

# ETHICS *in* Practice

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## I SEE AND AM SILENT / I SEE AND SPEAK OUT: THE ETHICAL DILEMMA OF WHISTLEBLOWING

### REPORTING HARMS: TWO STORIES

When operating room nurses\* at a Winnipeg children's hospital witness disturbing surgical problems and deaths in the paediatric cardiac program, they face a moral dilemma. After alerting supervisors and senior administrators, no changes occur, and the problems continue. The nurses persist in voicing their concerns. They often wish to tell parents to "take their child and run." They consider whether to go to the media with their story, but are afraid of being fired. They think of quitting their jobs, but fear they might be replaced by less-experienced nurses, making things worse for the children. By the time a review of the program is called, 13 children have died, and the nurses involved believe that some of those children could have been helped (Sibbald, 1997).

David, a nurse with several years experience, begins work on Unit 10, a long-term care unit in a mid-sized hospital. Within a few weeks he becomes aware that one of the nurses on the unit is being rough with the elderly residents. He speaks with this nurse about his concerns, but the behaviour continues. After observing her roughly forcing a resident into a chair, and verbally humiliating the resident several times over a shift, David reports the observed behaviour to the nursing manager. When the behaviour continues, David returns to the manager, saying that he is considering speaking with the hospital administrator or laying a formal complaint with the provincial nursing association. The alleged abuser is a long-time employee on the unit, and popular with the staff. When the supervisor speaks to her about the complaint, the identity of the complainant becomes clear. David is then ostracized by most of the unit staff and criticized and humiliated in front of residents and their family members. Although David discusses the situation further with his manager, she does nothing to intervene. After eight months on Unit 10, David, deciding that his working conditions are intolerable, quits and accepts work at another hospital.

\*Use of nurse refers to registered nurse.



### WHAT IS "WHISTLEBLOWING"?

Whistleblowers are people who expose negligence, abuses, or dangers, such as professional misconduct or incompetence, which exist in the organization in which they work. The decision to blow the whistle on a colleague, associate, or employer is never an easy one; unless there is a legal obligation to report, it should be considered a step one takes when all else has failed.

In health care institutions, threats to patient safety may come from prescribed treatments, environmental hazards, staffing inadequacies, or illegal, incompetent or unethical conduct of any employee or person such as a family member or volunteer. Employees, especially nurses, may be the first to recognize unsafe practice or to identify actual or potential hazards. However, a nurse may often be caught between the values and standards of the profession and the values and norms of the organization in which he or she works.

In the above cases, nurses face a decision: should they disclose information learned in the course of their work?

In the first case, the Winnipeg nurses consider taking their concerns to the media or to the parents of the infants. Should they call attention to what they believe is internal negligence and danger by going outside the organization with information? External disclosure of information about one's organization is the original meaning of the term "whistleblowing," comparing the act to the shrill sound of a whistle. Breaking the silence is designed "to disrupt the status quo: to pierce the background noise, perhaps the false harmony or the imposed silence of 'affairs as usual'" (Bok, 1988, p.332).

David, on the other hand, wants to call attention to harmful behaviour by reporting it to others inside his organization. Also referred to as "whistleblowing" in the literature, such an action differs from the traditional concept in that the employee, at least initially, does not wish to take the information outside of the organization. Both external and internal disclosure present similar problems, challenges and risks.

### WHEN SHOULD YOU CONSIDER BLOWING THE WHISTLE?

Do nurses have a right to blow the whistle? Some authors claim that in some situations there is a moral right to disclose harms. In some cases there may even be a moral obligation to disclose harms (Baker, 1988; Kelly, 1996, Anderson, 1990).

For one to have the moral right to blow the whistle, the following conditions must be satisfied (Baker, 1988):

- i. Serious harm to clients, employees or other members of the public must result or be involved.
- ii. The whistleblower should first have reported the problem to superiors. (Generally, for nurses, this may mean their immediate supervisor or manager.)

- iii. If the superiors do nothing, then the whistleblower should have reported up through the hierarchy without receiving any satisfactory explanation. (Again, for nurses, it may not be realistic to expect reporting beyond a certain level of comfort and accessibility in the hierarchy.)

To have a right to speak up does not necessarily mean that one ought to. But Baker (1988) suggests that there may be a moral obligation to whistleblow if the following conditions are met:

- i. The harm or potential harm must be very serious: the more serious the harm the more serious the obligation.
- ii. One must have reported up through the hierarchy as described.
- iii. The employee must have good reason to believe that the act of whistleblowing will significantly increase the probability of the desired change. Typically, this requires having documented evidence.

As well, in certain cases, there may be a legal duty to disclose information outside of the organization. For example, in many provincial/territorial jurisdictions there is legislation requiring that child abuse or the abuse of vulnerable adults be reported.

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## WHY IS WHISTLEBLOWING VIEWED AS NEGATIVE?

Although whistleblowers have performed indispensable public services, there are still dangers about which they should be aware (Bok, 1988). Such dangers include the invasion of privacy and undermining of trust, and the creation of chaos and mutual suspicion that can affect the functioning of the organization. There may be issues of lost work and reputation and breach of confidentiality for those falsely accused. Worst of all is the idea of an environment where insiders all too willingly inform on their colleagues. There are also personal dangers the whistleblower must consider. He or she can expect retaliation that may range from harassment, to being labeled as a “troublemaker,” to losing one’s job (Anderson, 1990; Napthine, 1993).

On the other hand, problems can arise when dissent is suppressed. The resulting moral distress and moral outrage can lead to professional disillusionment, causing some nurses to leave the profession. Kelly (1996) points out problems related to the perception of not living up to one’s moral values, suggesting that habitual silence in the face of perceived wrongs will lead to a “permanent dilution of ethical values.” There may also be legal consequences for failure to report.

Bok (1988) identifies three elements that account for the negative connotations many people attach to whistleblowing: dissent, breach of loyalty and accusation.

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## DISSENT

Like all dissent, whistleblowing makes public a disagreement with an authority, but it has the narrower aim of shedding light on wrongdoing. The whistleblower wishes to alert the public to a risk, and to assign responsibility for it. Inherent in all dissent is the conflict arising between conforming to the status quo and putting oneself on the line for something one believes in.

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## BREACH OF LOYALTY

The issue of loyalty is an important one in discussions of whistleblowing. Nurses have a professional commitment to the health and the well-being of clients, but frequently they experience conflict over what they see as divided loyalties: they are sometimes forced to choose between loyalty to clients, to employers, and to other health care professionals. As citizens, nurses are bound by the moral and legal norms shared by other participants in society and as individuals, they have a right to choose to live by their own values as long as those values do not compromise the care of their clients.

By accepting employment, nurses assume certain obligations to their employer and to their colleagues. Violation of these obligations is viewed as being disloyal. Recent labour arbitration notes the importance of loyalty, making nurses’ duties quite ambiguous:

....arbitrators have held that public servants and indeed all employees violate their duty of loyalty if they engage in public criticism that is detrimental to their employer’s legitimate business interests (Brown and Beatty, 7:3330, 1994).

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## ACCUSATION

The element of accusation arouses the strongest reactions from within the organization. It involves identifying the wrongdoer(s), be they colleagues or superiors. Alleged wrongdoers might take action in an attempt to cover up inadequacies, to discredit or to retaliate against the whistleblower.

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## HOW CAN THE CODE OF ETHICS HELP?

*The Code of Ethics for Registered Nurses* (CNA, 1997) gives guidance for ethical decision-making for all nurses, whether they are engaged in clinical practice, education, administration, or research. Five values in the code are especially relevant to nurses in deciding whether to blow the whistle:

- **Health and well-being (especially Statements 1 & 3)**
- **Dignity (Statements 1, 5 & 7)**
- **Confidentiality (Statement 3 & 5)**
- **Accountability (Statements 3, 4, 6, 8 & 9)**
- **Practice environments that are conducive to safe, competent and ethical care (Statement 4)**

Another resource, *Everyday Ethics: Putting the Code into Practice* (CNA, 1998) is a practical guide for applying the code’s values. This publication outlines three methods of moral decision-making. Let’s use two of these methods to look at our two cases:

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## THE WINNIPEG NURSES’ CASE

Model 1 (CNA, 1998, p.50) lists eight steps to consider in the complex ethical decision-making process:

### 1. Recognize the moral dimension.

The Winnipeg nurses recognize that they have an ethical problem. While they want to remain on the job and do the best they can for their tiny patients, they also realize that remaining silent will not protect their patients’ well-being.

## 2. Who are the interested parties? What are their relationships?

There are many relationships at stake in the nurses' decision: those with colleagues (including the surgeons, paediatric specialists, anaesthetists, other nurses), other staff at the hospital, the parents and the children, the community served by the hospital.

## 3. What values are involved?

The nurses might identify the values from the *Code of Ethics for Registered Nurses* that are being compromised. This might help them articulate why they are experiencing moral distress.

## 4. Weigh the benefits and burdens.

If the nurses do go public, they may lose their jobs; if they remain silent they may face unbearable levels of guilt and stress. More children might die, but disclosure may cause the program to close, resulting in a loss of resources in the province.

## 5. Look for analogous cases.

Many cases of whistleblowing have resulted in harm to institutions, and to the whistleblowers (Hardingham, 1994). In some cases change has occurred, but in others there has been no effective result. The nurses should ask: how would going public in this case help? Are the nurses prepared to face the problems that other whistleblowers have had?

## 6. Discuss with relevant others.

Discussions with colleagues, nursing management, professional associations, could help in determining what to do. This is a crucial step to take before considering disclosure, and could provide wider support for the nurses involved.

In many situations, the most effective way to change a harmful or potentially harmful system is to work collectively, involving as many people as possible. Needing effective leadership, the Winnipeg nurses involve the Manitoba Association of Registered Nurses, who provide support and assistance.

## 7. Does this decision accord with legal and organizational rules?

Although the nurses realize that they would be breaching organizational policies by going public or approaching parents with their concerns, they also have a professional responsibility. They are "accountable for addressing institutional, social, and political factors influencing health and health care" (CNA, 1997, p.8).

## 8. Am I comfortable with this decision?

While the Winnipeg nurses want to do more, they do not feel comfortable with going public, believing that such disclosure would cause further harm. They continue to press within the institution for their concerns to be addressed. However, with no changes occurring, the nurses find themselves in a very stressful situation. They feel increasingly uncomfortable and decide to go outside the organization.

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## DAVID'S CASE:

David might consider using the Circle Method for ethical decision-making from *Everyday Ethics* (CNA, 1998, p.58) to decide how to deal with his abusive colleague situation. This is a three-step method whose circular nature incorporates review and consideration of new information as it arises:

### 1. Information and identification:

David should gather information about the situation and identify exactly what his dilemma is. David believes that abuse is occurring

on his unit, others seem to agree but are afraid to speak up, and there is a feeling of loyalty between long-term staff members. The ethical dilemma is this: if David speaks up about the abuse, he will be harassed further, and will find it difficult to continue working on the unit. If David does not speak up he will be allowing the abuse to continue, and indirectly condoning the abuse by his silence.

If David is working in a province that has mandatory reporting legislation, his failure to report will also be illegal.

### 2. Clarification and evaluation:

In this step David would seek to clarify his dilemma by consulting a number of sources of information, perhaps looking at ethical principles. *Everyday Ethics* (CNA, 1998) describes ethical principles that justify decisions in health care, including the principles of beneficence (promote good), nonmaleficence (avoid harm) and justice (fairness). David's colleague may be unaware that others are perceiving the actions as harmful or abusive, and pointing out the harm to the person involved may end the problem. Promoting good may involve taking steps to prevent further abuse; justice might involve ensuring a safe environment for all residents.

Other resources might be useful, such as the *Code of Ethics for Registered Nurses*, provincial legislation that states David's legal responsibilities, and the Standards for Nursing Practice. Consulting with colleagues, professional nurses' associations/regulatory bodies or others might offer suggestions and support.

### 3. Action and review:

David must evaluate the outcomes of his action, and amend his decision as appropriate. Since David's concerns remain unaddressed after talking with his supervisor, a re-assessment of the situation is indicated. As a professional, David is accountable for "safeguarding the quality of nursing care clients receive" and must "take preventive as well as corrective action to protect clients from unsafe, incompetent or unethical care" (CNA, 1997, p.19), necessitating that he follow through on incidents that compromise client care and safety.

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## PROMOTING MORE OPEN HEALTH CARE ENVIRONMENTS

When there is a hostile, suspicious and non-communicative environment in a health care organization, safe, competent and ethical client care will be compromised. Nurse managers and administrators have an ethical responsibility to establish a climate of mutual respect and problem-solving rather than a climate of blame. Identifying and solving problems are easier if fear and fault-finding are removed from the equation, and responsible reporting of problems and potential harms encouraged.

*The Code of Ethics for Registered Nurses* (1997, p.26) suggests steps David's manager might have found useful:

- gather the facts about the situation and ascertain the risks. The manager could have spoken privately to other staff members and to the resident to determine whether abuse had occurred.
- review the relevant legislation, policies, and procedures for reporting incidents of suspected incompetent or unethical care. If their province/territory has a mandatory requirement to report abuse, both David and the manager had a legal obligation to report.
- seek relevant information directly from the colleague whose behaviour or practice has raised concerns. The nurse may not have realized that her behaviour was seen by others as abusive.

- consult with colleagues, other members of the team, professional nurses' associations/regulatory bodies or others, provides suggestions and support. The manager could have undertaken to resolve the problem as directly as possible, being open about her concerns.
- advise the appropriate parties regarding unresolved concerns and, when feasible, inform the colleague in question of the reasons for the action. This suggests the manager should have identified, reported and followed through on occurrences that compromised client care and safety.

*The Code of Ethics for Registered Nurses* states, "nurses support other nurses who act in good faith to protect clients from incompetent, unethical or unsafe care..." (CNA, 1997, 21). Thus, David's colleagues and manager had an ethical responsibility to support him in his goal to improve the care of residents.

Anderson (1990) notes that the perception of reporting harms needs to be changed from negative to positive: "We need to be sensitized to the fact that whistleblowers in nursing are not enemies of the people. They are our patient advocates... and the guardians of professional excellence." She offers some strategies to empower and protect present and future nurses and other health care workers who may be faced with the need to whistleblow. These strategies include the following:

- Lobbying for health care professional associations to introduce guidelines for the resolution of professional practice problems.
- Establishing local and regional mentor networks of former nurse whistleblowers to provide support, networking, and guidance for people who report wrongdoing.
- Including all aspects of client advocacy, including whistleblowing, in nursing education programs.
- Lobbying for legislation guaranteeing the right to whistleblow where it is in the public interest and to provide protection for whistleblowers acting within the scope of professional standards and ethics.
- Applying censure with public disclosure to health care agencies that fail to support professional nursing conduct or engage in the abuse of nurses, and institute a process of commendation to alert nurses to supportive work environments.
- Working to include measures to guarantee the provision of safe, competent and ethical care within union contracts.

Nurses may also want to refer to the Standards for Nursing Practice of their professional association/regulatory body for direction regarding whistleblowing.

## CONCLUSION:

Whistleblowing should be considered only after all other avenues of addressing the problem have been tried. Prospective whistleblowers should exhaust all internal resources, document their actions, and have a clear indication of serious harm before going public. They should seek the support of colleagues, and make use of them as a group to clarify intention and process before taking any steps.

While whistleblowing can result in negative consequences for both the employing institution and for the whistleblower, nurses are charged with the responsibility to "act in a manner consistent with their professional responsibilities and standards for practice" (CNA 1997, p.19). Henry David Thoreau expressed our obligation very well in 1849:

The only obligation which I have a right to assume is to do at any time what I think right. It is truly enough said, that a corporation has no conscience; but a corporation of conscientious men [and women] is a corporation with conscience. (Thoreau, 1970, p.245).

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