finds himself after the treatment" (Judge Aharon Barak, in the "Hadassah v. Gilad" court ruling).

At the same time, an ethical obligation exists to notify the patient of any error that occurred during treatment, which influences his health or the continuation of his treatment. Such disclosure is fully consistent with the most fundamental ethical principles – it is done



for the benefit of the patient, prevents additional harm to him, preserves his autonomy in choosing the continuation of the medical treatment, and is an expression of the transparency and integrity required in the professional and human connection with him. The pragmatic viewpoint also holds that a pro-active approach of initiated disclosure reduces the hostility towards the physician, reduces the desire to sue him in case of negligence, and prevents sensational public exposure, which always causes damage to the physician.

Many barriers exist in the path towards a culture of full exposure of errors in medicine. The public atmosphere is one of "accuse, disgrace, and punish" the physician who erred. Physicians justifiably fear that any such disclosure will lead to negative publicity, loss of reputation, loss of professional status, loss of patients, as well as disciplinary and legal proceedings, whose price is liable to be unbearable.

We are obligated to create a new social approach, in which the physician can freely report any error that he made, without necessarily being brought to trial. Only in this way can we, in the final analysis, improve the level of medicine in Israel and better preserve the health of the patient consigned to our care.

Position paper

- Medicine is not a precise science and it cannot guarantee positive results for every treatment.
- Consequently, a mishap in medical treatment is sometimes unavoidable. A mishap means a negative, unintended, and unexpected result during medical treatment.
- Not every error or mishap in medical treatment necessarily constitutes medical negligence.
- Consequently, admission of a mishap in the treatment does not mean admission of medical negligence.
- The patient has the right to know what medical treatment he has received. This right is derived from his right to know about himself, as an expression of the autonomy of the private wishes of the person and his dignity.
- Due diligence regarding a mishap in the treatment will preserve the essential trust in the physician-patient relationship.
- The patient should be informed of a mishap in treatment that has an influence on his health or on continuation of his treatment.
- The mishap should be disclosed to the patient as soon as possible, while expressing empathy and regret for the mishap that occurred.
- Disclosure shall be made by the physician in charge, and shall include information about what happened, when it occurred, how it happened, and what steps have



been taken so that such a mishap will not recur in the future.

- The disclosure shall include information regarding the possible influence of the mishap on the patient's health, and the steps taken to correct it.
- Assumption of responsibility is not an admission of guilt. Consequently, the physician reporting shall avoid a declaration or agreement that he, or another physician in the medical institute, is guilty of the mishap that occurred.
- Suitable rules shall be formulated, and a social and organizational culture should be created, of transparency and full reporting to the patient in the event of a mishap during the medical treatment.