

## Whistleblowing in Healthcare: Do We have Legal Protections

*The following transcript has been lightly edited for clarity. Elite Learning does not warrant the accuracy or totality of audio transcriptions provided by an independent contractor resulting from inaudible passages or transcription errors. An occasional transcription error may occur.*

### **Guest: Dr. James V. Stowe, JD, RN.**

James is both a nurse and attorney, obtaining a nursing degree from Auburn University and a Juris Doctor from Samford University, Cumberland School of Law. He practiced in the legal field, concentrating in part on medical claims before returning to hospital administration. James is currently the Director of a large Emergency Department.

### **Host: Candace Pierce DNP, MSN, RN, CNE**

Dr. Pierce is a nurse leader committed to ensuring nurses are well prepared and offered abundant opportunities and resources to enhance their skills acquisition and confidence at the bedside. With 15 years in nursing, she has worked at the bedside, in management, and in nursing education. She has demonstrated expertise and scholarship in innovation and design thinking in healthcare and education, and collaborative efforts within and outside of healthcare. Scholarship endeavors include funded grants, publications, and presentations. As a leader, Dr. Pierce strives to empower others to create and deploy ideas and embrace their professional roles as leaders, change agents, and problem solvers. In her position as the Sr. Course Development Manager for Elite, she works as a project engineer with subject matter experts to develop evidence-based best practices in continuing education for nurses and other healthcare professionals.

## Episode 1: Whistleblowing in Healthcare: Do We have Legal Protections

### Transcript

Candace Pierce: Welcome to our podcast series, Whistle Blowing in Healthcare. Do we have legal protection? This is Dr. Candace Pierce with Elite Learning by Colibri Healthcare, and you are listening to our Elite Learning podcast, where we share the most up-to-date education for healthcare professionals. Joining me to walk us through this legal topic is one of our legal experts, Dr. James Stowe. Jay, thank you for joining us for this topic.

James Stowe: Great, Candace, I appreciate your invitation and I'm excited to be here today.

PIERCE: Absolutely. And our goal through this series is to help you as our listeners understand the legal protections and practical steps involved in whistleblowing so that you feel empowered to report wrongdoing without fear of retaliation. Whistleblowing really is necessary in healthcare for maintaining ethical standards, patient safety, and organizational integrity. And it's this accountability that really leads to a safer and more transparent healthcare system. So, in this first episode, we want to explore the concept of whistleblowing within the healthcare sector, its importance, and the legal frameworks that support it. So back to you, Jay, out of curiosity for myself, and I'm sure our listeners, now I know you completed a nursing degree and then you went back to school for your JD. What did you do with your JD? And then what brought you back to healthcare?

STOWE I actually did medical malpractice, or as it's commonly referred to, medical negligence. I practiced a little over 50% of my practice in a defense nature. We represented hospitals in the town we were in, and therefore we represented many other physicians and nurses and all the entities within that hospital. We also represented standalone physicians, dentists, pharmacists. And so, we had a very, very healthy practice of that. For me personally, moving from the legal world back into the medical world, I wanted a little more hands-on. I missed the hands-on approach of changing lives. You can change lives greatly in the legal world, but I guess I wanted a little bit more of a faster pace and hands-on in a real-life scenario and really enjoyed that move. And fortunately, I was able to do that successfully.

PIERCE: Which one's harder?

STOWE Wow. That's a great question. You know, medicine, especially with my area where I practice in emergency medicine, is pretty prescriptive. It's kind of black and white. You know, if you have X lab value, you're going to do Y treatment. In the legal world, it's a lot of shades of gray. What you have to do is go in and you basically, argue prior precedent, prior decisions, and laws, and hope you can convince the judge and jury that your shade of gray is better than the other team's shade of gray.

PIERCE: Well, do we have gray with whistleblowing?

STOWE You really do. The concept of whistleblowing, especially in healthcare, is not very gray. It's pretty simple. If you want to make a difference and improve a process and tell somebody in an authoritative position that can help you make that change, that theoretically is whistleblowing. You're shedding light on an issue that needs to be fixed, corrected, or improved. In a more complex nature, we have federal laws that kind of govern massive whistleblowing. There are statutes of limitations in there. There are a lot of different nuances. But for the average, and I will say nurse, bedside nurse in a hospital, average phlebotomist in a hospital, radiology technician, you know, you have an opportunity. There's someone in your institution, more than likely, in a quality department, perhaps, that wants to hear your concern and wants to improve outcomes. So, it can be as simple as telling someone that can help you make a change, or it can be quite cumbersome filing a federal complaint and it's a long road when you do that. Not necessarily a bad thing, just a long road.

PIERCE: Why do we say whistleblowing is important in healthcare?

STOWE: You know, whistleblowing across the continuum of any company kind of shares the same benefits as whistleblowing in healthcare. Whistleblowing is raising

a concern right when you feel something's off, or you feel something's wrong. When we report waste, fraud, abuse, corruption, or there's a public health or safety risk, those are the things that we would report in a whistleblowing action. And that really kind of spans the gamut. It just hits home a little closer when you talk about the health and safety of people, because when you're in healthcare, that's really what you're going after. That's your primary goal. So anytime you have one of those issues, that can be the basis of a whistleblowing complaint.

PIERCE: So, when you hear the term whistleblowing, is it the same as if I just saw something on my unit and I go report it to my director to say, hey, I saw this happening. Could you look into it? Or is it when the term... Because I've always thought, you hear on TV, on the news, whistleblowing and these people, and then they had to leave the country. And then I've always thought whistleblowing was something big. Like I've reported something really big that, you know, could get a lot of people in trouble.

STOWE: So, and that's a great question because so little is known about it. And one of the reasons is this, when you work for a company, whether it's a small dental office, whether you work for an individual family practitioner, family practice medical clinic, or whether you work for a 500-bed hospital, when you realize something is wrong and you report that issue, there's going to be consequences. Right? Like, are you worried about what your boss is going to do? You know, are you going to get extra scrutiny? Are you going to lose your job? What is going to happen in a hospital setting? You generally have a lot more. It's a lot easier, right? It's a lot easier. But the reality is you're making a complaint about a concern. You can do that in your job setting. When you do a whistleblower complaint, you can't be anonymous. Okay. You can't be anonymous. So, when you make a whistleblower complaint, you're out there. If it's a big complaint and you draw the ire of a federal investigation, OSHA comes in and investigates your complaint, you're going to be in the news, right? You may be in literature papers. You may be on a website, federal website. You may be on a whistleblower podcast, for example. So, there are repercussions, but the concept of reporting an issue and trying to make it better is actually the same. It's just a different path with different consequences.

PIERCE: So, I was doing some research before we met today and there were two studies or really two statistics that I was looking at regarding whistleblowing in healthcare. And I saw that some studies suggest up to 250,000 patient deaths occur annually due to medical errors, many of which could potentially have been

prevented through effective whistleblowing. And the other one I saw was that approximately one in ten patient safety incidences involve preventable, I cannot talk today, preventable medical errors that could have been addressed through early reporting.

STOWE: I think that's right. I think, you know, you go back to medicine is an art, not a science. A lot of times you have to kind of use your best judgment, your best educated guess, see what happens. But we also have a lot of additional strains on the practice of medicine today and healthcare. No matter what form of healthcare you're in, you know, you're expected to do more with less today. And oftentimes people cut corners. I'll give you an example of a scenario where that is quite applicable. Working in an emergency department, we had a group of emergency physicians, they're an independent contracting group with the hospital, and they realized through their billing that they did not get paid to insert central lines. So, we have a patient that we're coding, we start some very strong medications that are very well known to destroy veins, can cause major issues, right? So, they would call the hospitalist and let them know that they're on these medications. Well, we started seeing a trend where the physicians weren't putting in central lines. And then we had all this extravasation, and multiple people were losing limbs Due to the severity of extravasation. And it stemmed from not knowing, not, let me rephrase that, they knew that these medications could cause an issue, but it was time. They didn't want to spend their time to do something that they weren't getting reimbursed for. So, you know, the complaint to the hospital staff did multiple times because you know, I mean, you code a patient, put one in because you got these powerful drugs. Blamed the hospital, the hospital didn't do anything about it. Come to find out the hospital tried. They just didn't have traction with the physician group. Didn't have upper-level senior management support to enforce this activity. So, when that didn't happen, they filed a whistleblower suit with OSHA about public safety. And it got investigated and there were some major repercussions, but You know, the individual that eventually filed the complaint had a rough go of it, because they were known, you know, in the hospital, it's usually anonymous, but it's an, it's an example of how you can use whistleblowing to protect individuals' lives. And we don't think of things as simple as that, but that is just a, you know, it's not very simple to those individuals who lost their limbs.

But the concept of it is very simple. Look, hey, we can prevent this, right? We just need some support to help prevent this.

PIERCE: Right, and it was preventable, but it was not, it was not do no harm. They were doing harm because of pay rather than setting it up to figure out how they could get paid and working together. I'm going to ignore this. And now I've done harm. Absolutely. That should have been turned in.

STOWE: Yes, and now, the practice has changed and not surprisingly, extravasations can always exist from time to time. It is one of the things that can happen. It is a risk. But it's amazing when you start looking at the graph and the volume goes straight down. Okay, this person had enough gumption to stand up and made a change, made a positive change.

PIERCE: That's, I just commend that person for what they did because that's huge to stand up and say, hey, I've done everything I can do on my end. Now I actually need some big help and, you know, basically bring in the people who could make the change. So, my question would be what legal protections are really in place for whistleblowers at the state and federal levels? Do we have any?

STOWE: Well, you have one major protection, and it is an interesting one. So basically, your protection is that the institution you work for cannot retaliate against you. Okay. Now that means that you make a report. We'll use that example. You're in the ER, you see this, you make that complaint. Now you have to understand that if you make a federal complaint, your employer is not going to be really thrilled. You're now inviting federal entities and then pursuant to the state's going to come on their coattails. And they're going to do a lot of investigations because they don't like to be caught off guard and not know. And so, they're going to do a lot of investigations and they're going to ask a lot of painful questions. And many times, they're going to find some painful result and they don't like it. Many times, it comes with corrective action and many times it comes with a fine. And so, your employer really doesn't like to get fired. So, retaliation is kind of a buzzword. Now retaliation is a lot of things. You know, obviously being fired is kind of the, the red flag, the one that stands out, but, things like being passed over for promotion, not being offered overtime, not being, you know, allowed a choice assignment, you know, when it comes to say, for example, a nurse, we're going to give you new patients every day you come. Right? So, you're on the floor. So, you're on MedSurg. We're going to give you new patients, six new patients every day. You're going to get all the discharges in a minute. Basically, making your life harder. It's retaliation. Now the truth of the

matter is there are federal laws here, but you're more than likely going to get fired. Okay. Because the worst-case scenario is the hospital understands very quickly the amount of money they're already at risk for losing or being penalized, your employment lawsuit is not really that important to them. So, you're going to get fired. And the reason is they want to make it painful. And you can file a retaliation claim and you can go through the system and go through the legal action and you more than likely will get your job back. Maybe six months down the road. Do you need a paycheck in six months?

I mean, how much income does your family have? and so it brings up these questions where right or wrong, what do I do? But retaliation is the biggest, kind of safeguard or protection. There's no more than that. And which is kind of interesting, for that you make a claim, you can't get fired or retaliated against, but I'm going to tell you, you make the claim. Work life is going to be really difficult. Let's take the one case, you're working in the ER. You have essentially made a claim about these physicians, this physician group. Now they've got all this focus, hyper-focus on them and their practices. How well do you think that working environment is going to be on a daily basis? Do you think you're going to be doing a lot of extra orders? You may be asked a lot of things. You may be spoken to a little more directly than before. So, it's just some things you got to think about, but retaliation and protection of your job is really the protection that's out there for whistleblowers.

PIERCE: How do they really define? So, if I go into court and it's about retaliation, how is retaliation defined? Is that another, obviously that's another gray area, right? Cause if I walk in and I'm like, well, they give me, they have made my working life complete. It's just horrible. And I mean, if I walk in there with that and I have all these examples, but does it fit under that retaliation definition?

STOWE: So, what they do is they take a look and they kind of define it as an adverse action. So, did something adversely occur in your employment? And it could be, there's very broad, broad kind of examples. And they've made it broad intentionally to say, hey, look, we want you to report these things, right? Like we want you to bring this forward and we're going to try to protect you as much as possible. The issue that happens is you the employer know you're being discriminated, harassed, belittled. You know you're receiving all these things, but how are you documenting this? Are you documenting each conversation? You know, it's very difficult. It's very difficult, right? Like if you are an RN in a hospital on day one, and day 100 you're still

an RN, nobody's messed with your schedule. You still have the same rotating schedule. You still have the same patient load. How do you document that your coworkers are afraid to talk to you now? How do you document that the physicians that round don't really call you back. They do, but they may wait three or four hours to the end of your shift. And now you can't leave on time. Right. And you've got kids, and they know that, and you've got to go pick them up and you can't leave timely to go pick them up. causes issues with the school. So, it's very, very difficult to, to know those things. You know, some of the things you just have to document and a lot of it is documenting your experience and then filing the retaliatory grievance. But again, now once you file that grievance, they've got to go in and investigate. So how long is that investigation going to take before a ruling is made and then the practice is your work changes? So, you know, it very much drags things out. You just have to be a very strong person. You have to be very, very strong person to make a major complaint because of our ramifications and it's difficult, you know, having seen this and having, bear witness to what it can do. You know, don't fault people for not bringing things up. It can change your life. It can change your family's life. It can impact you. I want people to, right. For health and safety and changing a patient's outcomes, but it also can change your family's situation. So, it's very, very difficult, but documentation is the key. And then you've got to be convincing in court, which is why you really do this whole thing. If you actually do a whistle-blowing complaint, you really need to hire a legal counsel to guide you through that.

PIERCE: Now know that on the news a few times we've heard about the whistleblower protection act. That does that apply to health care professionals?

STOWE: It does, it does. And that is the retaliation, termination or changing some aspect of your employment. It absolutely applies to health care.

PIERCE: It almost, and I know that we're not talking about psych here, but kind of what you're describing to me almost seems like I don't, as an organization, the organization as a whole says, I don't want to take responsibility for what I have been doing to hurt others that has been unethical or immoral. And now you have turned me in. So now I'm in trouble and it's your fault. So, I'm going to come after you to make myself feel better, even though I was the one that was in the wrong the entire time.



STOWE: Absolutely. Absolutely. You know, it's almost, you know, you can, you can see some five-year-olds having that kind of fight back and forth and trying to explain, well, they did this. And so, I did this and it's because of the scrutiny that's brought on. And it's because some of the fines, some of the fines can be incredible amounts of and it's fear. It's fear of what's going to happen. You know, hospitals and I pick on hospitals, but hospitals by and large have a one to 3 % operating margin. And for the, for the average individual, what does that is if they bring in a hundred million dollars a year, right? They bill patients, all the services, a hundred million dollars. And most hospitals are multiples of that. Okay. But let's say a hundred million dollars. Their profit is one to three million on average. It is very hard to operate a business with such small profit margin. If your air conditioner of your hospital goes out, you're out \$10 million. That's an air conditioner. We're not talking about broken equipment. Know, what about buying extra linen? What about buying trash? We haven't even gotten to that part yet. So, you know, it's a very, very difficult business. That's why you really, you don't see new hospitals being built by large. There are in certain areas and it's all, there's a lot of nuances there, but by and large, you don't really see new ones being built. See old ones being refurbished because it's just, it's not the best business model. So, one of these cases can really affect that.

PIERCE: Now, can you provide some examples where whistleblowing was successful in changing, making changes to care?

STOWE: There are a lot of different examples. You know, there are quite a few medications that, through the years, have been marketed for different uses that they weren't approved for. The FDA and drug companies submit their research to the FDA, and they'll say, "Okay, we approve it for X, Y, and Z reasons." Salesmen go out at the direction of the company, and they have these off-label uses, and they start marketing it, and bad things happen. A prime example is, "Hey, this medication is approved for anybody 18 and above or 12 and above," and they market it and give it to six-year-olds. Bad things happen to six-year-olds. They didn't test it on six-year-olds, right? That's why the FDA didn't approve it for anybody under 18 or anybody under 12, for example. So, that can definitely result in a large fine.

You have patients—A very common one relates to billing. We had a very large healthcare company in Alabama, HealthSouth, which was founded in Alabama and had rehabilitative hospitals. They did a number of things. They ended up billing—so in all their hospitals, you could bill as an individual for physical therapy or as a group. And as you can imagine, group settings bill less, right? Because it's one therapist spread out, say, ten patients—I'm making the number up—versus one-on-one. Well, they switched and billed the group therapy as individual. So, they got a higher rate. The higher rate allowed them to show a more positive bottom line, which allowed them to borrow money at a better rate to expand their business. And so, there was a lot of fraudulent activity there, and that was called out. Because, at the end of the day, they were overcharging Medicare and Medicaid at higher rates.

You know, there have been referral schemes where doctors or hospitals, for example—and this has been curbed a lot—would say, "We have a radiology suite here at the hospital," and at the end of the year, they would have it defined that every time you send somebody for an MRI, CAT scan, ultrasound, or X-ray, you get a tick. And at the end of the year, you get a nice bonus based on how much you referred there. Well, that's for all, and so there are a lot of those things. Healthcare systems have been hit numerous times. Pharmaceutical companies have been hit. There were, from a healthcare patient perspective, doctors who were unscrupulous and realized, "I can diagnose somebody with cancer. They won't know. And I can prescribe these treatments that are tens of thousands of dollars—\$20,000, \$30,000 treatments—and they've never had cancer." And some of those things were brought to light. It's a crime. You know, it's a crime, but it's also fraud. And the reason is, they're billing for services that aren't needed.

It spans the gamut, and it's a great thing. I think about all these things, you know, as an avenue to try to keep people honest, try to keep businesses honest, corporations honest. But there's big money at play. You know, if you win one of these lawsuits, theoretically, you're supposed to win anywhere from 10 to 30% of whatever monetary fine or remuneration occurred as the individual whistleblower. It's very hard to get that money. They tout it as, "Look, the individual got X, Y, and Z," but it's another reason why you need an attorney. At the end of the day, they say you get 10 to 30%. Who decides whether you get 10% or whether you get 30%? And that could be tens of millions of dollars' difference, right? So, at the end of the day, you're probably going to have to end up suing to get your actual monetary recovery for that.

So, a lot of nuances—it's complicated. It is not a simple issue of, "Hey, I'm going to state an issue out there, and then all of a sudden everybody else is going to take

care of it." It's a long process. It can take years to resolve, and it's difficult. It's difficult to go through.

PIERCE: So, there are some positives, I thought I heard just now there could be a positive for the whistleblower, not necessarily all negative. It just might take a while to get to the positive piece of it.

STOWE: Right, so in the original example, you would have to go and litigate this to see what the actual outcome would be. In the original example that I mentioned, I mentioned that ER physicians, the individual that whistle-blowed on this practice did not bring in the fact that the hospitalists were inserting the central lines and billing for that. If CMS got in there or OSHA when they did their investigation and brought in CMS, because you'd have to report it to CMS, said, hey, we shouldn't have paid all of those hospitalists for inserting this. And I'm going to say a flat rate. Okay, here's \$250 for every insertion. We shouldn't have paid your hospital \$2 million over the course of the last 10 years on inserting these because your emergency physicians should have.

Had they made that complaint, would the whistleblower now be entitled to if OSHA decided, hey, I want that \$2 million back? Maybe plus interest, because it's been over years, over 10 years. So, let's say there's a penalty too. Let's say it's a nice round \$5 million figure. If that's the case, and if they brought that up, you'd be entitled. Half a million dollars, maybe? But they didn't bring that up and the government's not going to voluntarily tell you, hey, hang on there. We want to pay you some money. They're not going to do that. So that's another reason why you want to get an attorney involved for you. But at the same time, you're going to go through some things. You're going to go through some very, very large amount of scrutiny. And you may need that payday at the end to make up for maybe lost earnings that you will have gone through.

PIERCE: And that's really good to know, because that is, like you said, probably not going to be shared. Hopefully you can find an attorney that will wait until the end of that payday if you were going to go through something like this. We are at the end of our time for this first episode. Thank you so much listeners for joining us for this first episode of Whistle Blowing in Health Care, Do We Have Legal Protections? Hopefully you have a bit of a better understanding of what whistleblowing actually entails and some of those legal safeguards that are in place. Check out episode two where Jay and I will take time to discuss the, actually Jay will be filling us in on the practical steps and the best practices for whistleblowing in healthcare.

## Episode 2: Whistleblowing in Healthcare: Do We have Legal Protections

### Transcript

Candace Pierce: Welcome back to Whistle Blowing in Healthcare. Do we have legal protections? In this second episode, we're going to focus on the practical steps that you can take when considering whistle blowing, as well as best practices to ensure your safety and effectiveness. Successful whistle bower cases have actually led to systemic changes in over 60% of healthcare institutions that have been investigated. So, we want to make sure that you're equipped with actionable strategies and insights to navigate the whistleblowing process confidently. I'm your host, Dr. Candace Pierce, and back for episode two is our legal expert, Dr. James Stowe. Thank you, Jay, for bringing your wealth of knowledge to our listeners.

Jay Stowe: I'm excited to be here.

PIERCE: Yes, I thought we could begin this discussion kind of moving it in like a case study flow with what kind of what do I do next? So, I am working in a health care facility and I'm at work and I suspect that something is wrong. What should I do first if I suspect that this is wrong?

STOWE: Great question, great question. Depending on the size of your organization, who you work with, they oftentimes have methodologies in place for you to let them know something's wrong, right? Do you have an event reporting system? Do you have an anonymous hotline? You go through orientation with facilities, and you hear these things and you just kind of in one ear and out the other. But it's really your tool to kind of whistle blow on something that is an issue without having to attach your name to it. That's oftentimes one of the best first steps. Because you get to kind of feel what any sort of investigation or blowback would be, right? And I say that because you're likely, reporting on something in an area that you work. And so, the investigation is going to occur in your area and your coworkers. If you're not there, we'll talk about it, you know, we'll be there and you'll kind of, kind of hear what's going on. So, it's a great first step, but even before that, before kind of making a report is really needed to find what is wrong. What is the actual action that is wrong? You know, if you think about it and you go, I didn't like the way Dr. Smith talked to that patient. That is just, that's not right. I found a whistleblower action. Well, we should all be nice and polite, but there's actually no law that says

we can't be rude. And so, yes, you know, I wish there were at times for sure, but unfortunately there's not. And you know, you get the first name and all that kind of stuff, but you could, you could say what you want. So,

PIERCE: Unfortunately.

STOWE: You really need to find what's wrong. And by that, you've really got to have some specific examples. Right. You need to have date, time, and patient's name. Was it a physician? Was it an administrator's name? What they said? Did memos come out? Was there education to a certain thing? Can you get copies of that? You've got to have some very granular, very detailed notes on the action that you're going to report on. You also need to have the outcome, right? You need to know what happened. And you need to have this over and over again so that you can illustrate a trend. You can illustrate there is an issue, it's ongoing, and it has not been corrected. But gathering evidence is the first step. Now, if you decide to go outside of your institution and report this, when you make your actual whistleblowing case, OSHA has 60 days to investigate. Imagine how many investigations they're doing across the country. How many each individual may be assigned to do. If your details are not very good, you can imagine that your claim may not be investigated very fully and very deeply. And nothing may come of it at that time. So, if you're to go that route, be diligent, be diligent, have what you need. I would say get in touch with an attorney. When you start this process, once you've made that your mind up, you'll really need an attorney because you are relaying patient information, right? Like patient names, specific things about them that can be basically protected health information. And so, the last thing you want to do is whistle blow and try to make wrongdoing right and then get sued for a HIPAA violation. So, it's very important that you get in touch with an attorney. There are ways and there are avenues that the attorney can actually respond using that information and keep you out of the hot seat. So, the first thing is really defining what the wrongdoing is, you know, and you need to look up the policies and procedures of your hospital, your institution. Is it outlined that this is, okay? And if it is outlined that way, then you need to dig into to more so and go, okay, could it be different? Should it be different? Or do they actually have good sound backing that says, hey, their pathway is correct. It may kind of stop you in your tracks. You may, you know, so you've really got to dig in and figure that out. But the very first thing I would do is detailed investigation, detailed notes, and get in touch with attorney.

PIERCE: Now, when you're talking about defining the wrongdoing, can you kind of give me some more information there? Because some things we think are wrong might not need to be, you maybe that just needs to go to your director versus whistleblowing versus it's not that it's not anything that needs to be. Can you kind of give us some more examples there?

STOWE: Absolutely. I'll give you an example. You have a patient that comes into say the emergency department or ICU or gets admitted to med-surg. And you feel as if at the bedside, as a bedside nurse, that frontline that we need to be aggressive. We need to be doing things as the patient's life is on the line and we need to be active. Physician rounds, hospitalist comes by, emergency department doctor, intensivist, they round on the patient. And they're not that aggressive. They don't, they don't do much. And you feel that is wrong. That is wrong. Right. Their life is at risk. That is wrong. The question I would have for you is if you start raising your voice, making reports, is, is it wrong under medical judgment as a physician? Is it prudent for them maybe to see how, how the patient materializes over the next four hours, 24 hours before they get aggressive, see if the issue resolves on, you know, I don't know. I'm not a medical doctor. So, I would actually have to go and really research that disease process. What should be done in the first four hours? What should be done in the first eight hours? What should be done in the first 24 hours to truly educate myself to know if the doctor wrong and not being aggressive in treating the patient? So that's kind of what I mean by those situations. Another easy example is That test wasn't needed. That doctor is billing for that. Or there's a billing issue and I think it's fraud. You know, it's fraud. I'm going to report them. How much do you know about billing? Do you work in the billing department? Do you work in the revenue department? You know, you really need to dig into these things and figure out whether it's truly wrong. Now the lab tests may not be needed, but if the medical texts say, yes, you can test for these 12 things. They kind of have the green light for it, right? They can do it. Doesn't mean it's needed. Doesn't mean they're still not billing them for it and for a needless test, but they do have the green light to say it's okay. So, you really have to dig into these different situations and scenarios and figure out even if your gut tells you something's wrong. Love it. Follow your gut, investigate. But before you raise your voice and put the flag up, you kind of need to do some homework and make sure that you're right. Okay. Make sure you have a sound argument on why something needs to be changed.

PIERCE: Now, what are some of those red flag things that you're like, man, that is it, that needs to go to OSHA. That is definitely something we should be

whistleblowing. What are those red flags? Because some of it I feel like a lot of what you're saying is kind of like yellow. It's yellow. I need to do some investigation because it might not be anything at all. But what are those? Man, that's a red flag.

STOWE: Well, you really have to ask yourself, are you ready for the scrutiny? Are you ready for kind of the thumb to be put on you? Once you make a report, what I would encourage everyone to do is if they have the opportunity to use an event reporting system, 800 number, utilize that. Go to the quality department, volunteer to be a part of root cause analysis on behalf of your department. You don't have to; you don't have to state the reason, or I want to be involved in this particular thing. Just go and be involved. People don't want to participate, so they will gladly have you there. Be involved. If you are involved in a process to change things, I think you'll see that there are a lot of good people in a lot of places that really want to improve healthcare, and they do great work. I think the red flag for me is not necessarily an absolute on this issue, I'm going to go make a formal complaint. It's if I see the issue and I've, and there's been a complaint either by myself or others repeatedly and nothing has happened in six months, nothing's happened in a year, then that's when I sincerely think about it. Because also kind of in a dual purpose of a formal complaint at that time is now also have all of those examples, right? I have those, I have the data that I need that shows an ongoing ignorance of the issue or failure to correct it. Okay. And so that's what I did. Now, as I sit here and talk about this, some of the red flags, you know, more along the billing side, I would, I would see the red flag if there are life and limb issues that are not being corrected immediately. And look, the wheels in a hospital turn slow. be the, I'm not the first to say this. I won't be the last. They turn slowly. Okay. So, no matter what it is, the wheels turn slowly. But if your complaint has been heard and they're working on it and they're trying to bring in the right people, you know, it may not be fast enough for you, but if they're sincere about it, You know, you have to decide whether or not you give them some grace and let them try to work it out or just blaze ahead and file a formal.

PIERCE: Who are we whistleblowing to?

STOWE: So, you actually make a complaint, a formal complaint to Occupational Safety and Health Administration or OSHA. You make that complaint under the guise of a number of different laws, acts that have been passed. So, let's say it's a

billing complaint. It may fall under a CMS act or the Affordable Care Act, even though you're saying, hey, this individual violated this act and I'm making that formal whistleblower complaint. Pursuant to the OSHA whistleblower complaint. It gets very tedious. There's a number of different acts you can file under. You're not going to know them unless you're an attorney in that field. I don't expect you to know them. There's no reason for you to know them, okay? So, when you get ready to file a complaint, please seek assistance from an attorney. This is not a negative thing. Most attorneys in this field will actually take your case based on the results at the end and potential profits at the end. And you can do a contract on those on the alleged earnings. So, you may not be out much on the front end financially, at least from a lawsuit perspective, but consult with an attorney so that you can get the proper guidance along the way.

PIERCE: For clarity, reporting whistleblowing is not the same as when I fill out the reports, the internal reporting mechanisms in the hospital, correct?

STOWE: So correct. So correct. So, if you, if you make a complaint in the hospital, it is going in most of your, your hotline and your event reporting and all of the complaint avenues are directed to your quality department. Okay. If, and they can be anonymous. How big is your hospital? Do I recognize your voice in the recorded line? You know, it's very easy thing, you know, that happens, but it can be anonymous. The issue is it goes to the quality department, which is non-discoverable in a lawsuit. Okay. That's why it's set up that way. It's not going to be discovered if there's a lawsuit. So, you know, if you don't find that they're producing change out of this, all of your complaints are not going anywhere, right? They're going to be kept in house. And if someone sues, they can't get the other complaints because that's in the quality department under non-discoverable in court. So, they're not going to get the 47 other people that this action or failure that happened to whistleblower. You can't be anonymous because then they can't, they can't ensure that you keep your job and no retaliation. Can't prevent retaliation on an anonymous individual, right? They don't know who to protect. But

STOWE: So, you've got to put your name on it, and you've got to make a formal complaint.



PIERCE: Which I think a lot of times has the opposite effect of why they want to know who you are. I want to keep you from being retaliated on. But now they know who I am. So now they are going to retaliate on me. When you were talking about discoverable data, though, if I've if I've turned in some complaints through my system that went to the quality department, can I keep a copy of those as part of my gathering and holding documents as evidence myself?

STOWE: So, if you're making an internal complaint, you need to read your policies and procedures of your institution on the record retention, record printing, record copying, photocopying, all of that good stuff, okay? It's all out there. It's one of those things that you cover typically on new hire orientation, which could have been years ago, and you assign a little something, you agree to it, but you don't really remember the ins and outs of it, right? You need to look that up because there's a good chance that your photocopying, printing out a copy of the document, medical records, someone else taking it home, what have you, is going to violate that. It actually is going to create a HIPAA violation for that. If you're not collecting this data specifically for a whistleblower action and have an attorney involved that can help protect you from a HIPAA violation and also policy and procedure violations to the hospital, then you likely are not supposed to take any of that data home with you. Not keep it, you shouldn't take it and keep it in your locker at work, all that kind of good stuff.

PIERCE: It seems very complicated if we were going to move forward with turning in with basically being a whistleblower. This is a lot of you've got to really think this through, decide if this is good for you, figure out. I would not have thought if I turned in something, somebody or a facility that I could then be hit with a lawsuit for breaking HIPAA laws. I would not have, that wouldn't even be on my mind.

STOWE: Most people don't realize this. Most people are like, "I'm trying to do good, right? I'm trying to stop a bad actor. I'm trying to stop fraud. I'm trying to stop theft. I'm trying to stop patient abuse." And they're trying to do good, but they don't realize the other things that are involved in that. At the end of the day, think back to when you were a child, did you like when someone told on you that you did something? You know, I've got two older sisters. I was not real fond when they told that I was outside riding my bike after dark when I was supposed to be inside. Well, employers and institutions are no different. They don't like being told on. They

don't like not knowing. They don't like the risk of being in trouble. Okay, you know, you got to also understand that the head administrators of most businesses, part of their bonus is on financial performance. That's just the reality. You know, if your business performs better, you get rewarded more. If you face an investigation and have to pay a \$2 billion fine, you're not getting your bonus. And they do not like that at all. So, you just have to keep that in mind.

PIERCE: How is that lawsuit, so if they bring a lawsuit against you for HIPAA, how is that not part of retaliation? I mean, we all know that that's what is happening.

STOWE: Well, what it is it could meet retaliation. Okay. But again, there's a couple of components. One, you got to litigate this lawsuit, and it keeps you from working for how many months, right? Now, you may be entitled to back pay and they may award that, but is your car repossessed in that time? You know, cause you haven't made monthly payments. Can you feed your kids? Can you pay your mortgage? Is your home foreclosed on? These are really shady negative things, but it's the reality of this scenario. So, it's tough. It's very tough. And it can have devastating backlash against you. And yes, they may lose the suit. They may lose the lawsuit. But the other component of that is you in discovery, you have to show all of the data and information that under that lawsuit that you took. Now the hospital knows which patients, which charts have been submitted to the federal government, and they can go address those however they deem necessary. So, it's kind of a fact-finding mission too. It's kind of a double-edged sword. It's tactics. You get in the world of legal tactics there. And none of it is pleasant for the individual that's whistleblowing.

PIERCE: No. Is there any way for us to protect ourselves from retaliation? Are there actionable things that we can do?

STOWE: If I'm a hundred percent behind anybody that wants to follow whistleblower action, there are some very significant impacts on your and your family's life. It is a very honorable, very meritorious thing to do. It can be a very profitable thing to do. But that being said, I would encourage you to have an attorney from day one to guide you in the process. Once you file the suit, if you experience in the first week back from filing your whistleblowing claim, all of a sudden something untoward happens at work and you get a different assignment

or you're, you know, for example, the nurses in your unit, they would rotate who is charge nurse. Okay. Charge nurse at that time was one less patient. Got \$5 an hour more, but you got to make admission decisions, call for bed placement, you know, whatever. All of a sudden you weren't allowed that the first week back. Didn't rotate to you. If you have an attorney on board, you can make a call to the hospital's counsel, write a letter and say, "Hey, retaliation is occurring," and you can put them on notice. And many times, it kind of scares them straight to, "Okay. They're on top of this." I mean, we were notified within 96 hours of this action that we were doing something wrong, and a lot of meetings will happen. A lot of people will have conversations, but it may be very beneficial to you to kind of curb that. The unfortunate things that may come your way.

PIERCE: Now, what role do legal advisors and whistleblower advocacy groups play in this process?

STOWE: You know, whistleblower advocacy groups can provide a wealth of information. They can provide you with direction. They can provide you with those, a list of names, a list of attorneys, I should say, that have experience in this field, that have experience dealing with the federal government, that have experience dealing with employers. You know, you kind of got to be an employment law specialist as well when you do this. So, you kind of have-to-have multiple hats as an attorney. So, they can really be beneficial in how to do things and guide, guide you. But they aren't your attorney. Okay. So you do need a legal advisor from an attorney to kind of hold your hand and kind of make sure that each step is done correctly. Advocate groups. Hey, they're invaluable. You can, you can pick their brain before you do anything, right? Before you even get an attorney, go pick their brain. "Hey, I think I have an issue." And go pick their brain, learn all kinds of information, the pros, the cons, what to find, what kind of records. That's right. Documentation, all that kind of good stuff. They're a great resource. You know, I would be cognizant to say that, you know, I wouldn't list who your employer is. Wouldn't give certain details out. Definitely remember HIPAA while you're doing this, you know, you can't share unprotected information.

PIERCE: What to find, what you need, the evidence.

STOWE: But there is a wealth of information, and I do encourage everybody to kind of pick their brains first.

PIERCE: Now, how, if you were considering as a healthcare worker, if you were considering maybe you do need to move forward with something, with whistleblowing on something, how do you balance your ethical obligations with those, what we know is probably going to happen, those risks personally and professionally?

STOWE: That is the million-dollar question, Pierce. It's a tough question. You know, this is a personal question that you and your family have to decide on. And really, you, you as an individual don't have to bring in your family. I don't know how you communicate or how you make decisions. It's a tough road. It's not an easy road to pursue. It's a worthwhile road. It's a difficult road to pursue. There's a lot of value and it's very valuable to patients' health, future patients' health. But it is really a difficult decision, and you have to decide it yourself. I wish I could say, "Hey, go talk to this person or go talk to that person and you'll get the advice you need." You see a suit online where someone recovered \$547 million or \$2.2 billion. There's a dozen that didn't recover anything. And so, then you're left, you know, holding the bag and with all the scrutiny. So it is, it's difficult. It's difficult. And I wish I had better guidance, but that's something that you need to talk with an attorney, and you know, here the attorney can also tell you, "Look, you don't have enough evidence. You don't have enough documentation. Don't do it. You're not going to, right?" Or "Okay. Hey, yeah, you're going to win and it's going to be a moral victory, but there's no money in it." And money should not be the guiding force, but do you know what? People do have bills. You have kids, they need to eat, you know.

PIERCE: We want to send them to T-ball. We want them to go to art class and band practice and all these things. So, it is a factor. It is important. But at the end of the day, it comes down to what you can do, how strong you are and what you can stomach, and at the end of the day, something like this is not necessarily about money. You know, as you were saying, most people didn't even know that they could have money coming towards them at the end. Had no idea that you could have some money coming towards you at the end. It potentially, but like you're saying that money could be years and years and years and years down the road, depending on whatever this is. This topic is that you are actually whistleblowing on.

So, it's really about that moral thought of "do no harm." We are in our role to care for others and to do no harm. Something like that, right?

STOWE: You know, why did you get into healthcare? You have to ask yourself, did I get into healthcare to do good, to help people? Do you have an opportunity to help people on a bigger scale than you ever imagined? And are you willing to take a chance to do that? A lot of good stuff has come from it.

PIERCE: Absolutely. Long-term impacts of whistleblowing. How can we mitigate that?

STOWE: It's tough. It's tough. You know, there's a lot of scrutiny on you as the whistleblower. Your work will get tougher. There's a high chance that you're terminated. You may be rehired later. You may be paid back pay. What does that look like in the interim? Let's say none of that happens. Let's say you keep your job, and you stay right where you are, but no one communicates with you now. You know, how fun is work to go to, you know, you're always walking around with kind of like an eye over your shoulder thinking, what am I going to do? You know, you don't get the help that you used to get. It's just tough. You know, before starting one of these things, I think you have to be cognizant and realize more likely than not, I'm going to need to find a new, new position Elsewhere. I'm going to find a need to find a new job in a career. You need to say if you're a nurse, you could be a nurse, but you need to find a new position, a new employer. Just know that that's coming. Okay. And in that, if you've built lifelong friends, at a place, it's difficult. It's easier now, know, nurses are more transient. Travel nursing is a much bigger thing than not that I'm suggesting that you to go travel, but, this is very impactful when you think. You may be in a rural community where there's only one hospital. Where are you to go? You know, do you need to move out of state? Do you need to move? You know, is that closer moving out of state than moving to another city within your state? There's a lot of questions on that, but I think you just have to part of being prepared is knowing probably you're going to want to get a new position somewhere else. May lose your seniority. You may lose where you are. But at the end of the day, if you're doing the right thing. You know, you're doing the right thing. You're helping people. That's part of it. It's unfortunate that there's blowback and penalties and you suffer psychological and emotional distress from this. But

you know, if you're able to save lives, impact lives, prevent harm. A lot of value to it, a lot of value.

PIERCE: Right. There's so much to think about within this topic. So, as you were talking us through all this, I was trying to take notes on it just so I could do a super quick recap. So, I'm going to see if I see if I missed anything or if we need to expand on anything. But whistleblowing in healthcare, we know it's an important act of professional courage that directly protects patient safety and medical integrity. And when we take time to speak up about misconduct, dangerous practices or systemic failures, what we're doing is really upholding that fundamental ethical principles that are a part of medical practice. And this is going to of course require careful documentation, understanding of legal protections and a commitment to patient welfare. So, we're not saying whistleblowing does not involve personal and professional risk because we all know that it does, but we also know that it represents a powerful mechanism for driving positive change. Preventing medical errors and maintaining the highest standards of healthcare delivery. So, when you speak up, if you speak up, your voice can be the catalyst that saves lives, improves systems, and really reaffirms that core mission of healthcare, which is to do no harm. All right, did I miss anything, Jay?

STOWE: That's perfect. I couldn't say it better myself.

PIERCE: Well, Jay, it's always such a pleasure to have you join us and share your legal expertise with our listeners.

STOWE: Happy to be here, exciting topic, complicated topic, excited. But when you read some of the verdicts online, and I would encourage anybody, even if you're not in position to make an actual whistleblower complaint, go online, take a look at some of the verdicts, and then really think about some of the rulings. Some of the things that were prevented going forward. I think it'll shock you, in some of the cases. It does me. But I also think, well, that was stopped. And think about the benefits and the prevention of harm that these actions allowed. And it really reminds me why I got into healthcare in the first place.

PIERCE: Where can the listeners go if they wanted to look at some of these verdicts?

STOWE: Simplest thing in the world. Type in whistleblower verdicts on Google, whatever your search engine is, and just read. And you'll get a litany of them, and you'll get more detail than you want to get. And just remember, they're allowed to do detail because it was released by OSHA. So, they're allowed to release names and companies and situations.

PIERCE: Right.

STOWE: Just to caveat.

PIERCE: Good to know. Yes, good to know. Well, to our listeners, thank you for taking time to listen to our podcast. I also encourage you to explore many of the courses that we have available on [elitelearning.com](http://elitelearning.com) to help you continue to grow in your careers and earn CEs.