

*how*TM

University of Michigan Hospitals and Health System (UMHS)

The University of Michigan Hospitals and Health System (UMHS) in Ann Arbor consists of three hospitals, a medical school, and numerous other health facilities. In 2001, UMHS, like many similar institutions, suffered under a budget-busting load of medical malpractice litigation that had seen exponential growth nationwide over the preceding decade. Given the increasingly transparent nature of medical care, better-educated patients, and opportunistic personal injury lawyers, it realized that it was going to incur liabilities in some percentage of cases despite doing everything it could to eliminate systemic errors. That year UMHS fought many malpractice claims and lawsuits in court, but also settled more than 260 others at a cost of \$18 million.

As the administrators at UMHS considered ways to reduce their potential liability, they realized they could do little about lawsuits stemming from catastrophic errors that result in loss of life or limb. They focused instead on suits involving less serious consequences, like a patient with epilepsy admitted for surgery whose doctor forgot to note his postoperative need for antispasmodic medication. When that patient had a seizure in the bathroom and bumped his head, requiring a few stitches, typically a lawsuit quickly followed. In cases like these, they asked themselves, what *should* we be doing for our patients?

Continuing to fight malpractice claims in court remained an option, but they chose a different course of action. They encouraged their doctors to say, “I’m sorry.” Using their established doctor/patient interaction education program, they developed scenarios to help doctors understand how to step up and promptly admit when a mistake was made. Now, when they discover an error like the prescription oversight for the epileptic patient, the doctor apologizes on the spot.

When UMHS announced this new approach, the strategy was widely ridiculed as legal suicide.

It is critically important to realize that in a hyperconnected world, where information about your actions travels instantly to any interested party, people watching you will judge not just *what* you do but *how* you do it. They’re not going to sit back and wait to see if you win or lose; they’re going to watch the manner in which you pursue the case. If companies were people—your colleagues or potential business partners—the opinion you form about them would certainly affect the way you choose to interact with them. Do you think that UMHS must be out of their legal minds for admitting liability immediately when mistakes are made? Or do you think that UMHS upheld its values and put the best interests of its patients first and the risk of higher legal costs second?

Here is where things stand in the marketplace. In the three years following UMHS’s decision to apologize, medical malpractice claims and lawsuits against them dropped by nearly 50 percent and the per-case cost of defending against the remaining suits dropped 50 percent as well, saving UMHS millions of dollars. One company attempted to limit its exposure by shutting down all challenges while the other opened itself up to challenge and, in so doing, actually reduced its exposure.

How did UMHS arrive at a counterintuitive solution like apologizing, a choice widely seen at the time as legal suicide? UMHS employs a value-based approach to pursuing corporate goals. Respect, compassion, trust, integrity, and leadership—the stated values—inform everything from the way they treat their patients to the way they treat their staff, and they articulated these values in their Seven Strategic Principles. As an

organization whose very core was grounded in the language of values, they tackled their mounting litigation problem by asking themselves not “What *can* we do?” but rather, “Based on our values, what *should* we do?”

This train of thought led them to see that medical care is fundamentally an interaction between two people—the doctor and patient—just like any other business relationship, and to examine what was “sick” in the cases that resulted in litigation. They quickly learned that the overwhelming majority of plaintiffs were generally able to forgive the error itself—doctors are only human, after all, but that the doctors who had betrayed their trust by denying culpability filled them with rage. The real illness in these cases lay in the interpersonal synapse between doctor and patient. Armed with the knowledge that the destruction of trust was contributing to retributive consequences for unavoidable mistakes, UMHS looked for ways to heal this core dysfunction; healing, after all, is what they do best. The new approach realized unexpected additional benefits as well. With the working atmosphere now free of retribution, doctors no longer have to duck and dodge to avoid the appearance of guilt when errors occur. They enjoy greater opportunity to explore what went wrong and devise innovative solutions to prevent future occurrences. The culture of transparency bred by UMHS’s new openness has brought error rates down throughout the hospital and measurably improved the quality of patient care.

The language of laws and rules is the language of *can* and *can’t*, *right* versus *wrong*. It’s a binary language with little room for nuance or shades of meaning. That is why it is inadequate to describe the full richness of human behavior. We are, as people, so much more than right or wrong. When you get stuck in the language of permissibility and prohibition (*can* versus *can’t*) you get stuck thinking in relation to rules rather than in the realm of true human potential. You can discuss a lawsuit in terms of utility—“*Can* we fight this effectively in court?”—but it is quite another thing to discuss it in terms of your values—“Given what

we believe, *should* we fight this in court?” The first approach prompts thinking in relation to rules and codes; the second opens up thinking in relation to what is most important to an organization’s or individual’s core values and long-term success. In that difference—the difference between *can* and *should* lies an extraordinarily important step towards thriving in a world of HOW: *True freedom lies not in the absence of constraint; true freedom lies in the transcendence of rules-based thinking.*

Thinking in the language of *can* versus *can’t* predisposes you to perceive challenges in a certain way and respond within narrow avenues. Thinking in and speaking the language of values—the language of *should* and *shouldn’t* instead of the language of *can* and *can’t*—opens up a wide spectrum of possible thought, a spectrum that encompasses the full colors of human behavior as opposed to the black-and-white responses of rules. This spectrum can lead to truly creative and innovative solutions to challenges.

I offer the legal challenge faced by UMHS because it paints a fairly black-and-white picture of the difference between thinking in *can* and thinking in *should*. Being presented with a lawsuit is usually far more serious than our daily confrontations with rules and regulations; however, our responses are in many ways identical in nature.

Transcending the rules-trapped language of *can* and embracing the values-inspired language of *should* illuminates the pathways to truly innovative solutions, like those of UMHS, as well as simpler choices like sharing the credit. UMHS achieved dramatically lower litigation costs; you, by sharing credit, earn the loyalty and increased dedication of a junior associate who, the next time your team needs an extra measure of effort to accomplish its goal, happily steps up and puts in the weekend hours necessary to get you there.

To thrive in a world of HOW, you must balance your muscles of casual avoidance—as strong and developed as they are—with the ability to think in the language of values, in terms of *should*. ■