More Serendipity: The Winkler County Trial

There is a reason I am telling you this story. Although it is about two nurses and a rural West Texas county, the implications of this situation affect all registered nurses. It is a test of the role of nurses as advocates and a test of criminal charges being used in violation of the whistle-blower protection afforded health care professionals. Let me disclose potential conflicts of interest in reporting this in a totally unbiased manner: (1) I am a registered nurse; (2) I believe the annual Gallup polls, which report that nurses are the most trusted professionals; (3) I have donated frequently to the legal defense fund (through the Texas Nurses Association [TNA]); and (4) I have sent messages to Anne and Vicki and acknowledged them as my heroes.

I live in West Texas, not too far from Winkler County. Nationally and internationally, few people would have reason to know about the county. Winkler County operates, among other things, a critical access hospital (Winkler County Memorial Hospital) and a rural health clinic. The hospital has 15 beds and 10 full-time and 5 part-time registered nurses (although now, probably minus 2). The hospital is not accredited, which is not uncommon for small, rural hospitals throughout the nation. Its last regular state survey was in August 2006; however, another survey was conducted in September 2009 as a result of a complaint the TNA filed against the hospital for its policy limiting external reporting and for terminating the nurses for making the report.

Two registered nurses, Anne Mitchell and Vickilyn Galle, reported a physician to the Texas Medical Board over concerns about the quality of care he was rendering. They used only the patient medical record numbers. The letter from the medical board identified 10 patient cases by their names and dates of birth. So, the sheriff indicated he needed additional contact information (e.g., addresses and phone numbers) to investigate this charge of harassment. That information mysteriously appeared on his desk the next day and the sheriff proceeded to track down each of the individuals to determine if any had reported the physician. All of the patients apparently denied any knowledge of the report or a concern. However, in his investigation, the sheriff received information from the medical board (which understood the sheriff was also investigating the physician) that those reporting the concerns were two nurses who had worked at the hospital for about 20 years and were about 50 years old. That information narrowed the “suspects” down to two nurses. To make a long story short, both nurses were charged, indicted, and arrested due to their failure to execute a public servant role properly. At the last moment, the case against Vicki was discharged based on prosecutor prerogative. Now Anne stood alone.

The case lasted about 3½ days and generally played to a full courtroom. As the testimony unfolded, many of us who were registered nurses were appalled at the lack of understanding of the role of a registered nurse (by several of those testifying for the prosecution) and the confusion around whether one’s practice act held greater sway over performance than did hospital policy or county rules (again by those testifying for the prosecution). How could such a case make it this far? What if the jury didn’t understand the role of registered nurses? What would happen to patients who no longer had the protection of the right of nurses’ roles in advocacy? How would other nurses respond to the chilling fact that activating our advocacy role to its fullest might land us in jail, in court, or even in prison?

The jury was out about an hour. They filed back into the courtroom and you really could have heard a pin
The judge made the point that we were not to respond in any manner to the outcome. When the foreman handed the signed decision to the judge, the silence was even greater. I am fairly certain some of us had to remind ourselves to breathe. When the not guilty verdict was announced, we all started to breathe—and some of us cried. Every penny I spent on my TNA dues and donated to the legal defense fund was worth this outcome!

The ultimate losers in this case, in my view, are the citizens of this community. They have a new hospital and have lost a nurse practitioner, who also reported the physician to the medical board because of concerns related to the physician’s practice in the clinic (and 500 patients followed her to her new practice site), a licensed vocational nurse, who reported she couldn’t stand the stress for fear of missing something the physician had done wrong, the two hospital nurses who were fired, and the medical chief of staff. Rural hospitals are always challenged to stay open and operational. This series of events must make it even harder.

Here is what I learned from this: Although there clearly were questions about the physician’s medical practice, the jury must have heard and valued that nurses are advocates and that we have a right to report questionable practice. The jury also understood that reporting wasn’t something we could choose to engage in, but rather an obligation. They also got that state law holds higher sway than do county or hospital policies and procedures. The public values nurses and doesn’t want us to lose our authority to function on their behalf.

Although I may be reading something into this decision, I am not reading anything into the courage of these two nurses. When I say that it took courage, I am not overstating the case. It took courage for these two nurses to stand up in a small, rural community for what was right, to fight the system (to the point of facing the prospect of going to prison), and to represent all nurses so well.

They are my heroes and whether you know it or not, they are yours.

**SOURCES**

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The author discloses that she has no significant financial interests in any product or class of products discussed directly or indirectly in this activity, including research support.

doi:10.3928/00220124-20100326-07