



# Risks & Claims Open Disclosure

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# Risks



- > Risk Management
  - > getting it wrong less often
- > Quality Assurance
  - > getting it right more often
- > Clinical Governances
  - > roles and responsibilities
  - > systems and processes



# Risks



- > Quality
  - > Incident reporting & review
  - > Morbidity & mortality review
  - > Credentialing & privilege
  - > Clinical Practice Guidelines
  - > RCA/Sentinel Events
  - > Audit (personal & system)
  - > Policies
  - > Education & training



# Claims



- > Adverse events cf. negligence claims
- > Communication and Open Disclosure
- > Notification to Insurer
- > Involvement of lawyers (privilege)



# Claims



- > Principles
  - > Openness / Timeliness
  - > Acknowledgment / Regret
  - > Responsive
  - > Empathetic
  - > Privacy

["Guide to Complaint Handling in Health Care Services" HSC]



# Claims



- > Why do patients sue?
  - > Communication
- > Before / During / After
  - > Informed consent
  - > Procedures
  - > After adverse event (Open Disclosure)

Governments and insurers recognise importance of good communication (especially after adverse event)



# Claims



- > Open Disclosure (Wrongs Act)
  - > An apology or expression of sorrow or regret is not an admission of liability
  - > A reduction or waiver of fees is not an admission of liability
  - > An admission of liability/blame IS an admission of liability
  - > Admitted facts are not protected
  - > Open disclosure must be well executed



# Claims



WHO? WHEN? HOW?

- > Prompt response
- > Clear and publicised process
- > Clear chain of command
- > Notification to insurers / lawyers
- > Education and training
- > Recording / documenting the process



# Claims



- > Who?
  - > Clinicians
  - > Management
- > When?
  - > ASAP
  - > Prompt holding response if necessary
  - > Investigate
  - > Prepare and practice



# Claims



- > How?
  - > Consider
    - > Stress to patient
    - > Support person
- > What?
  - > What happened?
  - > Cause?
  - > Avoid blame/excuse
  - > Effects
  - > What can now be done for patient?
  - > What can stop it happening again?



# Claims



- > Legal privilege for investigation
- > Records / Notes
  - > Existing
  - > New / contemporaneous
- > Communication
- > Insurance



# QUESTIONS



# Disclaimer



The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.



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