

Early Discussion and Resolution Conversation Guidance

When healthcare did not go as planned and a patient has experienced serious injury or death, an open conversation between healthcare providers and the patient or their family offers a constructive way forward, even if the care met professional standards. When a conversation is initiated under the Early Discussion and Resolution (EDR) program, communications are protected under Oregon law.

You may need several conversations to achieve resolution. This document offers general guidance for both the initial conversation and follow-up conversations, based on research from leaders in the healthcare communication and resolution field (see References). Every conversation is unique, and you should adjust your approach in consultation with your liability insurer.

Nothing in this document is intended as legal advice.

The Initial Conversation

The initial conversation with the patient or family should take place as soon as reasonably possible, even if your event analysis (e.g., investigation, inquiry, root cause analysis, or event review) is in an early stage.

Goals

- **Rebuild trust** with the patient or their family.
- **Acknowledge** the patient or family's experience.
- **Respond** to questions you can answer.
- **Ensure the patient or family can contribute** to the event analysis.
- **Set the stage for future discussions** with the patient or family.

Guidance

Get ready

- Review the event, with team members as appropriate, so that you are familiar with information relevant to the **Five Questions the Patient and Family Will Likely Have About the Event**

5 Questions the Patient and Family Will Likely Have About the Event

1. What happened?
2. Was it preventable?
3. Why did it happen?
4. What impact will there be on my health, treatment, and follow-up care?
5. What is being done to improve care for future patients?

- Know the timeline for completing the event analysis.
- Prepare yourself emotionally.
 - Consider your own feelings and seek support as needed.
 - Anticipate the patient or family's emotional response and plan how you will respond empathetically.
- Decide who should be included in the discussion with the patient.
 - Consider bringing one or more team members with you as well as a patient advocate, if your organization has one.
 - Limit the size of your team—too large a team may overwhelm the patient or family member and put them on the defensive.
- Rehearse the discussion, choosing a rehearsal partner who will be able to protect the confidentiality of your discussion, such as your liability insurer or risk manager.
- Decide if a mediator would be helpful.
- Hold all bills and donation requests until the matter is resolved.

Frame the conversation and begin to rebuild the relationship

- Give the patient or family your full and undivided attention (no phones or beepers).
- Introduce everyone and explain their role.
- Remind everyone that all communications are protected under law.
- Describe the purpose of the conversation and check in with the patient or family to understand their goals and key concerns.
- Ask the patient or family how they are doing, actively listen, and respond with empathy.
- Validate the patient or family's feelings.
- Express personal regret and apologize as appropriate.

Explain and confirm the facts as known, while remaining emotionally attuned

- Answer the **Five Questions the Patient and Family Will Likely Have About the Event** (see p.1) to the extent that the facts are known—do not require the patient or family to dig for vital information.
 - Use plain language, avoid jargon, and check for understanding throughout.
 - Do not speculate—incomplete information can create the wrong impression and it may be impossible to correct.
 - You can have follow-up conversations when more is known.
- Confirm your understanding of the event.
 - If the patient or family has not been interviewed, ask for their account of the event.
 - If the patient or family has been interviewed, ask if they have information to add.
- Explain your role in the event and, if appropriate, accept responsibility—avoid blaming others or “the system”.

Close the initial conversation and communicate next steps

- If needed, plan for a follow-up conversation.
- Ask the patient or family if they have any other questions.

- Designate a contact person whom the patient or family can reach with questions or concerns.

Follow-up Conversation(s) and Resolution

After the initial conversation with a patient or family, it may be appropriate to have one or more follow-up conversations.

Goals

All the goals for the initial conversation still apply. Additional goals include:

- **Fully inform** the patient or family about the findings of your event review.
- **Offer financial or non-financial restitution** if you conclude that care did not meet standards.
- **Engage the patient and family** in patient safety improvement activities when and if they are willing.

Guidance

Assess progress of the conversation to date, and prepare for the upcoming conversation(s)

- Review the initial conversation with your team.
 - Identify what worked, what didn't work, and any outstanding questions.
 - If communication was especially challenging, consider hiring a mediator.
- Look over the completed event analysis.
 - Determine if medical error occurred or if the event was an adverse outcome that occurred despite care that met professional and institutional standards.
 - If there is any question, seek the assessment of impartial clinicians.
- Prepare an offer of financial and non-financial restitution if the care did not meet professional and institutional standards.
 - Work with your team to value the event fairly.

- Ask the patient or family for information you may need to assemble your offer (e.g., out of pocket expenses or lost wages).
- Put all offers in writing—consider including the offer as part of a letter describing what happened.
- When you make the offer, advise the patient or family of their right to consult an attorney.

Note: Generally, it is better to separate the conversation about what happened from the discussion of restitution. Discuss the event analysis at one meeting, and schedule another to talk about compensation.

- Rehearse the upcoming discussion, choosing a rehearsal partner who will be able to protect the confidentiality of your discussion, such as your liability insurer or risk manager.

Frame the conversation

- Give the patient or family your full and undivided attention (no phones or beepers)
- Re-introduce everyone.
 - If you have new team members, explain their roles.
- Ask how the patient or family has been since you last met, actively listen, and respond with empathy.
- Bring everyone onto the same page: summarize where things stood at the end of the previous conversation, describe the purpose of the conversation, and check in with the patient or family to see if they have anything to add.

Update your explanation of the facts based on the complete event analysis

- Use plain language, avoid jargon, and check for understanding throughout.
- If the event occurred despite reasonable care, explain how the care met professional standards.

- If the injury or death resulted from care that did not meet professional or institutional standards, tell the patient or family what should have happened.
- Express personal regret and apologize as appropriate.
- Tell the patient or family what will be done differently to improve care for future patients.

Conclude the conversation

- Identify next steps and plan for additional conversations if needed, including any discussion of restitution.
- Express your appreciation for the patient or family's participation in the conversation process
- At the final conversation, invite the patient or family to participate in patient safety activities when and if they are interested, and let them know who to contact.

Learn more: To get additional information to support your communication and resolution work, including care for the caregiver and event analysis, contact the Oregon Patient Safety Commission or visit us online, oregonpatientsafety.org.

References

- Early Discussion and Resolution Law: ORS 31.260 to 31.280
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