

Whistle Blowing

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Abstract

This discussion will focus on whistle-blowing in nursing. Included in this discussion will be the definition of whistle-blowing, the difference between internal and external whistle-blowing and also what should be done prior to making a situation known. Also included will be the risks and retaliatory consequences frequently experienced by those who report wrongdoing, the different views on this topic and lastly the state and federal legal protection for reporters of whistle-blowing. At the conclusion of this discussion the reader will have a better understanding of this issue that is present in the health care industry and be able to follow proper channels if reporting any wrongdoing that they have witnessed.

Whistle-Blowing

Whistle blowing is defined by Lachman (2008, p.126) as 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” (Huston, 2010, p.259). Being a whistle blower, a person must be able to avoid getting caught up in groupthink, which is conforming to the norm even when it may not be appropriate. With whistle-blowing, there are many risks taken by the person doing the whistle-blowing. Severe repercussions could result like losing a job even though the goal is, in theory, to be helpful but in fact whistle-blowing has high instances of the problem going deeper than what the whistle blower had imagined. For nurses of a different cultural background the stakes are even higher when reporting wrongdoing due to larger retaliation. As nurses, we are responsible to uphold the Code of Ethics, section 3.5 provides guidance for nurses who are considering whistle-blowing which can be found on the American Nurses Association’s website accessed on November 4th, 2011. State laws vary when it comes to protection of whistle-blowers and so does public response. Whistle blowing takes a lot of courage for a person to stand up against what they know is wrong and to avoid groupthink. Following through with an allegation is a tough situation but the satisfaction of exposing wrongdoing may be enough for someone.

Discussion

According to the American Nurses Association (2011), nurses follow a Code of Ethics when it comes to the care of their patients. The first three provisions are appropriate when discussing the issue of whistle-blowing. Provision one states that, “Nurses, in all professional relationships, practices with compassion and respect for the inherent dignity, worth, and uniqueness of every individual, restricted by considerations of social or economic status,

personal attributes, or the nature of health problems” (American Nurses Association, 2001). Provision two states that, “The nurse’s primary commitment is to the patient, whether an individual, family, group or community” (American Nurses Association, 2001). Provision three states, “The nurse promotes, advocates for, and strives to protect the health, safety, and rights of the patient” (American Nurses Association, 2001). “Whistle-blowing is the act, for an employee (or former employee), of disclosing what he believes to be unethical or illegal behavior to higher management (internal whistle-blowing) or to an external authority or the public (external whistle-blowing)” (Bouville, 2007, p. 579). When it comes to this however, most people who report the wrong doing are unsure of whether they should report the problem or not for fear of retaliation from co-workers, friends or family.

“Enron and the artificial manipulation of energy prices, WorldCom and accounting fraud and Memorial Medical Center in New Mexico with concerns regarding inadequate and inappropriate care being given by an osteopathic physician are all examples of whistle-blowing” (Huston, 2009, p. 259). They all involved situations in which a person or group of people noticed the wrong and decided to report the wrong-doing. According to Huston (2009, p.260) there are two types of whistle-blowing. “Internal typically involves reporting concerns up the chain of command within an organization in the hope that whatever the problem it, it will be resolved. External involves reporting concern outside the organization and, in particular, to the media” (Huston, 2009, p. 260). A person who reports the wrong-doing should start internal to see if the problem can be resolved, however, if there is no improvement in the situation that person may take the issue externally to insure adequate address of the issue. When it comes to whistle-blowing, most issues should be addressed internally to see if the problem can be resolved before whistle-blowing externally. In Law and the Emergency Nurse, two nurses and a doctor: health

care workers allege retaliation for blowing the whistle on understaffing, two nurses, Barry Adams and Cathleen Kyle received termination letters after filling out incident reports on their units alleging understaffing. “Barry Adams claims that his patient load increased from 6 to 7 patients to 10 or 12 patients during his short tenure at Youville Hospital’s 26 bed sub-acute care unit” (Frank & Ellicott, 2000, p.598). Adams and several of his coworkers:

Were vocal about the alleged understaffing in East 2. They filed incident reports, signed petitions and voiced concerns at meetings. Adams wrote a 2-page memorandum to the director of nursing and imitated meetings with his supervisors. Discussions focused on patients who had fallen and on medication errors (Frank & Ellicott, 2000, p.598)

“The Kyle case included Cathleen Kyle beginning to notice a rise in acuity of the patients on her unit at a Boston teaching hospital, causing inadequately staffing” (Frank & Ellicott, 2000, p.599). Kyle also submitted a number of incident reports to her supervisors. Kyle, “reported that nurses were unable to provide timely monitoring and assessment of patient condition, patients were going hours without receiving medications, patients were not being fed at appropriate times, and call lights were not being answered in a timely manner” Frank & Ellicott, 2000, p. 599). As a result of these two registered nurses in November 1999 they both testified before the Massachusetts legislature, the result was a law protecting health care providers as well as registered nurses.

Standing up and speaking up against something that a person sees as wrong demonstrates that person being able to avoid groupthink which is going with the norm and not voicing other options. Whistle-blowing is unpleasant and takes a lot of courage to stand up against employers to make sure their ethical duties are upheld. Current complaints about unsafe staffing levels and delegation of tasks outside the scope of personnel are common due to the nursing shortage.

When a person decides to whistle-blow he/she can expect taking risks and some retaliatory consequences. “Personal risks of whistle-blowing can take many forms, including negative reactions from co-workers, losing one’s job, and, in the extreme, legal retaliation” (Huston, 2009, p.265). In typical cases the employer will fire the whistle-blower. William Weaver a senior adviser to the National Security Whistle-blowers Coalition counsels federal employees against coming forward in any situation, “...it will destroy their lives, cost them their families and friends, and squander their life savings on attorneys” (Huston, 2009, p.265). If someone does decide to pursue the issue farther they should try to report anonymously if possible. Nurses must remember that their primary professional responsibility is to their patients and not their employers. Section 3.5 of the Code of Ethics for Nurses states:

As an advocate for the patient, the nurse must be alert to and take appropriate action regarding any instances of incompetent, unethical, illegal, or impaired practice by a member of the health care team or the health care system, or any action on the part of others that places the rights or best interest of the patient in jeopardy (ANA, 2001a, para32).

Nurses must have professional and patient advocacy role. “Nurses must work to improve the practice of nursing and maintaining the integrity of the health care profession” (Huston, 2009, p.263).

Varelius discusses the idea that whistle-blowing would appear to involve a conflict between employee loyalty and protection of public interest. “Unless loyalty is shown to be necessarily connected to seeking the moral good of its object, we can accept that one should sometimes blow the whistle on one’s employer’s wrongdoing, but think that this is because considerations distinct from those of loyalty can outweigh one’s duty of loyalty to one’s

employers...” (Varelius, 2009, p.268). According to her argument it serves the same goal. “Being loyal to one’s employer is not incompatible with blowing the whistle about their wrongdoing, because employee loyalty and whistle blowing are for the moral good of the employer” (Varelius, 2009, p.271).

If a nurse decides to whistle-blow on a wrong doing there are certain guidelines that Huston outlines for completing this decision. The first is to stay calm and think before you act. Even if it’s as simple as writing a pros and cons list as to the risks and benefits. Second is to know and understand the legal rights, that vary state to state, put in place to protect whistle-blowers. A very critical piece of information a person needs before deciding whether to blow the whistle on a situation is to make sure there is really a problem. Check any and all resources before making a claim. Also a person may ask colleagues if there is a problem. This is where the whistle-blower avoids groupthink being told not to do something. A major point when making a claim is to follow the chain of command whenever possible and to attempt to confront the person being accused of the wrong doing. Presenting all the facts and leaving out interpretation is another key aspect when blowing the whistle. In doing all these steps the whistle blower should document the problem they are seeing and also what steps, in detail, that they took to see that the problem gets resolved. By keeping a detailed documentation of the steps taken to resolve the problem the whistle-blower may help protect themselves if legal action is taken against them. Lastly the whistle-blower should not expect thanks for the efforts. These guidelines can be found in more detail on page 264 in *Professional Issues in Nursing* by Carol J. Huston, 2009.

Being of a different cultural background, minority nurses may feel uncomfortable when it comes to whistle-blowing. “Asians, Fillipinos, and Africans may be more reluctant to blow the whistle because they’ve been raised to respect a clear chain of command” (Huston, 2009, p.

264). It is also the same for nurses whose first language is not English. Most fear a problem that they are unable to communicate accurately and that not speaking English as a first language would be used against them. When it comes to having legal protection for people who decided to whistle-blow it is not universal. "Legal protection varies state to state and as of July 2008 only 20 states have passed some type of legislation to protect people who choose to whistle-blow" (ANA, 2008). Ohio was not listed at the time of the results being accessed as having laws put in place to protect people. There is however legislation that has been enacted at the federal level and one such piece of legislation is called the False Claims Act. This piece of legislation encourages anyone to come forward fraud committed against the federal government. The only problem with this piece of legislation is that it has to involve fraud against the government involving money.

Conclusion

As a nurse our duty is to the patient because we are their advocate. What needs to be understood is that if someone decides to blow the whistle on a situation they deem wrong or in appropriate that there is no guarantee that the situation will change or the problem will improve. Also the person should take into consideration their state law and the protection they would receive. Since whistle-blowing takes a lot of courage and a person to avoid groupthink they should have excellent commitment and be able to following through until an acceptable level of resolution is reached. Sometimes just the self-satisfaction and pride that unethical behavior has been exposed and that at least the potential for correction is possible because of the whistle-blowers action is enough.

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