Saying 'Sorry' Pays Off for U. Of Michigan doctors

David N. Goodman, Associated Press Writer

DETROIT (AP) — When a treatment goes wrong at a U.S. hospital, fear of a lawsuit usually means "never daring to say you're sorry."

That's not the way it works at the University of Michigan Health System, where lawyers and doctors say admitting mistakes up front and offering compensation before being sued have brought about remarkable savings in money, time and feelings.

"What we are doing is common decency," said Richard Boothman, a veteran malpractice defense lawyer and chief risk officer for a health system with 18,000 employees and a $1.5 billion annual budget.

The estimated $5.8 billion annual cost of malpractice claims nationwide has drawn scrutiny as President Barack Obama and Congress plot an overhaul of the nation's $2.4 trillion health care system. So far, Obama has spoken in broad terms about shielding doctors from unwarranted lawsuits without capping damage awards, but medical malpractice is an issue that deeply divides. Doctors, hospitals, trial lawyers and patient advocates disagree not only on the solution but the problem itself.

Is it the high price of malpractice insurance? The difficulty for victims of medical errors getting justice? The cost of unneeded tests ordered by lawsuit-wary doctors? The "burying" of medical errors that kill tens of thousands of Americans yearly?

Officials at the University of Michigan say their approach addresses doctor, patient and public concerns.

The willingness to admit mistakes goes well beyond decency and has proven a shrewd business strategy, according to a 2009 article in the "Journal of Health & Life Sciences Law" by Boothman and four colleagues at the Ann Arbor school.

According to Boothman, malpractice claims against his health system fell from 121 in 2001 to 61 in 2006, while the backlog of open claims went from 262 in 2001 to 106 in 2006 and 83 in 2007. Between 2001 and 2007, the average time to process a claim fell from about 20 months to about eight months, costs per claim were halved and insurance reserves dropped by two-thirds.

Boothman said the health system learns of possible medical errors from doctors themselves, as well as from patients or their lawyers. In any case, the university conducts a peer review to see if there was an error and if changes are needed to prevent a recurrence.

Equally important, health system doctors and officials offer to meet with patients and their families, sometimes to explain that treatment was appropriate and sometimes to admit a mistake.

"I do believe caregivers want to do this," said Boothman, whose second-floor office looks out on the University Hospital at the heart of the sprawling medical center, 35 miles west of Detroit. "It's not a hard sell at all, as long as you can reassure them it's OK."

Malpractice lawyer Norman Tucker has several active cases against the University of Michigan and said the school is fair, though not an easy mark. Lawyers say because Michigan admits mistakes in some cases, it can signal a tough fight ahead in those cases where it denies error.

"You should follow Mark Twain's advice: 'When in doubt, tell the truth,'" Tucker said.

According to Harvard Medical School Dean Dr. Joan Reede, patients and their families can find great relief and comfort when a doctor promptly admits an error. She learned this personally when her mother nearly died from a medical error in 1998.

Tommye Reede of Hull, Mass., spent eight weeks in a hospital after hip surgery when doctors at first failed to spot a severe allergic reaction despite warnings from her medically trained daughter.

"There was an apology from the surgeon," Joan Reede said. "There was an acknowledgment that 'I did not pay attention.' ... At no point did I feel abandoned."

"When you get what you consider to be a sincere apology, you always feel better," said her mother, now 79, who didn't sue.

Mother and daughter talked about the experience in a 2006 doctor training DVD "When Things Go Wrong" by Dr. Tom Delbanco of the Harvard Medical School. They declined to name the hospital, saying they didn't want to single it out for attention.

The openness approach is catching on at places from Boston Medical Center to the University of Illinois to California's Stanford University hospital.

"Apologies for medical errors, along with upfront compensation, (reduces) anger of patients and families, which leads to a reduction in medical malpractice lawsuits and associated defense litigation expenses," according to Doug Wojieszak, spokesman for The Sorry Works! Coalition. The group includes doctors, lawyers, insurers and patient advocates.

The "saying sorry" movement has its skeptics, even among those who agree it's the right thing to do.

The right of injured patients to sue health care providers and force them to open up their internal records is a crucial part of reducing medical mistakes and improving

care, said Matthew Gaier, co-chairman of the New York State Trial Lawyers Association's medical malpractice committee.

Harvard University public health associate professor David Studdert says a review of published studies shows about 181,000 people are severely hurt each year as a result of mistakes at U.S. hospitals but only about 30,000 file legal claims.

Many people don't sue because they don't discover they're victims of malpractice, Studdert and colleagues wrote in a 2007 article in the journal "Health Affairs." The spread of disclosure, the article said, could cause malpractice costs to rise from $5.8 billion now to between $7 billion and $11.3 billion a year.

For "saying sorry" to work, doctors need protection from having their own honesty used against them in court, said Jim Copland, director of the Manhattan Institute's Center for Legal Policy and an advocate of curbs on damage suits. Protection could take the form of a shield law that would exclude an apology from admission as evidence in a malpractice suit. A number of states have or are considering such laws.

"If you go out and say, 'Oh, we messed up, are you going to lose the lawsuit? You need to give them some protection," Copland said.

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