

**Disclosure, Empathy and Apology:**

Staying on the Same Side of the Table

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**Objectives**

- Understand the process of disclosure, empathy and apology
- Identify practices that will lay the groundwork for successful disclosure
- Differentiate between empathy and apology
- Understand that the disclosure process is good for patients, families and the physician



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**Disclaimer**

- This information is not intended to be legal advice and is not intended to establish guidelines and/or the standard of care
- PLICO is not a regulatory agency
- PLICO does not dictate, mandate or identify practice protocols to be used
- PLICO does not ensure practitioner compliance with guidelines



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## Sorry...It's in the News

**Dennis Quaid Recounts Twins' Drug Ordeal**  
 Actor Tells 60 Minutes' Steve Kroft Medical Errors Kill Thousands

**Ritter's Widow Talks "Sad" Truth About Death**  
 Habit: Five, 400 Thea: Ten, 50, 60 PM EST

Doctors have said that it was only a matter of time before John Ritter's heart gave out. The late actor's wife, however, believes he may have been robbed of his remaining time.

Former 'Wings' star Amy Yasbeck, who was married to Ritter for four years, is moving forward with a malpractice lawsuit against two doctors, one who met with her husband two years before his death and one who unsuccessfully treated him on Sept. 11, 2000 for what turned out to be a preexisting heart condition that wasn't diagnosed until it was too late.

Yasbeck says that none of the facilities that treated Ritter nor the doctors or other personnel involved has admitted any wrongdoing or apologized. She's planning to remedy that.

"You can't treat my kid's dad for something and sit him in the process," the actress told the Los Angeles Times in a recent interview. "I think the money will flow how angry the jury will be about what happened to John and what could happen to them."

**Medicine means knowing how to say you're sorry**

**WATERGATE**

**plico**  
RISK MANAGEMENT

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## Would it kill you to say you're sorry?

The few firms that brought their PR/IR about use product quality and advertising integrity has voluntarily withdrawn their claims before and against their best.

- No changes to our products or ingredients.
- No changes to our advertising.
- No money exchanged.
- No settlement agreement.

Because we're ALWAYS used 100% USDA-inspected premium beef.

Now, they could have just asked us if the writer said our beef. From around 1990, we had been given to our 10th anniversary our ingredients in every case of our products are listed on our website to make for their own sake that those to do.

Let us have been saying all along, we would limited the quality of every single one of our products, and they are available. We didn't change our packaging or product distribution because we're always been completely transparent. There's nothing any pack retailer. We study all available. That's just been trying to serve a 100% beef.

We were supported by three 400,000, at least our 10 million consumers who could see and responsible every thing to keep the industry responsible of that. Support because of their public integrity, as when it was back.

As for the lawyers who brought this up, we got a warning, and you're probably getting pretty and quite about. How do you know what always happen? Saying to everyone, "I'm sorry."

It's over, you can do it!

**REAL-BEEF**  
100% GUARANTEED

**TACO BELL**

**plico**  
RISK MANAGEMENT

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### “People sue people, not events”

“Litigation arises not simply from medical error but from an unanticipated outcome coupled with an inability or refusal by medical staff to communicate effectively with a patient or the patient’s family.”

Gerl Amori, Ph.D. –  
Healthcare risk manager and consultant-Collins Medical Professional Liability  
Networking Forum, April 2008, reported in *Collins Professional Liability Insights*,  
Vol. 3, No. 1 5/14/2008



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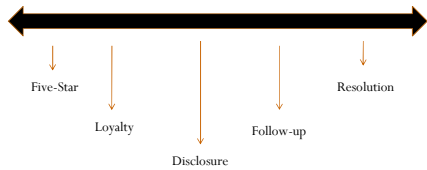
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### Disclosure is a continuum



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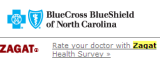
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### Benchmarkings, Ratings, Heightened Focus on Quality

**BCBS partners with Zagat to expand physician ratings**  
December 23, 2008 — 10:22am ET | By Anne Zieger

#### Policy Administration & Management

**WellPoint Partners With Zagat**  
WellPoint will team up with Zagat Survey to create an online physician rating tool for the health plan's members.  
By Nathan Cox More from this author  
NOVEMBER 22, 2007



**Hospital & Health Networks, December 2007**

**Zagat Guide Takes Peak Into Physician Offices**

**FierceHealthcare**  
DAILY NEWS FOR HEALTHCARE EXECUTIVES

**BlueCross BlueShield of North Carolina**

**ZAGAT: Rate your doctor with Zagat Health Surveys**

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### Five-Star Culture

- What does it mean?
  - Definition of "Five-Star":
    - Top-quality--having the highest quality (Encarta® World English Dictionary(North American Edition) )
    - Indicating the highest classification, based on a given set of criteria for determining excellence--a *five-star rating* (Webster's New World College Dictionary)
    - Of first class or quality (Merriam-Webster's Online Dictionary)




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### Five-Star Culture

- Treating staff, colleagues, physicians and patients at the highest level of service – internal and external
- Providing an unprecedented level of service
- Leaving a lasting positive fingerprint
- Consistent...pervasive...particularly with stress!




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### Five-Star Culture

**THE FIRST**  
**10**  
 More than a positive attitude




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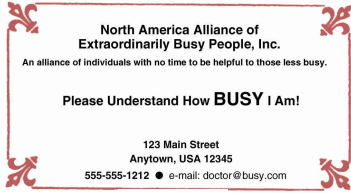
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## Burn the "BUSY" Card




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## Start with the Basics

Five-star begins...

- With your attitude...personalize it!
- At the patient's first contact with the practice
- At each member's contact with each other!
- Then each linkage...
  - Say "good morning" or "good afternoon"
  - Make eye contact
  - Be...
    - Reassuring
    - Interested
    - Friendly
    - Warm

Even on your worst day!




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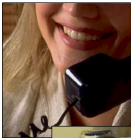
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## The Specifics—The Call



- Literally how the phone is answered
- Remember – patients can see over the phone line
- Opportunities
  - You can connect or not!
  - Warmth and interest can be communicated or not!




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### The Specifics—The Reception

- Greeting
- The setting
  - Organized
  - Positive distractions
  - Clean
  - Confidentiality being protected
- The “call back”
  - Invitation?
- Opportunities
  - I'm interested
  - I care
  - I respect you
- Everyone!




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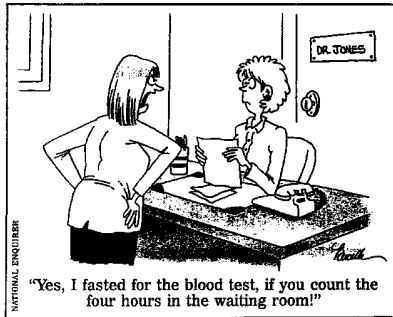
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NATIONAL ENQUIRER




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### The Specifics—The Wait

- #1 complaint
- Five-star
  - Demand management
  - Expectation management
  - The apology.
- Prevention
  - Auditing
  - Signs




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We are sorry!  
 We always try to meet your  
 scheduled appointment time.  
 Sometimes we run late and  
 we apologize. Sometimes a  
 patient takes longer with a visit  
 than we anticipate.  
 Sometime it may be you!

**Please,**  
 let the receptionist know  
 if you have been waiting  
 for more than **15 minutes.**




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### The Specifics—The Visit

- Greet
- Sit down
- Look at them!
- Body language
- Communication




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### The Specifics—The Visit

Providing written discharge, or after care, instructions can serve the patient, and the physician, well following completion of the office visit. Written discharge instructions may be indicated when:

- the patient has had a minor procedure in the office
- detailed instructions are required, such as tapering medications
- the patient is to monitor for specific signs and symptoms that result in an action
- the patient has learning, memory or comprehension deficits
- the patient has a new or complex diagnosis




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### The Specifics—Complaints

Service Recovery

- Empathize
- Understanding concerns/validation
- Remediate
- Listen
- Explain
- Follow through




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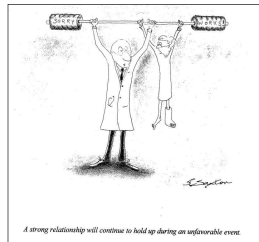
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### Create the Loyal Patient Relationship

- Five-star will help to create the trusting relationship that will transcend an event
  - Allows for service recovery
  - Defuse the angry patient
- It is a loyal relationship
  - Not just with the patient
  - Also the family




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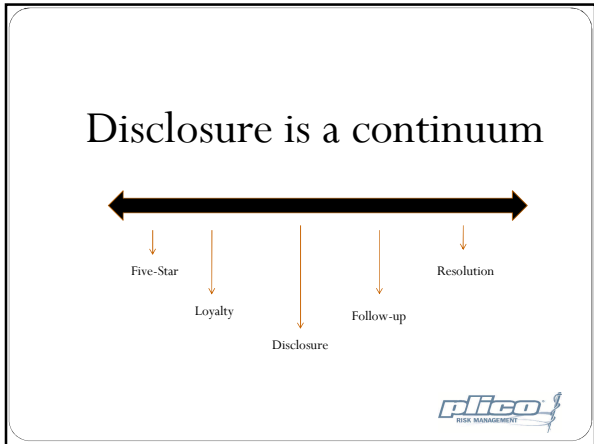
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### Sorry Works!—the Concept

“Sorry” is defined in the dictionary as:

- “feeling sorrow, regret, or penitence”
- “mournful, sad”
- “inspiring sorrow, pity, scorn, or ridicule: pitiful”

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### Sorry Works!

- Understand that “empathy” is appropriate 100% of the time
- Understand that communication about unanticipated outcomes in the right way, by the right people is key
- Understand a workable process for disclosure which can reduce liability exposure
- Recognize the difference between an empathetic “I’m sorry” and “apology”
- Know how to apologize to patients and families

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### Post-Adverse Event Communication... is Key



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### With a Proper Program You Can IMPACT....

- Whether a patient sees a lawyer in the first instance
- Whether the lawyer takes the case
- Whether a juror awards damages



#### REDUCE LIABILITY RISK BY IMPROVING YOUR PATIENT SATISFACTION

JAMES W. SUTTON, Esq., STEVENS & LEE  
 MAGGIE M. FINKELSTEIN, Esq., STEVENS & LEE  
 STEVEN A. BROWN, M.D., KNOWLEDGE MANAGER, PRESS GANEY ASSOCIATES, INC.  
 SARAH SHAWSKI, PH.D., RESEARCH ASSOCIATE, PRESS GANEY ASSOCIATES, INC.

#### CONCLUSION

Communication, service, and patient satisfaction were known to be linked to liability risk, but the extent is greater than originally believed. Previous research found that satisfied patients are less likely to sue. That conclusion is further supported by this new research, which not only reinforces the previous research but finds that patient satisfaction is a strong driver of professional liability risk and litigation.



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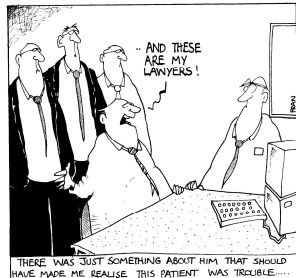
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### Patients Will See a Lawyer When...

- A lack of "relationship"
- Lack of or poor communication
- Lack of event management
- Lack of disclosure



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The failure to  
communicate is a catalyst  
for converting patients to  
plaintiffs.




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How Plaintiff Lawyers Use the “Plus”

- Selective cases being pursued
- Consolidation of counsel
- Courtroom drama will continue?
- Complications coupled with a “plus”

Lawyers learn to share their pain with jurors


By Jessica Carlson  
Los Angeles Times  
November 24, 2005

CARLSBAD — The lawyer about sobbing in the center of a dimly lit conference room, raged by dozens of other attorneys. As the attorney reached the final moments of his mother's will, his voice cracked and his body shook with unrestrained grief. And all around the room, the lawyers watching him also began to weep. Then the attorney began to make that eye connection. "My parents died... one by one. You know how it will be. I was disconnected from my father... another said, 'All of a sudden, I thought about my mother... a final added."

In the comic, Julie Beale, a tall, charismatic attorney in black jeans and black cowboy boots — a diamond ring on one finger — holds a sign.

Beale is a real lawyer specializing in wrongful-death and personal-injury lawsuits. He also is a proponent of psychodrama, a group therapy technique that is becoming increasingly popular among lawyers, particularly those who sue big businesses and corporations — as a way to prepare for trial and contend with a jury.

Beale and his mentor, lawyer and author Gerry Spence, say the technique helps attorneys become better people. Psychodrama also appeared that it can help them persuade juries to award millions of dollars to their clients... about 20% of which goes to the lawyer.




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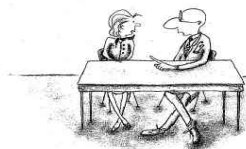

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Sorry Works!  
It's all about staying on the same side of the table


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### Sorry Works!

Empathy is appropriate  
100% of the time



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### Sorry Works!

- ...Knowing the difference
- "I'm sorry" = Empathy
- "I apologize" = Accepting responsibility
- Important that your patients know which you mean



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### An Empathetic "Sorry"

- *"Mrs. Jones, the surgery is over and I know you were looking forward to taking your mom home in a few days...you have that big birthday party with grandkids in a few days. But, I'm sorry to tell you she is in the ICU...the surgery didn't work out the way we expected. I'm so sorry..."*
- *"I can only imagine how upsetting this must be for you and, again, I'm very sorry this happened. Please know we are doing an investigation and will have some initial answers to you in the next two days..."*
- *"Please understand your mom is receiving the best care possible and we are going to keep you posted on her progress..."*
- *"In the meantime, is there anything I can do for you? Food or transportation? Can I help making phone calls? Do you need a minister? Here's my business card...don't hesitate to call me. I feel so bad for you...I'm sorry."*



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### What Was Said

Speed: "I'm sorry" should be provided as soon as possible after adverse event.

Empathy personalized and feelings of patient/family acknowledged

The "s" word

Taking the situation seriously

Customer service elements

Staying connected!



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### What Was NOT Said

- No Admission of fault – yet!
  - Do NOT prematurely admit fault or play retrospection game
- No jousting or speculation – not time to throw colleagues under the bus!



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### When to APOLOGIZE



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### Final Thoughts

- Five-Star Customer service improves patient satisfaction
- Satisfied patients are more likely to be loyal and return to your practice following an adverse event
- Satisfied patients are less likely to sue should an adverse event occur
- Empathy is appropriate 100% of the time
- It is important to know the difference between “sorry” and “apology”
- Disclosure is a continuum



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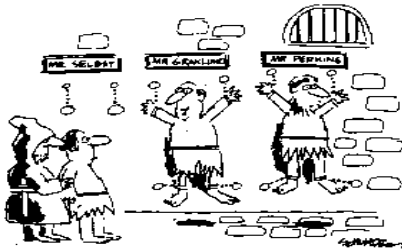
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### Thank you



"You'll like it here. They treat you like a person rather than a number."



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