THE IMPAIRED PHYSICIAN

OBJECTIVES:

- Identify the ethical implications of dealing with an impaired physician
- Understand the legal issues regarding impaired physicians
- Consider the appropriate response when dealing with an impaired colleague

There are many ethical dilemmas when dealing with impaired physicians. For example, when does a physician have the duty to report a colleague who is impaired? What are the legal implications of reporting an impaired colleague? Is there “whistleblower” protection? This case scenario discusses how best to intervene when observing an impaired or disruptive physician.

Some may assume that physicians are immune to the addictions and mental illnesses of society. But several studies have reported that up to 15% of physicians will have a type of substance abuse in their lifetime, and alcohol is the most commonly abused substance.\(^1\) During their addiction, impaired physicians treat patients on average of 10 years before a complaint or “personal disaster” brings the issue to light.\(^2\)

Slides 3-4: Case

*You are a junior resident taking call at a children’s hospital. A child presents to the emergency room with an open ankle fracture from an ATV accident. You call your attending, Dr. Baker, and he returns your call after a delay stating he has been having dinner with the invited speaker for tomorrow’s grand rounds. You make arrangements to get the patient to the operating room to perform the emergent surgery. When Dr. Baker arrives, you smell alcohol on his breath. He proceeds to the scrub. It is obvious that he is impaired.*

Slide 5: Question

- *What do you do?*
Slide 6: Case continued

You believe that you have a great relationship with Dr. Baker. You decide to ask him if it would be OK to call one of the other attendings to take the case since he has been out to dinner, and the presence of alcohol on his breath might concern the family. Dr. Baker doesn’t agree and says no.

Slide 7: Question

- Now what do you do?

In this case Dr. Baker has been judged to be impaired and is about to perform surgery, thus putting a patient in immediate danger. Therefore, the resident should immediately take action to protect the patient. It would be appropriate for the resident to speak with the attending directly, and if necessary notify another attending or colleague of the situation (such as the anesthesiologist, etc). There are many potential ways to approach this case, but the bottom line is that an impaired physician should be prevented from causing harm.

Slide 8: Case continued

After Dr. Baker’s refusal to step aside, you decide to let the anesthesiologist, Dr. Kramer, know about the situation. You hope that Dr. Kramer will talk to Dr. Baker as a colleague. If Dr. Baker continues to deny the problem, Dr. Kramer can stop the case until another attending is able to be there.

Slide 9: Questions

- What was your ethical duty?
- Do you know of any specific ethical or legal guidance that applies to this situation?

As the colleague of an impaired physician, you always have the ethical duty to act in the best interest of patients and society.Obviously, impaired or disruptive physicians pose a threat to their patients. Therefore, the primary ethical reason to intervene with an impaired physician is to prevent harm to
patients. The American Academy of Orthopaedic Surgeons Code of Ethics and Professionalism for Orthopaedic Surgeons states that every physician has the responsibility to take steps to make sure that no patient is harmed by the actions or inactions of an impaired physician. In addition, according to the American Medical Association Code of Medical Ethics Opinion 8.15, “It is unethical for a physician to practice medicine while under the influence of a controlled substance, alcohol, or other chemical agents which impair the ability to practice medicine.”

Slide 10: Case continued

Dr. Kramer speaks with Dr. Baker and urges him to withdraw from this case. Finally, Dr. Baker agrees not to perform the surgery but continues to deny that he is impaired. Another attending surgeon is called in. After the surgery is completed, you and Dr. Kramer discuss the events of the evening and what you should do next.

Slide 11: Questions

- What are the legal implications of this scenario?
- What are the reporting obligations in this case?

After the patient is out of danger the appropriate authority should be notified such as the chief of the department and/or the hospital peer review committee. This case cited an extreme example. In most cases however, the presentation of an impaired physician is more subtle and the situation may be more complex. The basic principles of protecting the patient and making a report in good faith should always prevail.

In addition to the ethical issues there are legal issues regarding reporting impaired physicians. The AMA outlines their opinion regarding reporting impaired, incompetent and unethical colleagues in opinion 9.031. This opinion states, “Physicians have an ethical obligation to report impaired, incompetent, and/or unethical colleagues in accordance with the legal requirements in each state and assisted by the following guidelines.” The guidelines include impairment, incompetence and unethical behavior.
The AMA Code of Medical Ethics specifically states that physicians have the obligation to intervene in a “timely” manner to prevent their impaired colleagues from harming patients. Also, physicians should ensure that their impaired colleagues get assistance from a physician health program (Opinion 9.0305). The duty to report may involve reporting to the licensing authority. The guiding ethical principle is to protect current and future patients from harm. Protecting the patient and obtaining help for an impaired colleague are two ethical reasons for action. Impaired physicians may pose a danger to themselves and their families. Also, intervening may prevent future harm to the physician’s livelihood.

Many states have reporting laws. Also, the Joint Commission requires all hospitals to have physician wellness programs and a peer review process. The Health Care Quality Improvement Act of 1986 requires all hospitals and states to report to the National Practitioner Data Bank any disciplinary actions against physicians. In general, physicians have a reluctance to be critical of their colleagues and they have a fear of retaliation against being a “whistleblower”. Although a physician may be sued for reporting a colleague, most state laws provide some immunity to persons who report impaired physicians in good faith.

An additional ethical reason to intervene is the need for the medical profession to self-regulate. Society holds the medical profession in a position of great trust. The public expects the medical profession to screen out providers who may be a danger to society.

**Slides 12-13: Case 2**

After residency you and a fellow resident, Dr. Kean, join a large group practice. During your second week at work you observe that Dr. Kean has been coming to the office late. Nurses comment on seeing him intoxicated at several parties. You have personally observed him make some questionable decisions regarding patient care. Although you have known Dr. Kean for many years and have seen him drink socially, you have never observed him to be impaired at work before.
Slides 14-15: Questions

- What is the difference between social drinking and alcohol consumption resulting in impairment?
- What is your ethical duty in this case?
- What specific ethical or legal guidance applies to this situation?
- What resources exist to help an impaired physician?

This case involves the ethical dilemma of social drinking versus alcohol consumption resulting in the impairment of a colleague. In this scenario, nurses report your practice partner to be intoxicated in public, and you observe him to make questionable patient care decisions. How should you respond?

Because alcohol consumption is a leading cause of impairment in society, some occupations have stringent rules regarding alcohol use. For example, airline pilots may not consume alcohol within 8 hours of their flight or have a blood alcohol content greater than 0.04% according to Federal Aviation Regulation 91.17. Many people have suggested similar guidelines for physicians. Although, physicians do not have such regulations, the AMA Code clearly states it is unethical to practice medicine while under the influence of alcohol. Currently, there is no evidence regarding the safe amount of alcohol to drink and still practice medicine. Therefore, any alcohol consumption would be considered unethical while taking call, because of the potential risk to patients.

Slide 16: Ethical Guidance

American Medical Society Code of Medical Ethics, Opinion 8.15

"It is unethical for a physician to practice medicine while under the influence of a controlled substance, alcohol, or other chemical agents which impair the ability to practice medicine.” Opinion 8.15

"Physicians have an ethical obligation to report impaired, incompetent, and/or unethical colleagues in accordance with the legal requirements in each state”... Opinion 9.031

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Slide 17: Resources

Forty-three states and the District of Columbia have Physician Health Programs (PHPs). These PHPs are typically sponsored by the state medical societies. If a physician voluntarily contacts a PHP, they will typically serve as an advocate on behalf of the physician before the state licensing board. Contacting a PHP to report an impaired colleague can be done anonymously.

Egos and a genuine fear that their reputation is at risk prevents many impaired physicians from seeking help. Fortunately, today there are many resources for treating and helping impaired physicians, whether the cause is alcoholism, drug abuse, mental illness, or something else. Forty-three states and the District of Columbia have Physician Health Programs (PHPs). These PHPs are typically sponsored by the state medical societies. If a physician voluntarily contacts a PHP, they will typically serve as an advocate on behalf of the physician before the state licensing board. Contacting a PHP to report an impaired colleague can be done anonymously. The PHP will perform a comprehensive assessment and arrange an intervention if necessary.8

Slide 18: Summary

- The first case was an extreme example of an impaired physician. In most cases the presentation is more subtle and more complex.
- The basic principles of protecting the patient and making a report in good faith should always prevail.
- Physicians should be proactive in taking care of themselves and colleagues in order to best serve their patients.

In conclusion, physicians have the ethical duty to intervene when a colleague is impaired. There are legal implications and protections do exist for the reporting physicians. Colleagues should utilize the resources available to help impaired physicians and seek those resources for themselves when needed. Finally, physicians should be proactive in taking care of themselves and colleagues in order to best serve their patients.
References

2. Blair M; Impaired Physicians blog. [http://www.impairedphysicians.org](http://www.impairedphysicians.org)