

## INVESTIGATION OF ABUSE ALLEGATIONS IN HOSPITALS: AN ETHICAL DILEMMA

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### ABSTRACT

Abuse of patients by healthcare workers is an issue of serious concern for every hospital and healthcare facility. These investigations present a serious challenge to healthcare administrators in that they present a unique ethical dilemma: how to balance the concerns and safety of patients with the obligation of ensuring justice and fairness for employees. This paper attempts to dissect this issue through case example and analysis.

### KEYWORDS

abuse, patient abuse, abuse allegations, ethics

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## Introduction

Between October 2009 and February 2013, registered nurse Jeffrey McAllister sexually assaulted at least 10 women in the emergency department at Legacy Emanuel Hospital. The discovery of these abuses set off a scandal that rocked the Portland community, led to an investigation by the Centers for Medicare and Medicaid and the Oregon Health Authority and triggered multiple law suits against the health system (Bernstein, 2013). These incidents raised many questions about how hospitals investigate abuse allegations and led to many changes in how Legacy Health responds to and addresses allegations of patient abuse.

Incidents like the one at Legacy present hospital leadership with a moral and ethical dilemma. They must protect their patients, while also protecting their employees. Leadership at Legacy was aware of allegations of sexual misconduct against Mr. McAllister, but did not respond in a way that honored their patients' right to be treated with compassion while at their most vulnerable. In these instances, Legacy failed in their ethical duty to protect their patients.

In this paper I will discuss the ethical issues surrounding the abuse of patients by caregivers, with a specific focus on the hospital setting.

## Discussion and Analysis of Issue

A study by May and Grubbs (2002) found that healthcare workers are often confused about what constitutes "abuse" or "assault." In order to understand the issues and dilemmas surrounding the investigation of patient abuse by caregivers, it is necessary to define what these terms mean. Most resources on this issue generally define abuse as encompassing intentional physical harm or sexual misconduct carried out by a caregiver, as well as psychological abuse intended to cause emotional pain (Albina, 2016). The Centers for Medicare and Medicaid Services (CMS; 2015) provide the following definition for abuse:

...the willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain, or mental anguish. This includes staff neglect or indifference to infliction of injury or intimidation of one patient by another. Neglect... is considered a form of abuse and is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

One concern when discussing physical abuse is how one actually defines this act. While certain physical acts such as slapping and punching, clearly meet the previously provided definition, there are other physical acts which fall into a "gray" area. When a patient accuses a nurse of being "rough" while providing care, does this constitute abuse? An over eager administrator or risk manager may automatically assume that this patient was physically abused, while the nurse may explain this accusation by stating that the patient was simply being repositioned to prevent pressure ulcers and required more force than usual due to the patient's size. In situations such as these, how should a hospital respond? If one's guidance is the previous definition provided from CMS, then an investigation should include the willfulness and intent of the act. If the nurse intended to cause harm to the patient, then the hospital would be correct in considering this to be an act of physical abuse. If considering the willfulness of the act, then this raises additional questions around boundary issues and gestures that may be misinterpreted (Rozovsky, 2011). A reassuring hug or pat on the knee by a well-meaning nurse could be interpreted by a patient as inappropriate and cause some degree of "mental anguish." Is the hospital obligated to treat this as "abuse"?

Another question that arises when examining allegations of patient abuse by healthcare workers is this: Does an organization's ethical responsibility to its patients outweigh its ethical responsibility to its employees? When determining how to respond to abuse allegations, an approach that utilizes procedural justice will allow one to examine the rights, values and interests of both patients and caregivers. As noted by Nelson (2005), some believe that a healthcare organization's primary

responsibility and priority is always with its patients; however this is subject to debate. The method provided by Nelson is one way a hospital that is struggling with how to address both patient and employee concerns could begin to evaluate how they investigate allegations of patient abuse. If, though, we believe there are instances where, as healthcare organizations, our patients are not always our first priority, then we must have a way to determine when to place our employees' concerns before those of our patients.

By offering these arguments, it is not my intent to diminish the seriousness of allegations of patient abuse nor to suggest that healthcare organizations should treat such allegations with a light hand. To the contrary, I believe that hospitals and all healthcare workers have an ethical imperative to prevent all manner of abuse against patients and to take all allegations of abuse seriously. If we refer back to Winkler, Gruen, and Sussman's first principles, this idea is addressed in two of these principles: "provide care with compassion" and "act in a public spirit" (2005). People seeking healthcare must be able to *trust* their caregivers to treat them with compassion and kindness. It is particularly important to remember the "asymmetric" nature of the relationship between patient and healthcare provider that can create a power differential. In the case of sexual abuse at Legacy Health, the management that knew about the allegations against Jeffrey McAllister did not act in a public spirit when they failed to investigate and intervene. Allowing this nurse to continue working put other patients at risk for sexual assault and allowed the abuse to continue unfettered, not to mention the effect it had on the public's confidence in the entire healthcare system. McAllister also used his power as a nurse working with vulnerable populations to his advantage when he abused and assaulted patients in his care.

The primary ethical dilemma in the investigation of abuse allegations arises when we examine another of Winkler, Gruen, and Sussman's principles: "treat employees with respect" (2005). When an employee is accused of abuse by a patient, it can be

very traumatizing and disturbing for the employee, as well as other members of the healthcare team. Employees may feel shame or anger and question their future role in the organization. Other staff may question how a patient could be abused "on their watch", as some of the Legacy employees did (Bernstein, 2013). While it is important to take all allegations of abuse seriously and to conduct thorough investigations, it is equally important to ensure that fairness and justice for the accused is maintained. Healthcare organizations have a duty to protect their patients and must also protect their employees from the potential trauma that a false allegation of abuse can cause. Striking this balance between two seemingly disparate concerns is where hospitals face their biggest challenge in the investigation of patient abuse.

In the case of Jeffrey McAllister, management did conduct investigations into some of the allegations of sexual abuse, but considered many of the accusers unreliable or not credible (Bernstein, 2015). This sort of assumption may arise when accusations of abuse are from patients being treated for psychiatric disorders, those with a history of substance abuse, or elderly patients suffering from confusion or dementia; however, these vulnerable populations are particularly susceptible to abuse (Boland, Burnage, & Chowhan, 2013). In these cases, it is easy to dismiss accusations as attention seeking or a symptom of their disease process, however this response does not respect a patient's right to be treated with compassion, nor does it honor the hospital's ethical (and legal) imperative to ensure the safety of their patients. An assessment of the severity of the allegation coupled with a review of any prior abuse allegations against the employee will help determine an appropriate response by the healthcare administrator.

## Conclusion

The abuse of patients by healthcare workers is without a doubt a serious issue that requires hospitals to respond appropriately when allegations against employees arise. As stated previously, by

making these arguments and suggestions it is not my intent to minimize the seriousness of this issue. Rather, it is my intent to highlight the ethical dilemma that arises when investigating allegations of patient abuse, namely how to best balance a hospital's ethical duties to its patients with that of its employees.

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