

By Genevieve M. Clavreul, RN, Ph.D.

# Moral Courage

*The astonishing story of two brave nurses who refused to turn a blind eye*

As so many of my readers already know, I love to attend conferences, meetings, symposiums and the like. Such was the case when I decided to attend a recent conference on one of my favorite topics – ethics! I scanned the agenda and was pleased that I had arrived in time to hear one of the keynote speakers discussing “The Price of Advocacy: Dealing with Moral Distress.”

Much to my dismay, I learned that this particular lecturer didn't like the terms “whistleblower” and “moral courage;” she didn't believe that moral courage was an important character trait for a good nurse's skillset.

This comment didn't sit well with many of the attendees, with one mentioning to the speaker that she liked the term “courage.” The speaker stopped the Q&A portion of the meeting 10 minutes early, and there

I was, next in line and left with no opportunity to ask my question or voice my opinion. *Quel dommage.*

### Defining “Courage”

What is moral courage? How is it different from garden-variety courage? The 9/11 firefighters who ran into the World Trade Center were undoubtedly courageous. The bystander on the beach who rescues a drowning child shows courage as well, and the list goes on. We often think of courage in a physical sense — the strength to withstand danger, fear, or difficulty. On the other hand, moral courage specifically addresses the character of an individual who stands up for right over wrong, no matter what.

Every day, nurses face moral challenges. When nurses stand up and speak out about prescription or medical errors, about lapses in patient care, the need for additional regulation or legislation, we do this as part of our obligation as the patient advocate. Sometimes, however, the actions go above and beyond the ordinary practice and become an act of moral courage that changes the whole landscape.

Such was the case of two West Texas nurses whose anonymous reporting of alleged wrongful behavior by a local physician ended with the Texas Senate passing a bill to protect whistleblowers.

### It Begins with a Simple Letter

For Anne Mitchell, RN, and Vickilyn Galle, RN the yearlong voyage down this rabbit hole as whistleblowers began simply enough — with a letter



Board (TMB) in 2009. In their letter, they alleged that Dr. Rolando G. Arafiles, Jr. displayed a pattern of improper prescriptions and surgical procedures, including a failed skin graft that Dr. Arafiles performed in the emergency room without surgical privileges. They alerted the TMB because they felt that the concerns

chilling effect" on the reporting of suspected malpractice.

Numerous nursing, healthcare and other advocacy groups also spoke out in defense of the nurses. They argued that the Supreme Court of Texas had held that "good faith" requires only a reasonable belief that the conduct being reported is illegal. Several Texas

tal and its administrator, Winkler County, the county sheriff and other governmental officials) had subjected them to malicious prosecution and violated their free speech rights as well as the state whistleblower law. All parties to the federal lawsuit recently settled out of court with a monetary payment to both nurses.

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## The whistleblower nurses could not have predicted that a simple act of patient advocacy would get them arrested, facing jail time and a yearlong court battle

voiced to hospital management weren't taken seriously.

Perhaps management felt that since these two nurses were administrative, they were not afforded the same whistleblower protections as floor nurses. But as we all know, when there is an RN after your name, you bear equal responsibility to act as patient advocate, whether you're a floor nurse, registry, a charge nurse or DON — it's not the title that defines us, but our licensure as RNs. We are all held to the same standard.

### The Prosecution

Meanwhile, the TMB notified the doctor of the anonymous complaint. In Kermit, Texas, a small town of just over 5,000 where the county sheriff considered Dr. Arafiles a close friend, it didn't take long for the complaint to lose its anonymity. Soon afterwards, these two nurses found themselves under arrest and looking at a possible 10 years in jail for "disseminating confidential information for a non-governmental purpose with intent to harm Dr. Arafiles."

The prosecutor would later dismiss the charges against Nurse Galle, but proceeded with the prosecution of Nurse Mitchell. When the TMB caught wind of what was happening, the Board's executive director Mari E. Robinson warned the prosecutor that the case would have "a significant

laws seemed to enshrine a nurse's right (and perhaps duty) to report a physician when the nurse believes that patients are at risk.

### The Sheriff

These arguments fell on deaf ears as both the sheriff, Robert L. Roberts Jr., and the prosecutor, Scott M. Tidwell, moved forward with the case against Nurse Mitchell. It's important to mention that Sheriff Roberts credits Dr. Arafiles with saving him after a heart attack, and had been quoted in the press to have characterized Dr. Arafiles as "the most sincerely caring person I have ever met."

In my opinion, Sheriff Roberts should have recused himself from this case. In light of his relationship with Dr. Arafiles, he could not have been impartial. But perhaps Dr. Arafiles was counting on the sheriff's acquaintance in order to help him find the people who were "harassing" him.

### The Tables Turn

Thankfully, in February of last year cooler heads eventually prevailed when the jury found Nurse Mitchell not guilty after deliberating for less than one hour.

Now it was the nurses' turn to fight back with a lawsuit of their own in Federal Court. Nurse Mitchell and Nurse Galle contended that the defendants (Dr. Arafiles, their former hospi-

### Action Over Silence

I'm sure that neither nurse thought the simple act of writing a letter alerting the medical board about poor standard of care delivered by a physician in their hospital would jeopardize their license, reputation and freedom. Perhaps if beforehand they had known the consequences of their actions, they may have chosen silence over action.

Such is the choice so many nurses face on the job every day. Do they try to interpret an unclear or illegible doctor's order and carry it out, keeping their fingers crossed that there will be no negative outcome for the patient? Or do they demand a doctor's order be rewritten or clarified?

Do they turn a blind eye to their fellow nurse who is using illicit drugs or perhaps "skimming" drugs from patients, fearing that the nurse might discover who filed the report? Or do they file that report, regardless of the potential repercussions?

Do they keep quiet their suspicions that hospital administration is skimping on mechanical upkeep, leaving the units with faulty equipment? Or do they report their suspicions to the appropriate regulatory agencies despite possible consequences? Such choices are what separates the average nurse from the superior one.

### A Great Profession

Nurses who display moral courage often unknowingly or unwittingly set in motion far-reaching changes. In the case of Nurse Mitchell and Nurse Galle, their plight galvanized nursing associations both national and local as well as medical associations and other watchdog agencies. Their case prompted Texas State Senator Jane Nelson (R-Flower Mound) to author legislation which would empower licensing agencies to impose fines up to \$25,000 against a license holder who retaliates against nurses who report abuses. This legislation passed the state Senate in early April and has moved to the House for consideration.

In closing, I would like to leave my readers with the following quote from Theodore Roosevelt: "In any moment of decision, the best thing you can do is the right thing."

During this National Nurses Week, take the time to thank a nurse that you know has shown moral courage. If that nurse happens to be you, be sure to hold your head up high with pride; nurses such as you help make our profession truly great. **WN**

## Healthcare Reform

### May Update

by Genevieve M. Clavreul, RN, Ph.D.

**The Back Story** On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (ACA), a sweeping package we know as "healthcare reform." Provisions go into effect during the next four years, with most changes taking place in 2014. Stay tuned as we guide working nurses through the twists and turns, answering the question: "What is going on with healthcare reform?"

### Supreme Court Rejects Request

In late April, the U.S. Supreme Court rejected Virginia's request that the Court to rule on the constitutionality of the ACA in an expedited hearing. Their ruling means that the lawsuit will move forward to the U.S. District Court for the Eastern District of Virginia. This appeal stems from a December ruling by a judge that the minimum coverage provision of the ACA is unconstitutional. That ruling has been put on hold, pending appeal. **WN**



Genevieve M. Clavreul, RN, Ph.D., is a healthcare management consultant who has experience as a director of nursing and lecturer of hospital and nursing management. She can be reached at: Solutions Outside the Box, PO Box 867, Pasadena, CA, 91102-2867; (626) 844-7812; gmc@solutionsoutsidethebox.net.



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