

# Am I My Brother's/Sister's Keeper?

*Then the Lord said to Cain, "Where is Abel your brother?" He said, "I do not know; am I my brother's keeper?"*  
 Genesis 4:9 (RSV)



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**A**dherents of the Abrahamic faiths or students of the *Bible* as literature will easily recall the circumstances of this famous quotation from the Hebrew Scriptures. Cain has killed his brother Abel, earning the disrepute of committing the first murder in biblical history. Scholars of ethics have answered Cain's sardonic question in the affirmative: avowing that while the individual is primarily responsible for his conduct and its consequences, the community also bears a responsibility.<sup>1</sup>

Many of you will have seen news clips of yet another Department of Veteran Affairs (VA) scandal: This one involving an impaired pathologist. I have purposely not used the pathologist's name to emphasize that our shared obligation to protect patients from impaired members of the profession goes far beyond this single outrage. Although we might believe we could never be that individual; none of us are immune from depression, dementia, or physical disabilities that diminish our ability to care for patients. Although it is worth noting that having read or watched everything I could find on the story, the "facts" are few and far between, which I will argue later only underscores the problems with professional accountability especially in a large bureaucratic organization.

This column is not meant to impugn or exculpate anyone but to encourage us to reflect on our ethical awareness and response to hints that there might be an impaired practitioner among us. The Fayetteville VA Medical Center (VAMC) in North Carolina—ground zero for this incident—held several town halls in which anxious and angry veterans demanded an explanation for how an impaired pathologist could have placed in harm's way nearly 19,000 patients.<sup>2</sup> Of this cohort, 5,250 patients have died since 2005. The VA leadership, including the VISN 16 network director and the interim medical director of the Fayetteville VAMC indicated that out of 911 pathology reports that had undergone expert peer review, an incorrect diagnosis was identified in at least 7 with

1 possible associated death.<sup>3</sup>

The VA officials estimate that the entire review may involve more than 30,000 cases. The allegations are that the pathologist was impaired due to a substance use disorder, in this case alcohol. In interviews, the physician has admitted the alcohol problem and receiving treatment for it but denied he was ever impaired on duty.<sup>4</sup> This denial directly contradicts the VA reports that he was intoxicated on duty at least twice.

We do know that the physician in question was enrolled in the Mississippi Physician Health Program (PHP). The Federation of State Physician Health Programs (FSPHP), of which the Mississippi program is a member, provides confidential initial evaluation, ongoing treatment, and monitoring for state licensed health care practitioners with a substance use or other mental health disorder or other condition that could potentially impair their fitness for duty. The PHPs have been career saving for many physicians and other health care professionals. The incentives to return to the practice of medicine are powerful, leading to a higher recovery rate than that of the general population.<sup>5</sup>

According to FSPHP, "While both PHPs and state licensing boards are engaged in patient safety efforts, PHPs primary focus is on improving the health of the physician, and the licensing board's primary duty is to protect the public."<sup>6</sup> This potential conflict of interest has been criticized recently.<sup>7</sup> News reports suggest that the ambiguity of this relationship between PHP and licensing board may have left a "who's minding the store" mentality. But here are the facts of this particular case.

In March 2016, an employee reported that the pathologist was intoxicated on duty, and he was immediately removed from service. Of the many elephants in the room, the biggest moral pachyderm is why, given the chronic and progressive nature of substance use disorders did it take 11 years for a formal report leading to action?

Having been in circles of leadership, I know well that often there is much discussed that

cannot be disclosed, which frequently contributes to staff demoralization. Dozens of medical center employees over decades must have seen behaviors; some of those employees likely reported their observations. The news reports are silent on this point except for attributing it to “fear of retaliation.” In our current VA climate this is a major intimidator of staff trying to tell the truth and leaders seeking to do what is right. Yet research has identified myriad other motives for not reporting impaired colleagues, including loyalty, collusion, denial, indifference, scarcity of resources, and overwork.<sup>8</sup>

In October 2017, the pathologist was again found intoxicated on the job, attributing it to a migraine headache. The hospital investigated, but the pathologist may have continued working in some capacity. Finally, after the pathologist was arrested for driving while intoxicated March 1 of this year, the interim VAMC director contacted the Mississippi licensing board, declaring that the pathologist “had failed to meet standards of practice” and indicted that he “constituted an imminent threat to patient welfare.” The Arkansas Medical Foundation then rescinded its support of the pathologist, citing the pathologist’s failure to adhere to monitoring and reporting requirements. The Mississippi program followed suit on June 20, and the medical board rescinded his license.

All employees at whatever level are owed due process and respect for their rights, but Congress recently saw fit to legislate further limits on federal employee protections. Most health care administrators still standing in the chaos of today’s VA would tell you that survival is all about when did you know and what did you do about it? But it is not just administrators, the code of ethics of almost every health care profession includes an obligation to report impaired practitioners. Principle II of the American Medical Association Code of Ethics states, “A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.”<sup>9</sup>

If one is in private practice in a small town, it is easier to pull your friend aside on the golf course and say you seem to be having a problem, counsel your friend to get help, often

through a PHP. Then if the gentler approach fails, take the harder action of reporting to the medical board or other authority. To report takes moral courage. It takes seeing that the practitioner is not betraying the “white line” of health care professions but honoring the highest commitment of professionalism to the patient.

The last thing we need in our current suspicious and fearful environment is to turn VAMCs and clinics into a dystopia. Yet reporting in a large organization with rules and red tape can seem terrifying, overwhelming, and confusing. A fair, safe, transparent, clear, and consistent means for staff to discharge their ethical obligations is sorely needed. Or else we will be reading about another tragic scandal and asking each other, “How could this have happened?”

#### Author disclosures

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#### Disclaimer

The opinions expressed herein are those of the author and do not necessarily reflect those of *Federal Practitioner*, Frontline Medical Communications Inc., the US Government, or any of its agencies.

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