

Five Years Later: UK Duty of Candour Matures

by Julie Maciura
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Regulators are increasingly experimenting with strategies to change the approaches and attitudes of the profession as a whole rather than just engaging in enforcement activities in relation to individual practitioners. One such experiment in the United Kingdom is celebrating its fifth birthday. The Professional Standards Authority (PSA) has recently released a report analyzing the outcome of the initiative, identifying barriers to its full implementation and suggesting enhancements.

In 2014 the health professional regulators in the UK published a joint statement expressing the expectation that practitioners be candid with patients when things went wrong. This was part of a coordinated effort that included health organizations and institutions that flowed from the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry. Also called the “Francis Report”, it concluded that a lack of openness contributed to the suffering and death of hundreds of patients from poor care.

The duty of candour is more than just being open with patients. It is defined in the joint statement as follows:

Every healthcare professional must be open and honest with patients when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress.

This duty includes:

- telling the patient when something has gone wrong;
- apologizing to the patient;
- offering an appropriate remedy or support to put matters right (if possible); and
- explaining fully the short and long-term effects of what has happened.

The joint statement also indicated that practitioners must likewise be open and honest with their colleagues, employers and regulators, raising concerns where appropriate and not stopping others from raising concerns.

In assessing the evolution and effectiveness of the duty of candour, the PSA report identified a number of barriers:

1. Organizations “which had a blame culture, or a culture of defensiveness, were not environments in which the professional duty of candour could thrive”. In those cultures being candid could adversely affect a practitioner’s career.
2. The passage of time, due to workload or discovering the error afterwards, can result in a closed “window of opportunity” reducing the authenticity of the disclosure and apology.
3. A lack of education and training in communication skills and the rationale for candour makes it difficult for practitioners to implement the obligation.
4. Fear of regulatory, civil or even criminal litigation discourages candour especially in light of the recent prosecution of Dr. Hadiza

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Bawa-Garba¹. The PSA noted that many experts believed that being candid reduces legal liability, but that this is a difficult message to communicate to practitioners. There is also a “myth” that being candid or apologizing can result in higher insurance premiums and a denial of coverage.

5. Some felt that professional regulators had not done enough to set standards for and communicate the expectations of candour. Similar to the previous point, perceptions of a blame culture within regulators is a disincentive to being candid.
6. A few comments obtained by the PSA related to disclosure and overwhelming patients with information they did not particularly want to know. The PSA noted the risk of reverting to a paternalistic approach to disclosure associated with this concern.
7. High performing practitioners sometimes have personal difficulty acknowledging they have made an error.

The PSA then examined how regulators had already helped embed the duty of candour, including:

1. Health regulators had incorporated the obligation in their standards.
2. Many regulators had incorporated the duty, including its rationale and its benefits to practitioners in the education and training to become practitioners.

3. Many regulators also incorporated the requirement into the continuing professional development requirements for practitioners.
4. Some regulators have included an absence of candour as grounds for discipline and the presence of candour as a mitigating factor for penalty. However, the absence of candour is often part of a broader concern about dishonesty and was often not communicated as a separate concept.
5. Some regulators have communicated on the topic with other stakeholders in the health care system.

The PSA urged regulators to take additional measures to encourage candour including:

1. Publishing case studies, not only as an effective communications tool, but to help practitioners identify and relate the duty to their actual practices;
2. Ensuring that practitioners understand the positive impact candour can have on patients (and indeed the general public) and the adverse impact a lack of candour can have on them;
3. Shifting the communications message to practitioners away from the “stick” of complying with the requirement and toward the benefits to the practitioner and their practice setting flowing from openness;
4. Working with other stakeholders, especially employers and system regulators, to understand and promote candour together;
5. On a related point, collaboration by regulators to provide support in implementing candour in multi-disciplinary teams;

¹ Dr. Bawa-Garba was disciplined after having been found criminally responsible for manslaughter for the death of a child following a series of institutional and individual errors.

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6. Joint action by regulators to communicate a consistent message about candour, just like they did with the initial joint statement;
7. Indicating how a practitioner being candid will be used positively in the complaints and discipline process;
8. Clarifying the scope of the duty (e.g., distinguishing patient “distress” which invokes the duty, from patient discomfort that does not), perhaps through case studies; and
9. Education and training in candour for all programs leading to registration.

The PSA report concludes: “This report has shown that there is not one way to embed a culture of candour, instead regulators, professional bodies, providers and education bodies need to work together.”

Regulators elsewhere can benefit from studying this report on the initiative in the UK. The duty of candour is a regulatory tool to try to change behaviour in a systemic way rather than by just disciplining individuals for misconduct. It is analogous to other initiatives regulators have developed in such areas as client-centred care, informed consent / choice, know your client, and sexual abuse prevention plans. It is a shame, as was noted by the PSA, that progress in such matters is so difficult to measure.

To view the PSA report, see:

https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/telling-patients-the-truth-when-something-goes-wrong---how-have-professional-regulators-encouraged-professionals-to-be-candid-to-patients.pdf?sfvrsn=100f7520_4