

# Current Ethical Issues in Cardiothoracic Surgery: Information Driving Transparency and the Changing Surgeon-Patient Relationship

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Rodman Taber Lecture  
Michigan Society of thoracic and Cardiovascular Surgeons  
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Rodman Taber  
1920-2013

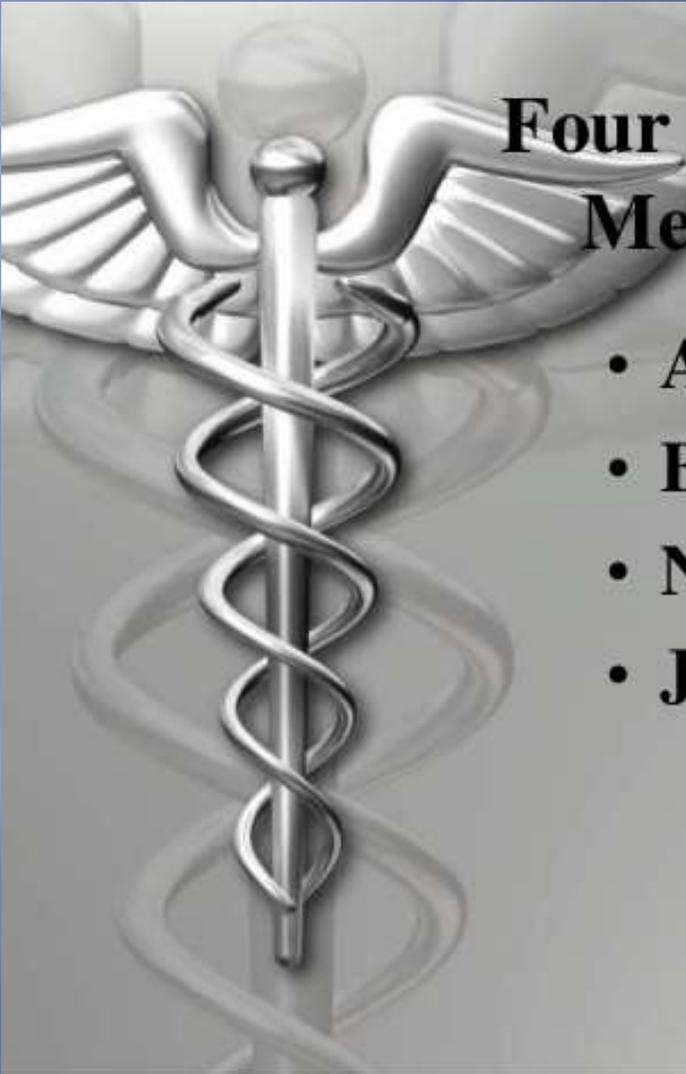
# DICLOSURES

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Premise:

Increasing availability of information, of all types, is driving transparency and is changing the relationship between surgeons and their patients

1. Running concurrent Operating Rooms and disclosure of the roles of residents, fellows, physician-extenders and other attending physicians
2. Disclosure of relationships with Industry
3. The employed physician – employer vs. patient
4. Disclosure of medical errors



## **Four basic Principles of Medical Ethics**

- **Autonomy**
- **Beneficence**
- **Non maleficence**
- **Justice**

Beauchamp and Childress,  
Principles of Biomedical Ethics, 2009

# Respect for Autonomy



# Nonmaleficence

**First**



**Do No Harm**

# Beneficence



“Relieving suffering & providing benefits”

# Justice



“Fairness in distribution of risks, benefits and costs”

# Physician-patient relationship



Fildes, 1891

# Professional-Patient relationships

- Veracity...truth-telling and comprehensive, accurate and objective transmission of information
- Privacy & Confidentiality
- Fidelity...loyalty, putting the patients first



- Terminology: concurrent, simultaneous, overlapping
- How often does this happen? Does it affect outcome? What are our own rules
- Legal/Billing requirements for surgeon's presence
- Ethical Issues:
  - Consent
  - Patient expectations
  - Physician-patient relationship/obligations

“A primary attending surgeon’s involvement in concurrent or simultaneous surgeries on two different patients in two different rooms is not appropriate”



American College of Surgeons  
Statement on Principles

In general, the patient's primary attending surgeon should be in the operating suite or be immediately available for the entire surgical procedure...when the attending surgeon is not present or immediately available, another attending surgeon should be assigned as being immediately available.



American College of Surgeons  
Statement on Principles



The United States Senate  
**COMMITTEE on FINANCE**  
ORRIN G. HATCH, CHAIRMAN    RON WYDEN, RANKING MEMBER



## Case 2:

A surgeon implants an innovative device to have a therapeutic benefit. The surgeon routinely uses a specific manufacturer's device (but there are several alternatives). All goes well but a month later the patient utilizes the Sunshine Act and notes that the surgeon received \$ 50,000 that year for "consulting". The surgeon had disclosed this relationship to his hospital and medical school (but not to the patient). The patient complains that this should have been disclosed as it was material to his decision regarding which surgeon, hospital, and device to use.

Should the surgeon have disclosed his consulting relationship to the patient?

- A. Yes
- B. No

- Is it now the surgeon's responsibility to disclose such relationships...or the patient's responsibility to search them out?
- At what point are payments from industry material to the patient's decision process
- At what point, if ever, is the surgeon's duty to the patient compromised by his/her relationship with industry
- Is this different than any other potential conflict of interest?
- What oversight exists for the use of new (novel) devices?

- Medicare
- Medicaid/CHIP
- Medicare-Medicaid Coordination
- Private Insurance
- Innovation Center
- Regulations & Guidance
- Research, Statistics, Data & Systems
- Outreach & Education

Home > Open Payments

- Open Payments
- About
- Explore the Data
- Program Participants
- FAQs
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## The Data is Out!

The third year of Open Payments data is now available. Check out the data dashboard to see an overview of the data, or dive right in and use the search tool [here](#).

Click [here](#) to see a copy of the announcement for the 2015 Open Payments program data.

## 2017 Physician Fee Schedule

The Open Payments Program is soliciting feedback in the 2017 proposed Physician Fee Schedule! See page 81 FR 46395 of the [proposed rule](#).

We will discuss the proposal live on August 2 at 1:30 p.m. EST. See our [Events page](#) or view the [presentation](#).

## View the Data

[View Summary Data](#)

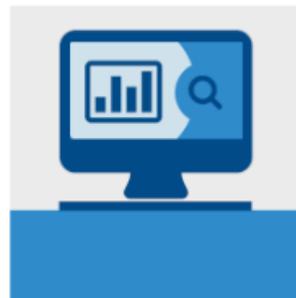
[Search the Data](#)

[Create Charts and Graphs with the Data Explorer](#)

## Open Payments

Open Payments is a federal program, required by the Affordable Care Act, that collects information about the payments drug and device companies make to physicians and teaching hospitals for things like travel, research, gifts, speaking fees, and meals. It also includes ownership interests that physicians or their immediate family members have in these companies. This data is then made available to the public each year on this website.

[Learn more](#) about Open Payments.



### Search & Explore Open Payments Data

- Use the search tool to look up doctors, hospitals, or companies.
- [Download](#) the data sets.
- [Interact](#) with all the data sets.



### Physicians and Teaching Hospitals

- Learn how to [register](#) to [review \(and dispute\)](#) your financial data.
- [Step by step guides](#) available.
- Already registered? [Login here](#).



### Applicable Manufacturers and Group Purchasing Organizations

- Learn How to [register](#).
- Already registered? [Login here](#).
- Attend helpful [events](#) to learn more about Open Payments.

# Industry to physician payments

American College of Surgeons – Surgical Forum October 2015 (JACS 221:4(1), S64, 2015)

Total payouts to physicians ~\$1.7B a year

Over 5 months (Aug-Dec 2013)

- Approximately 1/2 of physicians received nothing
- General surgeons (N=11,000): median payment \$100; mean payment \$1200 Largest payment to a surgeon ~\$250,000
- Of (general) surgical specialties, cardiothoracic surgeons had the highest payments reported to Physician Payment Sunshine Act database – twice the amount of general surgeons

# Moore v. Regents of University of California (1990)

- These principles lead to the following conclusions: (1) a physician must disclose personal interests unrelated to the patient's health, whether research or economic, that may affect the physician's professional judgment; and (2) a physician's failure to disclose such interests may give rise to a cause of action for performing medical procedures without informed consent or breach of fiduciary duty

[Supreme Court of CA: 51 Cal. 3d 120; 271 Cal. Rptr. 146; 793 P.2d 479](#)

# Case 3: The Employed Physician



## Case 4:

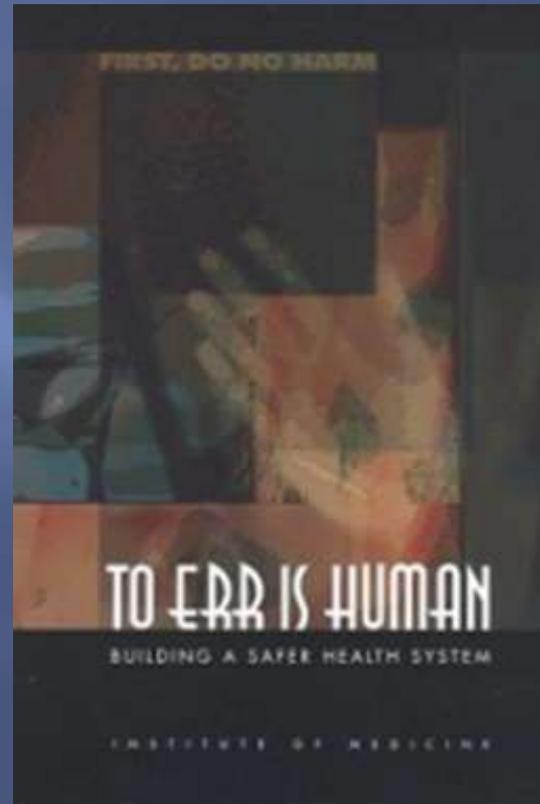
75 year old man undergoes mechanical AVR...not discharged on appropriate anticoagulation ...has a stroke from which he gradually recovers.

Should he be told that stroke was from inadequate anticoagulation?

- A. Yes...by the attending surgeon
- B. Yes...by someone other than the attending surgeon
- C. No

# Medical Errors

- ▣ 44,000-100,000 deaths each year
- ▣ 1,000,000 excess injuries each year



IOM 2000

# What is “right” changes with the times

- “The patient has no more right to all the truth than he has to all the medicine in the physician’s saddlebag...he should only get so much as he needs”
  - Oliver Wendell Holmes...Dean of Harvard Medical School (1846-53)
- AMA’s principles of Medical Ethics (1957)...a physician must report an accident , injury, or bad result stemming from his or her treatment
  - Often interpreted to mean reporting to supervisor, hospital, QA Committee, etc – but not patient
- 1991 American College of Physicians Ethics Manual...“physicians should disclose to patients information about procedural and judgment errors...if such information affects care of the patient”
- 1994...AMA Council on Ethical and Judicial Affairs: “physician is ethically required to inform patients of all facts necessary to ensure understanding of what has occurred” (in context of medical error)

# Practical issues

- Deciding whether to make a disclosure
  - Major vs. minor;
  - Obvious or hidden error
  - adverse outcome or “near miss”
- Timing of disclosure
- Who should make the disclosure
- How to make the disclosure...ie; What to say
  - Apology is the expected social response to an error and is prerequisite to making amends and being forgiven (Lazare, JAMA, 2006)
- What about disclosure of errors by other physicians

# Early Disclosure, Apology & Resolution

- University of Michigan
- Stanford...“PEARL” program
- CARE...BIDMC and others (Mass initiative)



The screenshot shows the homepage of the Massachusetts Alliance for Communication and Resolution following Medical Injury (MACRMI). The header features the MACRMI logo, the organization's name, and a 'USER LOGIN' button. A navigation menu includes links for 'About', 'For Patients', 'For Providers', 'Resource Library', 'Blog & News', and 'Contact'. The main content area is divided into a 'WELCOME' section on the left and a vertical sidebar on the right. The 'WELCOME' section contains introductory text about the organization's mission and a central resource for information on the CARE approach. The sidebar includes five interactive buttons: 'For PATIENTS', 'For PROVIDERS', 'Use Our Resource LIBRARY', 'Connect with the MACRMI Community', and 'Sign-Up for Our NEWSLETTER'. A photograph of a doctor and a patient is visible in the background of the main content area.

**MACRMI** Massachusetts Alliance for Communication and Resolution following Medical Injury

USER LOGIN

About For Patients For Providers Resource Library Blog & News Contact

## WELCOME

MACRMI is a Massachusetts alliance of patient advocacy groups, teaching hospitals and their insurers, and statewide provider organizations committed to transparent communication, sincere apologies and fair compensation in cases of avoidable medical harm. We call this approach **Communication, Apology, and Resolution (CARE)** and we believe it is the right thing to do. It supports learning and improvement and leads to greater patient safety.

**This site is a central resource for information on the CARE approach and the health care institutions implementing it.** Here you will find answers to many of your questions regarding medical injury; resources and support for patients, families and clinicians; education and training resources for health care providers; sample guidelines and policies; research and articles; and ways to connect with each other. **By sharing what we learn from medical errors and near misses, we are enhancing patient safety together and improving our health care system. Thank you for participating.**

For PATIENTS

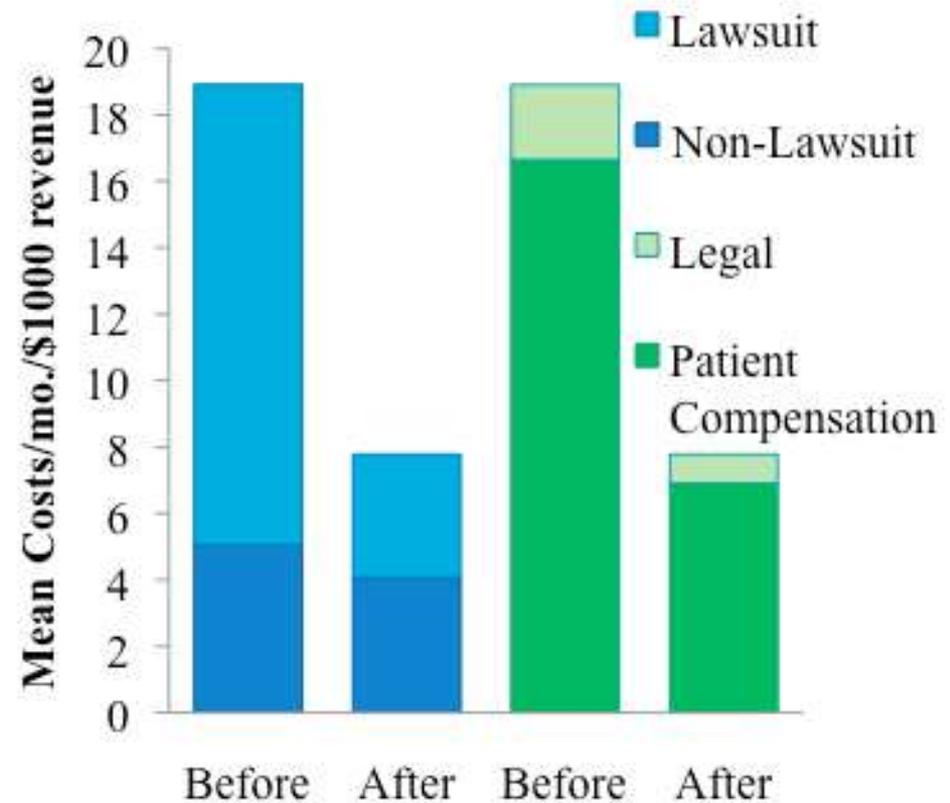
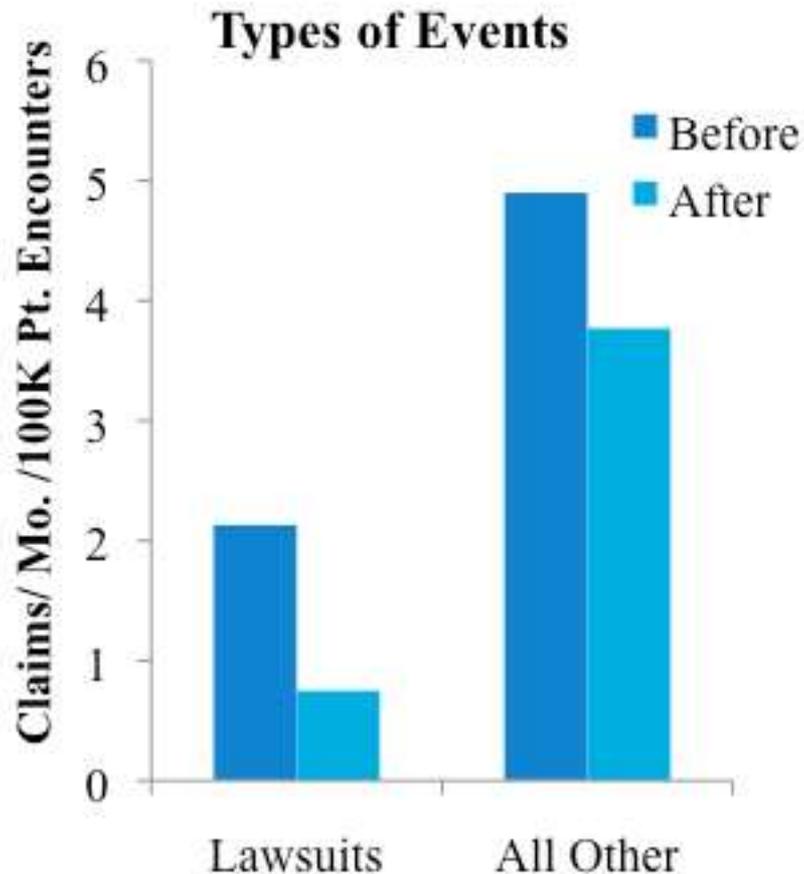
For PROVIDERS

Use Our Resource LIBRARY

Connect with the MACRMI Community

Sign-Up for Our NEWSLETTER

## Results: 50% reduction in claims and costs/claim



# OpenNotes

A New Medicine With Clear Benefits

TRUST  
BETTER RECALL  
**IN CONTROL OF  
HEALTH CARE  
PARTNER**

BETTER PREPARED  
**SHARED  
DECISION  
MAKING**  
TRUST  
**BETTER  
QUESTIONS**



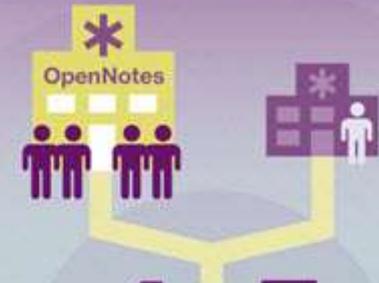
“If consumers are to become truly active partners in their own health care, they should be able to retrieve their personal medical information readily, including their doctors’ notes.”

— Tom Delbanco, MD and Jan Walker, RN, MBA, Co-Directors, OpenNotes

**99%** OF PATIENTS SAID THEY WANT TO SEE THEIR DOCTOR VISIT NOTES



## Consumers Choose Transparency



**4 OUT OF 5**

PATIENTS SAID HAVING ACCESS TO OPEN MEDICAL NOTES WOULD BE A “SOMEWHAT” OR “VERY IMPORTANT” FACTOR IN CHOOSING A HEALTH PLAN OR A DOCTOR/PROVIDER.

“My fears: Longer notes, more questions and messages from patients. In reality, it was not a big deal.”

— Participating OpenNotes Physician

SHARING VISIT NOTES WITH MY PATIENTS IS A **GOOD IDEA**

**88%**

OF DOCTORS PARTICIPATING IN THE STUDY



If we put ourselves in the shoes of our patients, we will probably make the right decision



Steamboat Springs, CO, March 2015

**THANK YOU!**



**Carmel, CA; Christmas 2014**