

The Hippocratic oath in practice: the ethics, challenges and strategies for healthcare worker reporting

Dr Prinitha Pillay - Rural Health Advocacy Project

John Stephens- Section 27

“There’s really no such thing as the voiceless....only the deliberately silenced or the preferably unheard”

Arundathi Roy

Overview

- Why it is important to report
- Do you have a mandate to report
- Do you report? Why or why not? How?
- What are the different types of reports
- How to report (tools and strategies)
- Strategies to protect against reprisal
- Discussion and case studies: How to navigate ethical dilemmas using case studies

Have you

- Witnessed a patient die because you didn't have a drug or equipment?
- Been frustrated because your patient interrupts treatment because of a drug shortage?
- Had to choose who to bump off a list because there was no line to do an operation?
- Been frustrated because of a colleague who abuses RWOPS?
- Turned patients away because of not enough staff?

Why should you care?

- Welfare of citizens is a primary responsibility of a health care worker
- You are not a passive employee but an active independent practitioner whose primary duty is to your patient
- Healthcare IS a right not a privilege

Why should you report?

- Because the accountability surrounding this responsibility is the core issue facing SA today and we won't get change otherwise

Today is about creating the ethical climate you wish to work within

- In fact it could be argued that higher standard is warranted in health care because of the impact on individuals, families, and society that are affected by ACTION AND INACTION alike!
- There are hidden costs of inaction that can further perpetuate the culture of fear and intimidation i.e it gives life to the very failure of clinical leadership
- You are a gatekeeper with power

Did you know

- There are mechanisms that are created with the goal of making health services better e.g. complaints, whistleblowing
- Therefore there ARE tools are you disposal
- You are the witness and in the know
- South Africa had a proud and effective tradition of HCWs speaking out, taking risks to finally shape sound policies

CASE STUDY: SAVE THE BABIES CAMPAIGN

How do you act when you witness health care failures?

The constitutional mandate for advocacy

- Section 9 “Everyone .. Has the right to equal protection and BENEFIT of the law. **Equality** includes the full and equal enjoyment of rights and freedoms.”
- Section 10 “everyone has inherent **dignity** and the right to have their dignity respected and protected”
- Section 11 “everyone has the right to **life**.”
- Section 27 “Everyone has the right to have access to **health care services** ... No one may be refused emergency medical treatment”
- Section 29 “Every **child** has the right to ... **Basic health care services**..

The constitutional permission for advocacy

- Section 7 + Section 16 + Section 19
 - The State must respect, protect, promote and fulfil the rights in the Bill of rights..
 - Everyone has the right to freedom of expression ..
 - Every citizen ... has the right to campaign for a cause

Practical guidelines for employees (NO. 702 31 August 2011)

- By remaining silent about corruption, offences or other malpractices taking place in the workplace, an employee contributes to, and becomes part of, a culture of fostering such improprieties which will undermine his or her own career as well as be detrimental to the legitimate interests of the South African society in general. Every employer and employee has a responsibility to disclose criminal and other irregular conduct in the workplace

Batho Pele Principles

- Section 195 of the constitution gives effect to a transparent accountable ethical efficient effective public service that respond to peoples needs.
- Principles of
 - Consultation
 - Setting service standards e.g NCS
 - Access
 - Courtesy
 - Information
 - Openness and transparency
 - Redress
 - Value for money

Patient Rights Charter

- Allows for
 - Participation in decision making
 - Access to healthcare
 - Healthy and safe environment
 - Choice of health services
 - Treated by named HCW
 - Knowledge of your medical aid
 - Second opinion
 - Continuity of care

Ethical Frameworks

- HPCSA ethical rules
- Code of Conduct for the Public Service

Dual Loyalties and Human Rights:
HCWs may experience spilt loyalties
and it shows up in the conflicts
between the ethics of the profession,
duty to the user and duty to the
state/employer

CASE STUDY: DR GAZI

How to report health care issues

failure within the public health care system that prevent prevent sound service delivery

- INTERNAL
 - Within DOH
 - Facility (informal and formal written) using the NCMP colleague, manager
 - District or Provincial
 - National
 - Office of Health Standards Compliance
- EXTERNAL
 - Professional Bodies e.g HPCSA, SANC, SAPC etc

CASE STUDY: Controversial Clinical Manager Messina Hospital

- Independent Constitutional Bodies eg. SAHRC, Public Protector, ?Ombud of OHSC
- Media
- Legal
- Advocacy organisations
- Unions

What are tools and tips?

- Start as soon as possible
- Gather all the key facts
- Use mechanisms that exist to improve the health system e.g. complaints system, the OHSC
- Step 1 is always internal report at the level closest to you (at facility) before escalating it
- Use mortality and morbidity meetings
- Follow up in writing
- Cite relevant patient rights, ethical rules, standards of care, national core standards
- Document all effort made to improve the situation
- Document all communication made
- Liaise with others (colleagues, patients, organisations)
- Organize, organize, organize! Organise to empower yourself and others, there is strength in numbers
- You can demonstrate best practice to others and policy makers
- You can advise patients to use the complaints mechanism
- Escalate the problem to district or provincial or national level
- Seek external assistance (legal, unions, independent bodies, professional boards, advocacy org)
- Use the four doors to ensure legal protection when whistle blowing

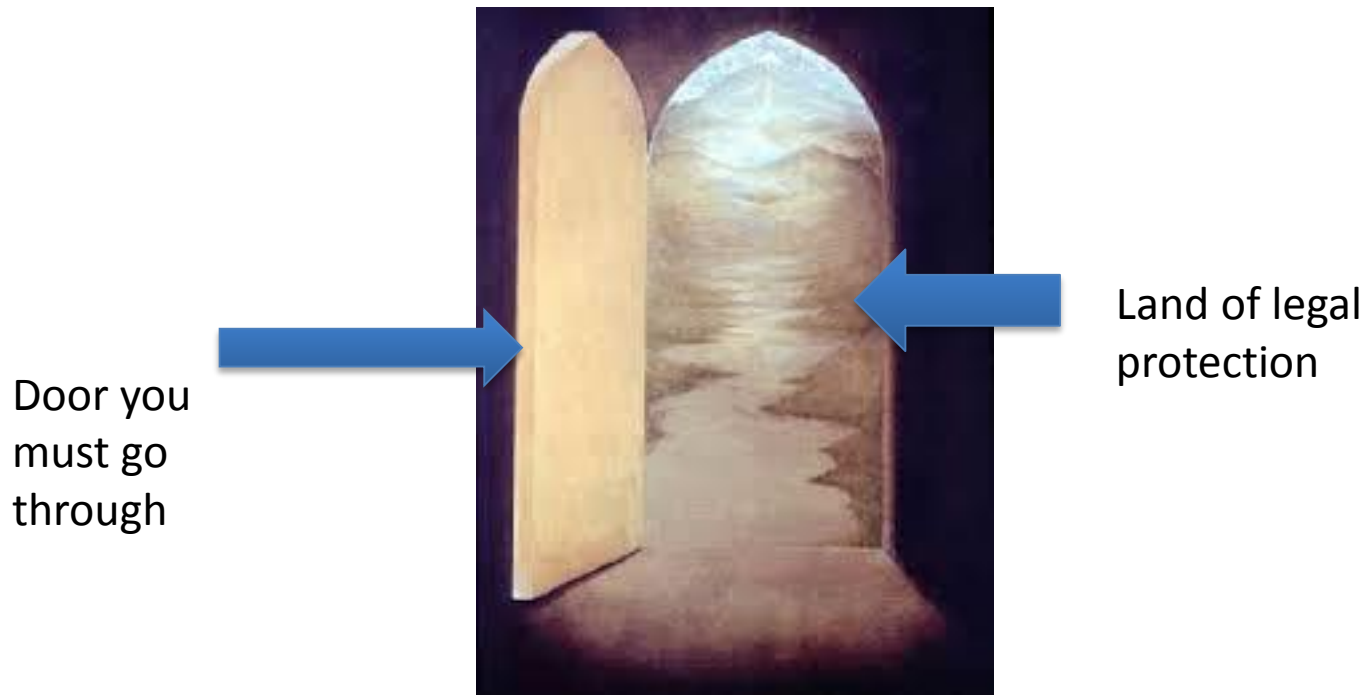
When do you whistle blow?

- Whistle blowing is about ensuring that “malpractice, fraud, corruption, dangers that compromise patient health and safety”* –are dealt with in a manner that promotes individual responsibility and organisational accountability
- It is not only a right but also a duty to report conduct that is prejudicial to public interest

*Protected Disclosure Act

How to whistle blow: the Protected Disclosure Act

- Protected Disclosure Act: four doors to legal protection



What to disclose: “impropriety”

- crime, failure to comply with any legal duty (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety, damage to the environment, discrimination and the deliberate cover-up of any of these. It applies to concerns about past, present and future malpractice.

What about the confidentiality clause in my contract?

- The contract is invalid if it conflicts with the PDA and Public Service Act which says
“An employee, in the course of his or her official duties, **shall** report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence or which is prejudicial to the public interest.”

"shall" is mandatory language, it means "must" not "should"

Door 1: Legal advisor

- Legal advisor:
 - To seek advice about concern and how to raise it
 - Confidential!
 - Good faith does not apply

Door 2: Internal

- Through your internal process:
 - Good faith
 - “substantial” compliance with relevant procedure

Door 3: Regulatory authority

- Office of the public protector or Auditor General
 - Good faith
 - Reasonable belief that PP or AG deals with this kind of stuff
 - Does not have to be raised with employer first
 - Substantially true

Door 4: “General Disclosure”

- Police, Media ..
 - Not made for personal gain and honest and reasonable belief that it is substantially true
 - “Good cause” for going outside

The 4 good causes

- the concern was raised internally or with a prescribed regulator, but has not been properly addressed
- the concern was not raised internally or with a prescribed regulator because the whistle-blower reasonably believed he or she would be victimised.

The 4 good causes

- the concern was not raised internally because the whistle-blower reasonably believed a cover-up was likely and there was no prescribed regulator, or
- the concern was exceptionally serious

What am I protected against?

- Occupational detriment
 - Very broad, definition includes: harassment, dismissal, transfer against the will of the employee, non-promotion, a denial of appointment, or “otherwise adversely affected”
 - But, there are limits to the reach of the law

However

Can be scary to speak out because of

- Lack of support
- Intimidation
- Fear of losing ones job
- Lack of advocacy training

TIPS BEFORE DECIDING WHICH ACTION TO TAKE WHEN RAISING A CONCERN OR SPEAKING OUT

- What type of problem do I have? E.g. is it a human resources issue? A problem with equipment? Or a potential case of corruption or fraud?
- Is this response the appropriate response- will it have counterproductive consequences? What are alternative methods?
- Is it ok to address this problem alone, or would a group action be more effective?

CASE STUDY: CAMPAIGN in SUPPORT of Dr PFAFF

- Did I use the internal communication channels / available systems, procedures and to advocate for improvements/
- Do I have the key facts?
- Have you organised with others?
- Do you need to speak out for others, with others, enable others to speak out for themselves?

Over to you...

- Do you have your own experience you would like to share?
- What dilemma have you had recently that worried you?
- Would you have done something differently in the case studies above?
- What holds you back now from trying to disclose a health care problem?

Rural Health
Advocacy Project

