



Safety and Quality

TOOL 2

Open Disclosure

Saying sorry

A guide to
expressing
regret during
open disclosure



Government
of South Australia

SA Health

Contents

- 1. Introduction..... 1
- 2. Saying 'sorry' as part of open disclosure 1
 - How to make an expression of regret..... 1
 - What if it isn't clear that an incident has occurred? 3
 - Phrasing your apology or expression of regret 3
 - Useful phrases for open disclosure discussions..... 4
 - Active listening 4
 - What not to say 5
 - Non-verbal communication 5
 - Factual explanations and speculative statements 6
- 3. Legal aspects of expressing regret 6
- 4. Three key points..... 7
- 5. References 7

1. Introduction

Expressing regret, in conjunction with saying sorry, is a key component of open disclosure. The Saying Sorry – a guide to expressing regret during open disclosure is designed to assist clinicians and other open disclosure participants to express regret with sincerity and empathy and without speculating or creating uncertainty.

While this document focuses on expressing regret, it is important to note that this only forms part of open disclosure. To ensure that open disclosure is effective, apologising or expressing regret should be in the context of other communication and actions.

This document should be read in conjunction with the SA Health Patient Incident Management and Open Disclosure Policy Directive and resources provided to assist with open disclosure implementation and practice.

2. Saying 'sorry' as part of open disclosure

One of the principal aims of open disclosure is to restore patient trust in clinicians and the healthcare system. A key element of achieving that aim for patients is early acknowledgement of harm by providers and clinicians and an expression of regret for the harm endured. Expressing regret is a key component of open disclosure, but also the most sensitive. 'Saying sorry' requires great care.

The following points should be considered:

- > the words 'I am sorry' or 'we are sorry' should be included
- > it is preferred that, wherever possible, people directly involved in the incident also provide the expression of regret
- > sincerity is the key element for success. The effectiveness of an expression of regret hinges on the way it is delivered, including the tone of voice, as well as non-verbal communication such as body language, gestures and facial expressions. These skills are often innate and may need to be practiced.
- > the expression of regret should make clear what is regretted, and what is being done to address the situation.
- > an expression of regret is essential in helping patients / consumers, their family, carers and / or support person cope with the effects of a traumatic event. It also assists clinicians in their recovery from incidents in which they are involved.

It is important to note that an expression of regret alone is insufficient, and must be backed up with further information and action to ensure effective open disclosure.

How to make an expression of regret

The person leading an open disclosure discussion / meeting on behalf of the health service should, as relevant and appropriate:

- > acknowledge that an incident has occurred
- > express regret for what has occurred (including the words 'I am/we are sorry')
- > provide known clinical facts and discuss ongoing care (including any side effects of which to be aware)
- > invite, and listen to, the patient's side of the event and how it has affected them both clinically and personally
- > indicate that a clinical review is being or will be undertaken to determine what happened and to implement processes to prevent the incident from happening again
- > agree to provide feedback information from this review when available.

Examples of appropriate phrases during an expression of regret:

- > *'I am / we are sorry for what has occurred'*
- > Factual statements explain how the incident occurred
 - *'this incident occurred because the wrong label was mistakenly placed on your specimen sample'*
- > Explaining what is being done to ensure it does not happen again
 - *'we are currently investigating exactly what caused this breakdown in the process and will inform you of the findings, and steps taken to try to prevent recurrence, as soon as we know.'*

Examples of appropriate phrases to avoid during an expression of regret:

- > *'It's all my / our / his / her fault ... I am liable'*
- > *'I was / we were negligent'*
- > any speculative statements.

Feedback to patients / consumers, their family, carers and / or support person:

Recommendations from incident investigations should not only be disseminated and implemented to prevent recurrence.

In addition, patients / consumers, their family, carers and / or support person should be kept informed of progress of investigations during the open disclosure process.

They should be made aware of outcomes from investigations including:

1. the system causes of the harm they experienced
2. the role of individual clinicians (without apportioning blame)
3. findings and recommendations
4. changes to the systems as a result of the investigation.

Further information is available in the providing follow up section.

What if it isn't clear that an incident has occurred?

It is recommended to acknowledge patient harm and an initial discussion as soon as practicable after patient harm is detected, even if all the facts are not known.

In these situations it is still appropriate to say 'sorry' for the harm that has occurred. The expression of regret should be followed by the known facts but not be followed by speculation on the causes of the incident or other related matters.

An example of appropriate wording in such situations is:

Example of appropriate wording for low level response in initial discussion:

'I am sorry' or 'we are sorry that this has happened. I realise it has caused great pain / distress / anxiety or worry'.

'I am / we are sorry for what has occurred. It is clear that something unexpected has occurred / things don't go to plan but fortunately it was recognised immediately and we have ensured that you did not suffer any harm from it. However, we will keep an eye on you for the next 24 hours and will ask you to let us know if you feel anything unusual. We do not expect that you will need to stay here any longer than originally planned'.

OR

'I am/we are sincerely sorry that this has occurred. I am / we realise that it has caused great pain / distress / anxiety or worry. We are investigating what happened and will give you information as it comes to hand. It is very important for us to understand your version of what happened. We can go through this now if you like, or we can wait until you are ready to talk about it.'

Phrasing your apology or expression of regret

The exact wording and phrasing of an expression of regret will vary in each case. The following points should be considered:

- > The words 'I am sorry' or 'we are sorry' should be included.
- > It is preferred that, wherever possible, people directly involved in the incident also provide the expression of regret.
- > Sincerity is the key element. The effectiveness of an expression of regret depends on the way it is delivered, including the tone of voice, as well as non-verbal communication.
- > The expression of regret should make clear what is regretted, and what is being done to address the situation.
- > Expression of regret is essential in helping patients/consumers, their family, carers and/or support persons cope with the effects of a traumatic event. It also assists clinicians in their recovery from adverse events in which they are involved.

Useful phrases for open disclosure discussions

The open disclosure process does not need to be a tightly scripted. However, it is important to practise the words you will use so you feel comfortable and natural with the language when the need arises, without appearing to be rehearsed, defensive or concealing,

The following text provides phrases to use with the patient in an open disclosure conversation.

- > *'Let me tell you what happened. There has been a significant lapse in quality and we failed to follow up with you and tell you about your diagnosis.'*
- > *'Let me tell how sorry I am that this has happened.'*
- > *'I want to discuss with you what this means for you, but first I'd like to express my regret'*
- > *'I want to discuss with you what this means for your health.'*
- > *'I'm sorry, this shouldn't have happened. Right now, I don't know exactly what happened, but I promise you we're going to find out and do everything we can to make sure it doesn't happen again.'*
- > *'I will get back to you as soon as we know what happened and we can talk about the steps we will take to prevent it happening again.'*
- > *'Our organisation takes this very seriously and we will look into it to find out exactly what happened and what we can do to prevent it happening again.'*
- > *'Do you have all the information you need? I'm here if you have any other questions.'*
- > *'I know it's hard to take it all in so I'm happy to go over this again another time.'*
- > *'Would you like us to contact you to set up another meeting to talk about what has happened and answer any questions you may have?'*

Level 2 responses for minor incident can conclude at this stage. The conclusion should always be noted in the patient record.

For level 1 responses, the acknowledgement conversation signals that a formal open disclosure meeting will be convened. The time and place, as well as attendees and participants in the meeting, should be negotiated. Further information is available in Tool 3 SA Health Open Disclosure Comprehensive Guide on Open Disclosure Process for Clinical Lead / Facilitators.

A health service contact should be provided to the patient / consumer, their family, carer and / or support person. This will be a staff member whom they can call for further information.

Active listening

It is important to listen to the patient and give them the opportunity to relate their experience and how it has affected them. It can be useful to say back to the patient, in your own words, what they have told you. Non-verbal communication is an important part of active listening.

These skills are not often innate and may need to be practised.

What not to say

Certain phrases should be avoided during an expression of regret. This is to ensure that only known facts are communicated to the patient, and to ensure that there is no direct or implied blame of colleagues or the health service organisation. Liability is not determined by what is said, but it is prudent to phrase your expression of regret accurately.

Hearing the word 'sorry' in an expression of regret is very important to patients who have been harmed, and their family and carers. However, any insincerity, real or perceived, can have the opposite effect. It is important to realise that people harmed during care are likely to have a heightened emotional sensitivity.

Some examples of wording to be avoided:

- > *'It's all my / our / his / her fault ... I am liable'*
- > *'I was / we were negligent ...'*
- > *'We are sorry ... but the mistake certainly didn't change the outcome ...'*
- > *'I know, I know for you this is unpleasant, awful ... but believe me, for me it's shattering'*
- > Any speculative statements and apportioning of blame:
 - *'I would say that the night shift staff probably neglected to write down that you were given this medication...'*
- > So-called apologies that are vague, passive or conditional:
 - *'I apologise for whatever it is that happened'*
 - *'Mistakes were made'*
 - *'These things happen to the best of people...'*
 - *'If I did anything wrong, I'm sorry'*

Examples of more suitable wording:

- > *'I am/we are sorry for what has occurred'*
- > *Factual statements explaining how the incident occurred ('this incident occurred because the wrong label was mistakenly placed on your specimen sample')*
- > *Explaining what is being done to ensure it does not happen again ('we are currently investigating exactly what caused this breakdown in the process and will inform you of the findings and steps taken to fix it as soon as we know').*

Non-verbal communication

Non-verbal communication should be congruent with verbal communication while expressing regret. The person delivering the expression of regret, and others present, should be aware of:

- > body language and positioning such as facing the patient
- > maintaining appropriate eye contact throughout
- > mobile telephones and pagers being turned off
- > active listening, which includes giving the patient the impression that you are taking in what they are saying through your physical responses such as nodding and other body language.

Again, these skills are often not innate and may need to be practised.

Factual explanations and speculative statements

An expression of regret can be given once harm has been recognised and accompanied by all the known facts. A full, factual explanation of the event requires the facts to be established. In the event of serious harm, it is unlikely that all the facts will be available at the time of disclosing the harm to the patient and the initial expression of regret.

The SA Health Patient Incidents – Management and Open Disclosure Policy Directive emphasises the importance of communicating harm, and expressing regret, as soon as possible but that avoiding speculative statements is critical. Speculation includes conjecturing on the causes of the harm as well as what will occur as a result of the harm (other than noting that an investigation will occur). Making promises or other statements to patients after adverse event that are subsequently retracted can undermine trust.

You should consider the following points when signalling open disclosure and/or preparing for a formal open disclosure process:

- > Harm should be acknowledged and an expression of regret provided as appropriate.
- > The known facts should be provided.
- > There should be no speculation on the causes of an adverse event.
- > Blame must not be apportioned to any individual, group or system.
- > The results of reviews and investigations must not be pre-empted.

3. Legal aspects of expressing regret

Expressing regret is central to open disclosure. All Australian jurisdictions have enacted apology laws to protect statements of apology or regret made after ‘incidents’ from subsequent use in certain legal settings. In South Australia, this is the [Civil Liability Act 1936](#).

Further information is available in the [Australian Open Disclosure Framework](#).

Factual explanations and speculative statements:

It is important that clinicians avoid making speculative statements during and initial disclosure. The following should be considered when signalling open disclosure and preparing for a formal open disclosure process.

1. Harm should be acknowledged and an expression of regret provided as appropriate.
2. There should be no speculation on the causes of an incident
3. Blame must not be apportioned to any individual, group or system.
4. The results of reviews and investigations must not be pre-empted.

An expression of regret and admission of liability and the legal aspects of open disclosure:

An expression of regret are central to open disclosure.

Section 75 of the *Civil Liability Act 1936*, states ‘expressions of regret’:

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

Discuss the legal aspects of open disclosure with the LHN Safety and Quality or Risk Management Unit.

Further information is available in the Australian Open Disclosure Framework – Appendix 1, page 62.

4. Three key points

Open disclosure is about much more than expressing regret, its overall success can often depend on how the expression of regret is delivered. In this regard, the three key points for those engaging in open disclosure are:

- > **Do not fear saying sorry** - providing you don't engage in unwarranted speculation about the incident or apportion blame to other individuals, entities or institutions, there are no medico-legal grounds for avoiding the word 'sorry'.

Similarly, there is no reason to fear it from an interpersonal point of view. Remember that an expression of regret is a natural human response after an unexpected event. Patients who have been harmed, their families, carers and other persons affected by the incident, will appreciate and benefit from a sincere expression of regret.

Equally, you and your colleagues can also benefit from this interaction. The conversation can be difficult but, according to the available evidence, may lead to a better outcome.

- > **Consider your delivery** - think about your phrasing and non-verbal aspects of your delivery. It is important to remember that what you say is not always what is heard, and that this can be influenced by non-verbal cues such as maintaining eye contact. Other aspects of delivery such as body language, positioning and potential distractions can undermine the conversation.
- > **Listen** - expressing regret is also about listening and giving the patient an opportunity to tell how they feel, and how the incident has affected them. Practise, and engage in, active listening and always give the patient the opportunity to respond.

5. References

[Australian Open Disclosure Framework](#), Australian Commission on Safety and Quality in Health Care (ACSQHC)

[Saying sorry: a guide to apologising and expressing regret during open disclosure](#), Australian Open Disclosure Framework, Australian Commission on Safety and Quality in Health Care

[Just-in-time' information for healthcare professionals](#), Australian Open Disclosure Framework, Australian Commission on Safety and Quality in Health Care

[National Safety and Quality Health Service Standards](#), Australian Commission on Safety and Quality in Health Care



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