

## Whistleblowers: Troublemakers or Virtuous Nurses?

Regrettably, whistleblowing is still necessary in today's health care environment — one that is weighed down with fraud, incompetent practitioners, and patient safety issues. It is an action seen in movies and heard about in organizations, yet distant from nursing. Nurses are left with a question, "Could I stand up for what is right like that courageous person?" The focus of this article is to provide ethical justifications for the action of whistleblowing as well as information on legal protections and ways to reduce the risks and negative consequences often experienced by the whistleblower.

### What Is Whistleblowing?

*Whistleblowing* is an attempt by a member or former member of an organization to issue a warning to the public about a serious wrongdoing or danger created or concealed by the organization (Ahern & McDonald, 2002; Bolsin, Faunce, & Oakley, 2005; Davis & Konishi, 2007). Numerous definitions of whistleblowing appear in health care and business literature, but all point to the importance of advocacy, that is, protecting someone who will likely be harmed. For this article, the definition will differentiate between reporting the problem within the organization and whistleblowing to an external agency (Fletcher, Sorrell, & Silva, 1998; Sellin, 1995).

To define the terms further within the scope of nursing, whistleblowing is the action taken by a nurse who goes outside the organization for the public's best interest when it is unresponsive to reporting the danger through the organization's proper channels. Reporting is the action taken by the nurse inside the channels of his or her organization to correct a dangerous situation. Examples of reporting include incident reports and verbal reporting to line managers (Firtko & Jackson, 2005).

These definitions indicate that whistleblowing results from a failure of the ethical climate of the organ-

ization to address accountability for the safety and welfare of the patients. The nurse feels compelled in the face of inaction to take a stand against the wrongdoing in the organization. Because staff nurses have an increasing responsibility to maintain an ethical practice environment, it is important to cover the organizational ethics issues and solutions as well. A discussion of what both the organization and the nurses in leadership roles within the organization can do to help maintain the business' moral compass will be discussed in an upcoming *Ethics, Law, & Policy* column.

### When Is Whistleblowing Morally Required?

The ethical theories used in this article to justify whistleblowing are Kantian (duty), virtue, and utilitarian (Bolsin et al., 2005; Grant, 2002; Kline, 2006). Kantian theory instructs people to act in harmony with universally accepted rules. Telling the truth is at the heart of this deontological theory (Kant, 1996). Though Kant had no way of knowing the self-sacrifice that is often required in whistleblowing, I believe that Kant would want an individual to stand firm in telling the truth, regardless of personal outcome.

Virtue theory requires an individual to personify integrity and courage (Adams, 2006; Bolsin et al., 2005). Reporting unethical colleagues, patient safety violations, or health care fraud requires the integrity found in professional character. For example, a primary goal is to remain loyal to providing relief to a patient in suffering. Turning a blind eye to practices that go against that primary aim would not only breach the nursing *Code of Ethics* (duty) (American Nurses Association [ANA], 2001), but it would also violate the basic virtues of honesty and courage.

The ethical theory of consequentialism (utilitarian) provides a powerful justification for whistleblowing: maximizing the human benefit and minimizing the harm. Below is the standards theory summarized by Davis (2003, pp. 89-90) and describing when whistleblowing is morally required for the greatest good of society.

- The organization to which the would-be whistleblower belongs will, through its product or policy, do serious considerable harm to the public

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(whether to users of its product, to innocent bystanders, or to the public at large).

- The would-be whistleblower has identified that threat of harm, reported it to the immediate supervisor, making clear both the threat itself and the objection to it, and concluded that the superior will do nothing effective.
- The would-be whistleblower has exhausted other internal procedures within the organization (for example, by going up the organizational ladder as far as allowed), or at least make use of as many internal procedures as the danger to others and his or her own safety make reasonable.
- The would-be whistleblower has (or has accessible) evidence that would convince a reasonable, impartial observer that his or her view of the threat is correct.
- The would-be whistleblower has good reason to believe that revealing the threat will (probably) prevent the harm at reasonable cost (all things considered).

Sometimes the threat to the safety or health of patients is so immediate that going through the channels of a hierarchical structure could cost patients' lives. If the immediate supervisor is the source of the problem, the nurse has no choice but to leap up a level above him or her in the organization. Unfortunately, not following the chain of command could be the resulting focus of the retaliation rather than the identified ethical issue. If blindness to the danger extends to the next level in the hierarchy, the individual's loyalty to the organization or his or her naiveté on how a health care organization functions could become the issue. This is because whistleblowing challenges the amoral view of the organization; from the organization's point of view, the nurse was unable to resolve the ethical concerns internally (Grant, 2002).

### Who Are Whistleblowers?

Whistleblowers are generally seen as brave individuals who take a stand against the practices of an organization. Whether in business or health care, the cases are similar to the examinations of 64 whistleblowers by Glazer and Glazer (1989). They are parallel to the movie *The Insider*, which depicted the tactics of the tobacco industry to hide the addictiveness of its product. Many stories indicate that whistleblowers face adversity when standing up to an organization, including that of Barry Adams, RN (Fletcher et al., 1998).

Barry Adams worked in a sub-acute unit in a New England hospital in 1996. As the hospital implemented staffing cuts and cost-containment actions, he became increasingly distressed about the quality and safety of the patient care. His careful documentation revealed that inadequate staffing and lack of supervision of new staff correlated not only with patient falls, but also with incomplete treatments and serious medication errors. For 3 months, Mr. Adams documented and communicated his concerns up the chain of command within the hospital. He was fired eventually for his actions. He sued the health care organization and won;

upon appeal, the hospital lost a second time. For Mr. Adams, like most other whistleblowers, personal and professional reputation was above reproach.

Iiffe (2002) identified whistleblowing as an obligatory rather than a chosen state. From that point of view, whistleblowers find themselves in a position either to speak out or to remain silent. At those moments, the situation and the virtue of courage collide. Some nurses choose to maintain standards they have as personal and/or professional. Like Barry Adams, they are often not average performers. They are above-average performers committed to the organization with a strong belief in moral principles (Grant, 2002).

### What Are the Negative Consequences to the Whistleblower?

Comprehending the public character of whistleblowing is crucial to appreciating the risks associated with the action. When whistleblowing is interpreted as I have defined it, the action requires moral courage. Malcontents who file frivolous lawsuits or draw attention to themselves in public media are not the focus of this article. Those scattered individuals undermine the courageous nurses who risk so much to honor their *Code of Ethics* and alert someone to wrongdoing and neglect within a health care organization. In the case of Barry Adams, 21 individuals came forward in the suit to attest to his integrity and protest his termination (Fletcher et al., 1998).

The list of negative consequences to whistleblowing seems endless: broken promises to fix the problem, disillusionment, isolation, humiliation, formation of an "anti-you" group, loss of job, questioning of the whistleblower's mental health, vindictive tactics to make the individual's work more difficult and/or insignificant, assassination of character, formal reprimand, and difficult court proceedings (Ahern & McDonald, 2002; Brodie, 1998; Fletcher et al., 1998; Wilmot, 2000). As Barry Adams learned, blowing the whistle can be a life-altering incident. Even though Mr. Adams lost his job, he must have felt a sense of achievement for speaking out about patient safety issues.

### What Legislation Provides Support to Whistleblower?

Under the 1st and 14th Amendments to the U.S. Constitution, state and local government officials are prohibited from retaliating against whistleblowers (Fauce, 2007). Federal regulations offer legislative protection for reasonable allegations of whistleblowers who acted in good faith for public interest because of a substantial and imminent threat to public good. Additionally, more than two-thirds of U.S. states have passed legislation to protect whistleblowers from retaliation (Grant, 2002). However, who is covered, what is covered, and how and when individuals are to report incidents vary from state to state (Drew & Garrahan, 2005). A person would be wise to know his or her rights and the procedures required before deciding to blow the whistle on an organization.

Two Web sites provide information, books, blogs,

**Table 1.**  
**A Guide for Moral Decision Making**

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|----|--|
| 1. | What are the moral dimension(s)?                               |
| 2. | Who are the interested parties? What are their relationships?  |
| 3. | What values are involved?                                      |
| 4. | What are the benefits and burdens that need to be examined?    |
| 5. | Are there any analogous cases?                                 |
| 6. | Who are relevant others with whom you could discuss the issue? |
| 7. | Does the decision accord with legal and organizational rules?  |
| 8. | Am I comfortable with the decision?                            |

Source: MacDonald, 2002.

Internet links, and other guidance. The National Whistleblower Center is a nonprofit, tax-exempt, educational and advocacy organization dedicated to helping whistleblowers (<http://whistleblowers.org/index.html>). Since 1988, this organization has used whistleblowers' disclosures to improve government and corporate accountability, environmental protection, and nuclear safety. Though not specifically focused on health care, the center's Web site provides a wealth of information.

The second Web site, Freedom to Care, does have a health care component. However, it is focused on issues in Great Britain (<http://www.freedomtocare.org/>). A link on this Web site connects nurses and nursing students to the International Association for Nursing Ethics and information on the ethical issues involved in whistleblowing (<http://www.freedomtocare.org/contents.htm#healthcare>).

The False Claims Amendment Act of 1986 primarily focused on prohibiting any false claim for reimbursement to the United States, but it did include a whistleblower provision (*qui tam*) (<http://www.taf.org/whyfca.htm>). This regulation protects whistleblowers who disclose violations that involve fraudulent use of federal funds. The whistleblower can be a current or former employee, a patient, a competitor, or any person who obtains first-hand knowledge of fraudulent behavior. This person can file suit on behalf of an entity and recover 15%-30% of any settlement. If the government wins the case, then the whistleblower could win a substantial amount of money. For example, in fiscal year 2006, the U.S. government recovered a record \$3.1 billion in cases of fraud (DoBias, 2007). Tenet Healthcare Corp's \$920 million settlement accounted for the largest percentage of the \$2.2 billion from recoveries in health care.

### Is There a Moral Guide to Solve the Whistleblower Dilemma?

If effective and well-communicated internal structures are available to ensure employees' concerns are addressed, the need for whistleblowing does not exist. However, in a less than idealistic world, the nurse needs a model on how and when to voice a concern that helps reduce the risk as much as is feasible. MacDonald (2002) provided such a guide to moral decision making. The model is outlined with slight alteration in Table 1.

An example to exemplify this model could be the continuous violation of an advance directive for a patient who is in the terminal phases of illness, or who is unconscious and therefore unable to voice his or her choices. By choosing to remain silent, the nurse would be complicit in violating the moral dimension of the patient's autonomy asserted in the advance directive.

The interested parties would include all other health care professionals caring for the patient, the patient's surrogate decision maker, and the nurse managers responsible for the unit. By speaking up in such a situation, a nurse would be in danger of undermining the status quo of the organization and breaching loyalty to the "conspiracy of silence," and could be seen as a troublemaker.

The issues of values, benefits versus burdens, and legal cases need reflection. The values espoused through the *Code of Ethics* (ANA, 2001) address the autonomy of the patient as well as the responsibility of the surrogate to speak for the patient. The burdens on the patient are more obvious than those on the nurse who speaks for the patient. The preceding negative consequences (burdens) outlined for the whistleblower may seem out of proportion to the benefits of integrity. Barry Adams, RN, could be an analogous case (Fletcher, 1998), but so could other nurses who refused to violate the patient's right to self-determination. MacDonald and Ahern (1999) found that talking to a respected friend or relative about the dilemma is an effective way to cope with whistleblowing. Violating the patients' advance directives violates not only the *Code of Ethics*, but other legal and organizational rules. The Patient's Self Determination Act (Galambos, 1998) and policies with the organization relative to advance directives also would be violated.

Finally, the nurse needs to ask, "Am I comfortable with this decision?" MacDonald (2002) offered some questions that can help the nurse address this question. The nurse may not be "comfortable" because often situations requiring the virtue of integrity and courage are not comfortable at the time. However, it is imperative that the nurse ask the following questions to determine if, in the long term, he or she could continue in the profession while maintaining a high level of integrity. Questions could include:

1. If I carry out this decision, would I be comfortable telling my family about it?
2. Would I want my children to take my *behavior* as an example?
3. Is this decision one which a wise, informed, virtuous person would make?
4. Can I live with my decision?

### Conclusion

I believe that the ends do justify the means of whistleblowing, when the ends are increased patient safety, change in misconduct, and/or an ethical climate that supports professional nursing. As a professional, every nurse needs to champion whistleblowing rather than ostracizing nurses with the moral courage to speak out on unethical practices. Encouragement is needed for the nurses who risk their own well-being for the sake of the patient (Peternelj-Taylor, 2003). ■

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## Ethics

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