



APOLOGY OR ADMISSION OF CULPABILITY?

When it comes to conflict resolution and mediation strategies for medical mistakes, civil litigation attorneys have historically recommended silence—the strategy of “deny and defend”—because silence is believed to ensure that the health care provider’s defense is not jeopardized by statements that might be construed as an admission of error or evidence of culpability.

But that philosophy, and in some cases the law, is changing. “There is, to my knowledge, not a shred of evidence to support [deny and defend],” writes Lucian L. Leape,¹ professor of health policy at Harvard University.

On the human medical side, 35 states have enacted “apology laws”² that require physicians to provide full disclosure after an adverse event but

prohibit an apology or expression of regret from being used in civil litigation. Laws vary widely, however, and it is debatable whether a veterinarian who apologizes to an owner of “chattel property” is granted the same protection as a physician speaking to a human patient or family member.

Regardless, liability risk can be

reduced when sound communication strategies are in place to be followed after an adverse event.

Case Study

Consider the hypothetical case of an intact male dog being brought in for a surgical procedure requiring general anesthesia. Despite all presurgical data being within normal limits, the dog suffers an unpredictable anesthetic reaction and dies; that is, an adverse event happens due to no one’s negligence, either by act (commission) or omission. Also assume the veterinarian spent the appropriate amount of time discussing the risks and possible outcomes of the procedure and

continues on page 18 ►



The Art of Apology

Is there a formula for successfully apologizing when something was done in error or by omission? Leape says there is, and explains the four steps in the process:⁴

1. Explain what happened including all known facts.
2. Take responsibility for what has occurred, from the employee on through to the practice owner.
3. Apologize (appropriately) at once.
4. Explain what will be done in the future to prevent such an outcome from happening again.

the client signed a well-suited document acknowledging the risks.

Keep in mind that claims may be made or litigation pursued because people *can* bring suit; not because they will necessarily prevail. So is it advisable for a veterinarian to offer consoling words despite the fact that a client may sue? The answer is a qualified “yes.” Veterinary teams should develop an *apology policy* based on detailed discussion with the practice’s counsel and liability carrier.

A reasonable response to the hypothetical case might be: *“I’m so terribly sorry for your loss; I know how much Sir Sleepsalot meant to you and I know how I would feel. This was, unfortunately, one of the unpredictable and rare risks we discussed before surgery that can happen with general anesthesia. Can I answer any questions or help you in some other way during this difficult time?”*

If your case is not without fault, consider asking: *“Is this a good time for me to explain what I think happened, and why?”*

It is widely felt that saying one is sorry is not equivalent to admitting guilt.³ Issuing an apology and explanation can recall the acknowledgement of risk and it displays sincere empathy. The client will still be upset and grieving, but will feel better.

Let’s contrast the earlier response with a bad one, which might go something like: *“Gosh, there is no reason Sir Sleepsalot should have died. I used the same anesthetic protocol on him that I’ve used on thousands of dogs since I got out of veterinary school. My technician came and got me as soon as she realized there was a problem. There was nothing we could do here and I am sorry.”*

The client could easily contend, *“She [the veterinarian] even admitted to me she used an old way to give anesthesia, and that is what killed Sir Sleepsalot! And she also implied she wasn’t even in the room and left my beloved pet alone with a technician, not a veterinarian. And when they did realize Sir was in trouble, she said they didn’t have the right stuff there to save him.”*

Despite the poor apology and the client’s interpretation, everything done could have been within the law and standards of care. So again assume nothing “wrong” was done; same case, same outcome, two different statements to clients. The difference in the two statements is what is referred to as “basic moral awareness.”⁴ The client-turned-plaintiff’s interpretation of what was, or

was not, said in the second statement could precipitate a complaint and investigation, or worse, a lawsuit. The well-executed apology will maximize credibility, cultivate client confidence and loyalty even under the most adverse conditions, and minimize the risks of legal entanglement.

Be Proactive

Develop forms and protocols for discussing medical risks with clients before any procedures are performed. New client information should include an exemplar

of an informed consent form so owners are not taken aback in a time of duress when they need to sign one. More tips:

1. It is recommended that no apology strategy be instituted without first consulting an attorney licensed to practice in your state.
2. Take the time to discuss risks and *all* potential outcomes, including death, with the client *before* a procedure. Search for cues that the client is actively listening and understanding by asking open-ended questions, such as, “Now that we’ve been over this and you know the risks Ginger faces, what would you like me to do?”
3. Long before you need them, get to know your business counsel and liability insurance representatives. Try to build trust and understanding so they know that you can be counted upon to say the best things at the right time—with little or no risk.
4. With counsel, review your state’s law regarding veterinary medical mistake apologies. Discuss it with your liability carrier. Role play and see if you can pass muster with them.
5. Practice a sincere, introspective apology with a trusted friend. Remember, a legitimate, heartfelt apology is not the same thing as explaining an error in class during veterinary school. The apology is about the client—not saving your bacon by explaining in molecular detail what happened.
6. Listen to the client, who may be in shock and may verbally “wander,” issuing rhetorical questions or statements. Owners are generally searching to understand what has happened; how a health care provider responds initially can have profound effect on the value it carries forward. ■

The well-executed apology will maximize credibility and cultivate client confidence.

References

1. Does apologizing to patients after adverse events decrease the risk of getting sued? Frank M, Henry GL. *Proc Am Coll Emerg Phys*, 2008.
2. Sorry Works Coalition. sorryworks.net/lawdoc.phtml.
3. The art of private veterinary practice: The art of the apology. Milani M. *Can Vet J* 48:195-198, 2007.
4. Disclose, apologize, explain. Leape L. *Newsweek*, newsweek.com/id/44893, 2005.

Skillset addressed in this article: self-management

Charlie Powell is the public information officer for WSU’s College of Veterinary Medicine and public information director for the Washington State Medical Association.