

A Roadmap for Removing Barriers to Disclosure, Apology and Offer in Massachusetts

The Problem

The current medical liability system has several fundamental flaws that negatively impact patients, physicians and the health care system as a whole. Today in Massachusetts, litigation is the predominant pathway for harmed patients to seek compensation. The current tort system takes a great emotional toll on patients and doctors alike.

Programs that support disclosure, apology, and offer (the “DA&O model”) are attracting wide attention as a potential approach for increasing access to timely and just medical injury compensation, reducing medical liability costs, and more effectively linking adverse events to patient safety improvements.

Aim/Goal

- Identify barriers in Massachusetts to implementation of a Disclosure, Apology, and Offer (DA&O) model of response to serious events
- Identify strategies for overcoming barriers
- Design a Roadmap for medical liability reform and improved patient safety based on study findings
- Examine the degree to which the proposed plan for Massachusetts has applicability for other states.

The Team

BIDMC: Kenneth Sands, MD (PI); Sigall Bell, MD; Peter Smulowitz, MD; Anjali Duva, MCP; **Mass Medical Society:** Alan Woodward, MD; Elaine Kirshenbaum, MPH; Charles T. Alagero, JD; Liz Rover Bailey, JD; Robin DaSilva, MPH; Therese Fitzgerald, PhD; **Harvard School Public Health:** Michelle Mello, JD, PhD; **U. Michigan:** Rick Boothman, JD

The Interventions

- Key informant interview study of knowledgeable individuals from leading stakeholder constituencies in Massachusetts, including providers, insurers, legal community, patient advocacy groups, regulators, and legislators.
- Semi-structured in-person interviews of 45-60 minutes, 2 physician interviewers
- Interview transcripts excerpted, coded by theme and analyzed using standard content analysis methods

The Results/Progress to Date

Multiple different constituencies in Massachusetts support the “DAO” model, and feel that implementation is feasible

Appealing Aspects of Model	
<i>Ethical and professionalism considerations</i>	
<i>Reduces legal costs/risk</i>	
<i>Improves culture within hospital</i>	
<i>Improves dispute resolution process</i>	
<i>Serves patients' needs better</i>	
<i>Ethical and professionalism considerations</i>	
Barriers	Solution
<i>Charitable immunity law</i>	<i>Voluntary institutional action to go above cap</i>
<i>Physician discomfort with DAO</i>	<i>Education</i>
<i>Attorney interest in status quo</i>	<i>Education of attorneys and public regarding prior favorable results</i>
<i>Concern about increased liability risk</i>	
<i>Coordination across insurers can be difficult</i>	<i>Proactively establish protocols</i>
<i>NPDB or state reporting requirements</i>	<i>Advocate with NPDB and BORM for new process</i>
<i>Forces of inertia</i>	<i>Public Advocacy</i>
<i>Fairness to patients</i>	<i>Involve patient advocacy groups</i>
<i>May not work in other settings</i>	<i>Pursue demonstration projects</i>
<i>Insufficient evidence</i>	

Next Steps: Moving to Implementation

- Build a Coalition for Change among all key constituencies
- Establish Education Resource and Data Center
- Pursue Enabling Legislation
 - Apology protections
 - Timely notice with sharing of all pertinent medical records
- Pilot Program in Massachusetts, in a variety of settings

“I think it’ll be a huge win for patients, a huge win. I think they suffer as much as anybody in the courts, maybe more. It’ll be a huge win for providers emotionally. It will be a huge win from a financial perspective because the right people will be getting compensated in a more timely manner and there will be far less waste in the process. That’s a lot of benefits.”

-Quote from an Interviewed hospital representative



Beth Israel Deaconess
Medical Center



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Harvard Medical School

THE SILVERMAN INSTITUTE
For Health Care Quality and Safety

For More Information Contact
Kenneth Sands, MD MPH, SVP HCQ, ksands@bidmc.harvard.edu