

Addressing Physician Incompetence

Reporting the incompetence or malfeasance of colleagues is one of the most difficult ethical dilemmas that physicians face.

Chapter in Brief:

- ▲ *Physicians who fail to maintain competence not only endanger patients but also damage the profession's collective reputation.*
- ▲ *While the vast majority of physicians believe they should report a colleague's incompetence, many admit that they have not always done so.*
- ▲ *While reporting colleagues' incompetence is the right thing to do, there can be unintended consequences. The issue may be best dealt with by a committee rather than an individual.*
- ▲ *Medical boards are taking a more proactive approach to competence issues; many now require physicians to engage in rigorous "maintenance of certification" (MOC) activities in order to maintain their credentials.*

Physicians who fail to maintain competence not only endanger patients but also do damage to the collective reputation of the profession. And those who fail to stop or report an incompetent or impaired colleague are guilty by what might be termed "disassociation," ethicists contend.

"If I see someone doing something wrong and I am a silent witness, I am culpable," says Faith T. Fitzgerald, MD, assistant dean of humanities and bioethics at the University of California-Davis Health System in Sacramento. "I have eroded patient trust not only in [the wrongdoer] but also in me."

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Date _____ Time _____ [] F/U Appt
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 Phone Number _____ AM PM
 Chief Complaint _____
 Assessment _____

[] Discuss and advise **Action**
 [] Rx to Pharmacy _____
 [] order lab work _____
 [] call for office visit in _____ days/weeks
 [] Other _____

_____ minutes spent in telephone medical discussion
 [] billable [] not billable **Coding**

Telephone service
 5-10 minutes
 11-20 minutes
 21-30 minutes
 Online encounter

Physician	NPP
99441	98965
99442	98967
99443	98968
99444	98969

Signature _____

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But for any number of reasons, physicians don't always step up to report incidents of incompetence. The physician may worry that others won't believe him or her or, if the incompetent or impaired colleague is a superior, that the reporting physician's career may be harmed. Or the physician may be concerned that he or she will be unable to document the incompetence or impairment, even though studies show that such impairment rarely goes unrecognized—just unreported.

None of those reasons is good enough not to take appropriate action, Dr. Fitzgerald maintains. "Doctors say, 'If I criticize my colleague or my attending or my teacher, that may rebound upon me and hurt me,'" she says. But, she continues, "What choice are they making? Either you have said you will take care of the patient first or you'll take care of self first."

Many Incidents Go Unreported

Interestingly, a recent study on physician professionalism led by Eric G. Campbell, PhD, of Massachusetts General Hospital Institute for Health Policy in Boston illustrates the scope of the discrepancy between what physicians think is the ethically appropriate response in such cases and what they actually do. Although 96 percent of the more than 1,600 doctors surveyed said physicians should report an incompetent or impaired colleague through appropriate channels, only 45 percent said that they always do so. The study appeared in the Dec. 4, 2007, issue of *Annals of Internal Medicine*.

"We found that a lot of physicians don't report an impaired colleague—for lots of reasons," Dr. Campbell says. After the study was published, one physician wrote to let the researchers know that in the wake of reporting a very important colleague's incompetence, the physician in question was fired and has since been unable to get another position. "But then there were the letters from patients. One says, 'This is what happened to me because of an incompetent doctor, and I've found five other people who were harmed. If we found out, how could the hospital not know?'"

Keith Brownsberger, MD, an Anchorage, Alaska, infectious disease specialist who spent nine years on the state medical board, has seen the damage incompetent physicians do to patients and the profession. "It's not easy—but you just report

it,” he says, because it’s the only way to stop the physician from harming more people. He recalled the case of an incompetent physician who had early-onset Alzheimer’s and may not have realized it. The physician had continued practicing long after he should have, in part because colleagues were reluctant to report his cognitive deficit.

In the case of a colleague’s impairment from alcohol or drugs, Frederick Turton, MD, former chair of the ACP’s ethics committee, thinks that physicians have an ethical responsibility to voice their concerns to an impaired colleague, then to other appropriate individuals if the doctor doesn’t seek help.

To address fears of retribution, many organizations have set up dedicated phone lines on which health professionals can leave details about a colleague’s suspected incompetence or impairment. However, some ethicists are opposed to the notion of anonymous reporting: “That gives the message that you can do the right thing if it keeps you safe. I think that’s the wrong message,” says Dr. Fitzgerald. Physicians, she believes, should do the right thing for patients regardless of the consequences.

“Faith [Fitzgerald] is right, but the world makes that hard. You refer to those people, you depend on their referrals, and it’s easy to shoot yourself in the foot, which is frequently what you do if you rat out somebody,” Dr. Turton says. “The person who can go to a colleague who is abusing a substance and [handle the situation] well is rare. That’s why you have committees with people who can do that.”

Changing Accountability Climate

Of course, recognizing and addressing a deficit in knowledge or skill in one’s own practice can be difficult as well, for other reasons. It’s difficult for anyone—perhaps especially physicians—to admit to his or her shortcomings.

Physicians who recognize a personal deficit may do the sensible, ethical thing: seek out targeted continuing medical education (CME) in the area and rigorously, regularly assess their own performance. That’s the ideal, “but that typically doesn’t happen,” says Daniel Duffy, MD, a leading proponent of performance measurement who serves as senior advisor to the president of the American Board of Internal Medicine in Philadelphia.

Once physicians pass the boards and are credentialed, he maintains, the licensing board plays an essentially retroactive role. “After that point, if we don’t get into trouble or get arrested, the boards don’t really pay much attention. We send in our money every year or couple of years, and we’re licensed.”

That situation, which leads to many ethical conflicts, is being addressed now. A commitment to competence and lifelong practice improvement is among the pillars of medical professionalism, so it is not surprising that the public, payers, and even physicians themselves in this information era are pushing for greater transparency in the demonstration and measurement of doctors’ competence. The most tangible response to that push are recent initiatives medical specialty boards have undertaken to verify physicians’ skills, knowledge, and competence on a continual rather than periodic basis—through rigorous maintenance of certification (MOC) requirements.

“It’s about public accountability and actually having a way of holding onto our commitment to be an accountable profession. Part of being a professional ... is that we regularly measure what

The Impaired Physician: Acknowledge Thyself and Report Others

No one—neither ethicists far removed from physician practice nor doctors in the middle of it—disagrees with the view that physicians who are incompetent or impaired should report themselves or be reported by colleagues. But, the challenges in doing what’s right are myriad, ranging from fear of job loss when the impaired physician is a superior to the possible financial impact on one’s own practice when the impaired colleague is a co-worker or a referring physician.

The American College of Physicians (ACP) ethical guidance in sticky situations is straightforward and easy to follow. Following is an excerpt, taken from the most recent edition of ACP’s Ethics Manual:

Physicians who are impaired for any reason must refrain from assuming patient responsibilities that they may not be able to discharge safely and effectively. Whenever there is doubt, they should seek assistance in caring for their patients.

Impairment may result from use of habit-forming agents (alcohol

we do and report that to those to whom we are accountable,” says Dr. Duffy, who is also senior associate dean for academic programs at the University of Oklahoma in Tulsa.

The MOC movement, as some call it, has been generally well received by physicians who see the value in continuous learning and assessment, especially younger ones. Resistance has come primarily from doctors who have been in practice two decades or longer. “Some of them just say, ‘This is ridiculous. It’s unnecessary. Trust me. I am good,’” Dr. Duffy says of the tendency among some doctors “to confuse confidence with competence.”

On the positive side, some early detractors who went through the process came back later to admit that it was useful and that they had learned a lot. But others did it grudgingly. Their major complaint, he says, is that the effort “is taking away too much time from their income-earning capacity.” That’s why he thinks that the profession should take the ethical high road and support a common framework for evaluating competency in the interest of deeming accountability for continuing competence as “a newly articulated commitment of medical professionalism.”

or other substances) or from psychiatric, physiologic, or behavioral disorders. Impairment may also be caused by diseases that affect the cognitive or motor skills necessary to provide adequate care. The presence of these disorders or the fact that a physician is being treated for them does not necessarily imply impairment.

Every physician is responsible for protecting patients from an impaired physician and for assisting an impaired colleague. Fear of mistake, embarrassment, or possible litigation should not deter or delay identification of an impaired colleague. The identifying physician may find it helpful to discuss the issue with the departmental chair or a senior member of the staff or community.

Although the legal responsibility to do so varies among states, there is a clear ethical responsibility to report a physician who seems to be impaired to an appropriate authority (such as a chief of service, chief of staff, institutional or medical society assistance program, or state medical board). Physicians should assist their impaired colleagues in identifying appropriate sources of help.

Source: Ethics Manual, 2005 edition, American College of Physicians, Philadelphia, Pa.