Is it safe for nurses to blow the whistle?

In this article...

- Difficulties of deciding whether to raise concerns
- What “blowing the whistle” really means
- Support mechanisms that should be in place

Keywords: Raising concerns/ Whistleblowing/Confidentiality/Legal/ Support

This article has been double-blind peer reviewed

When they see incidences of poor care or patient safety issues, nurses and other health professionals have a duty to raise concerns, but this may present personal risks.

NHS staff feel safe and confident raising concerns (Francis, 2015).

What is whistleblowing?

When nurses are faced with situations that cause them concern for the safety of patients or colleagues, they must decide what to do; if they do not feel safe to raise concerns within their organisation, or they have raised concerns that have not been addressed, they may need to resort to whistleblowing.

“A whistleblower is a person who makes disclosures about unlawful or irregular conduct of other persons or bodies to people with a reciprocal interest in receiving the information or the public in general” (McQuoid-Mason and Dada, 2011)

“Going public or speaking out to one’s professional organisation or to the media in order to protect the welfare of patients because of a perceived wrongdoing on the part of others is whistleblowing” (Anderson, 1990)

Jones and Kelly (2013) described whistleblowing as “an imposed, rather than a chosen, situation”; whistleblowers are ordinary people who, on becoming aware of a negative situation, are forced to decide whether to speak out or remain silent. Initially, a concern should be raised through an organisation’s internal processes. Only when all internal processes have failed should the whistle be blown externally in the best interests of the public (Lachman, 2008).

Whistleblowing can highlight issues involving patient safety, incompetence and fraudulent activity (Lachman, 2008). However, it is not an easy thing to do;
nurses – or patients and their families – often face a dilemma when considering whether or not to blow the whistle because of a fear of reprisals and the negative connotations of the word whistleblowing (Waters, 2008). Graham Pink, often seen as the original nurse whistleblower, has said “whistleblowing is an ugly term and, unfortunately, it is seen as a negative thing” (Agnew, 1998), while Whyte and Waters (2012) offered a less discordant expression, describing it as “speaking the truth”. However, Harbridge (2014) argued that the “truth is not always welcome” and the courageous individuals who take the risk of whistleblowing are owed something better.

Consequences of whistleblowing
The decision to whistleblow can affect health professionals both professionally and personally for the rest of their lives (Harbridge, 2014), so they must bear in mind the potential for their action to result in personal, financial and/or professional loss. Many believe they are acting ethically, morally and in accordance with a duty of care or professional code of conduct.

Many whistleblowing cases have resulted in the public exposure of an organisation’s wrongdoing but none more so than the cases of Graham Pink and Helene Donnelly. Mr Pink repeatedly reported a catalogue of concerns at Stepping Hill Hospital in 1989 (Pink and Brindle, 1990), and was eventually dismissed; Ms Donnelly raised concerns about care provided at Mid Staffordshire Foundation Trust, focus of the Francis inquiry (Francis, 2013), and was subjected to bullying and intimidation.

The negative consequences for Mr Pink, Ms Donnelly and other whistleblowers means health professionals contemplating this course of action should consider:

- How safe is the environment for whistleblowers?
- What protection is afforded to whistleblowers by their employers and in law?

Policy and law
To protect nurses and other health professionals from reprisals, appropriate protection needs to be defined in law (Wilmot, 2000). In 1992, Derek Fatchett MP published an NHS Freedom of Speech bill in an attempt to introduce a broad code of ethics for all healthcare staff. Clause 8 stated:

“A duty and a right to report to any competent person any instruction, policy or practice which they would believe would result in inadequate or unsafe conditions which are likely to either harm the health and safety or wellbeing of patients/clients or colleagues or be contrary to law or be to the detriment of the health service and public confidence in its operation.” (McHale and Fox, 2007)

Although Mr Fatchett’s bill failed to reach Parliament, the following year the public responded to the Pink case by publishing staff guidance on relations with the public and media (NHS Management Executive, 1993) and, in 1998, Parliament passed the Public Interest Disclosure Act (PIDA). This law, which still regulates issues around raising concerns and whistleblowing, provides safeguards against unfair dismissal of employees who want to raise concerns internally under a protected disclosure. Parliament also amended the Employment Rights Act 1996 by ensuring if an employee is dismissed for making a protected disclosure, it will be deemed unfair dismissal (McHale and Fox, 2007).

Protected disclosures relate to breaches of law, and dangers to health, safety and the environment. The legislation provides that an employee must have a reasonable belief that the disclosure is protected (McHale and Fox, 2007), criteria for which are outlined in Box 1. When a disclosure is made externally rather than internally to the organisation, whistleblowers must satisfy further criteria to ensure their protection. They must reasonably believe the disclosure is:

- Not for any personal gain;
- Of a sufficiently serious nature;
- Fundamentally true (Game, 2014).

If the disclosure has been made to a regulator, such as the Nursing and Midwifery Council, it must conform to that regulator’s conditions and professional standards (Game, 2014).

Further legislative support was published in 2014, when a statutory duty of candour for NHS bodies was introduced to ensure that they adopt an open, honest and transparent culture when things have gone wrong (Care Quality Commission, 2014). The NMC and General Medical Council (2015) also produced guidance around the duty of candour to further support nurses and doctors.

Confidentiality
Nurses often face a dilemma when their obligation to maintain patient confidentiality conflicts with their duties with respect to the NMC (2015) Code. Confidentiality in healthcare is not only part of a duty of care to the patient, but also a requirement within regulatory codes of conduct. It must be included in NHS contracts of employment with links to disciplinary procedures. Above all, it is a legal obligation drawn from statutory and case law. Beech (2007) advocated that all nurses keep up to date with professional codes and any changes in law to fully understand when it may be permissible to override a duty of confidentiality.

This remains an integral part of the NMC (2015) Code, which states that nurses should always act in a manner that upholds it and the law, and that:

“As a nurse or midwife, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately [...] share necessary information with other healthcare professionals and agencies only when the interests of patient safety and public protection override the need for confidentiality.”

A breach of confidentiality could be deemed as a breach of the Code but, under the same Code, a nurse should:

“Act without delay if you believe that there is a risk to patient safety or public protection [and] raise and, if necessary, escalate any concerns you may have about a patient or public safety, or the level of care people are receiving in your workplace or any other healthcare setting and use the channels available to you in line with our guidance and your local working practices” (NMC, 2015)
Nursing Practice

Discussion

Whistleblowers need to ensure their voice is heard and that they can justify their actions, but they also need to ensure, from an ethical and legal context, that they have acted within the boundaries of their employment contract in terms of confidentiality and the Code.

In response to concerns over the inadequacy placed on confidentiality in the NHS (Clements, 2004), Caldicott Guardians were introduced in all NHS organisations. These are responsible for safeguarding the confidentiality of patient information (NHS Management Executive, 1999). Beech (2007) advised professional discretion may come into play when considering requests to disclose against duty of confidentiality to justify overriding this duty.

Support mechanisms

Nurses who have the courage of their convictions to blow the whistle on unethical practices when all internal processes have failed should not be ostracised by their colleagues but applauded for their moral convictions to blow the whistle on unethical practices (Andersen SL, 1990). Jones A, Kelly D (2013) When care is needed: the whistleblowing nurse role of whistleblowing in nursing: help for the helpers. Nursing Standard; 27: 5, 12.

Conclusion

The Francis (2013) report into care failings at Mid Staffordshire Foundation Trust is boosting support for nurses. It has led to NHS organisations providing more support for potential whistleblowers and dealing with confidentiality agreements that have historically “gagged” the individuals involved (Game, 2014). Its findings revealed that the NHS needs to be more transparent, safer and provide care with compassion.

Francis (2015) provided recommendations, principles and actions for NHS organisation; those outlined include a culture change and enhancing legal protection to those who make protected disclosures. Times are changing.

“...the workplace that best enables and supports patient safety is one with a just culture, an understanding of human factors, high levels of staff engagement, and one that is appropriately resourced, led and managed.” (Fecitt, 2014)

References

Nursing and Midwifery Council, General Medical Council (2015) Openness and Honesty when Things Go Wrong: The Professional Duty of Candour. bitley/NMCDutyCandour

Are you making the most of the Nursing Times archive?

Over 5,000 double-blind peer reviewed articles, published since 2000
Content relevant to nurses in all specialties and settings
Inspiration for service improvements
Clinical reviews to update your knowledge
Concise, accessible research reports
Print-friendly PDFs to download
Option to save to your account – just click the bookmark symbol at the top of the page
To access the clinical archive go to nursingtimes.net/clinical-archive

For more on this topic go online...

A model to support staff in raising their concerns
Bitley/NTConcernSupport

BOX 2. FURTHER SUPPORT

● In 2012 NHS Employers launched the Speaking Up Charter, requiring more commitment to NHS organisations working together to support those staff who raise concerns by creating a just culture of openness and transparency;

● In March 2013 following a survey of over 800 nurses that revealed staff concerns over the fear of repercussions if they blew the whistle on poor care, Nursing Times launched its award-winning Speak Out Safely campaign. Its aim is to make it safer for staff to raise concerns about patient safety by increasing honesty and transparency in the NHS, and asking organisations to sign up to support the campaign in their areas. For more details go to nursingtimes.net/so

71% Respondents to the 2013 NHS Staff Survey who felt confident to raise concerns

Respondents to the 2013 NHS Staff Survey were confident to raise concerns by creating a just culture of openness and transparency; those outlined include a culture change and enhancing legal protection to those who make protected disclosures. Times are changing.

The workplace that best enables and supports patient safety is one with a just culture, an understanding of human factors, high levels of staff engagement, and one that is appropriately resourced, led and managed.” (Fecitt, 2014)