Ethical Case Study of the Practice of Care by a Consumer Healthcare Company: The Case of the Johnson and Johnson Recalls of Children's Tylenol and Motrin

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On my honor as a University Student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments

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Introduction

A giant in the consumer goods, healthcare, and pharmaceutical industry, Johnson and Johnson (J&J) has established itself as one of the most valuable companies in the world. In 2023, for the 10th consecutive year, the company won the top spot on *Fortune* magazine's list of the World's Most Admired Companies in the pharmaceutical industry (Johnson & Johnson, 2023). J&J is also widely known for its Credo, a mission statement that bolsters the company's commitment to its core values and principles which include serving the world community, customers, employees, and stockholders (Johnson & Johnson, n.d.). Despite this acclaim and reputation that J&J has established, it has also received a series of onslaughts and complaints from customers and the federal government for failing to deliver to its standards with the products and services it provides. The series of recalls of children's Tylenol and Motrin products in 2010 is just one example of the many disturbing incidents that have tarnished J&J's reputation (McDonald, 2015). One of the largest recalls in history, this was a shocking incident to the public, given the company's exemplary handling of quality crises in the past and its famed public commitment to its Credo.

Current scholarship shows that experts in legal and business affairs have analyzed this incident through the lens of ethical business management and have determined that decisions made at the senior management level to cut costs led to J&J failing to commit to its Credo and serve its shareholders (Monseau & Lasher, 2015). However, this approach limits the analysis to focus on J&J from a law-abiding business and operational position rather than a purely ethical and moral position, which should be especially important for this case because J&J directly impacted human lives. Consequently, a holistic view of the events leading up to this incident and

their implications regarding the ability of J&J to live up to its reputation as a healthcare giant are not adequately considered.

I will use the ethical framework of the care virtue, or care ethics, to argue that Johnson and Johnson acted immorally as it failed to practice attentive, responsible, and competent care to consumers through its preoccupation with financial circumstances, its partial commitment to performing necessary tasks, and its inadequate capacity to follow federal regulations as expected by protocol. Care ethics expands on care as a virtue in the context that one's actions are in relation to maintaining, or caring for, oneself, others, and the environment. I will begin by briefly providing background regarding the events leading up to the Tylenol and Motrin recalls and then I will apply the cycle of practicing care to key events to show how, on multiple occasions, J&J failed to be attentive, responsible, and competent caregivers. To do this, I will analyze internal communications between J&J officials and testimonials of J&J officials at the Congressional hearings for this case.

Background

In this section, I will provide background on the relevant events leading up to the recalls of Tylenol and Motrin by J&J to better understand the case and chronologically order the events to better apply the cycle of practicing care. In April 2008, McNeil, a subsidiary of J&J and the manufacturer of Tylenol and Motrin, received customer complaints of adverse events with Tylenol (Monseau & Lasher, 2015). In August 2008, McNeil tested for microbial contamination but could not find anything. McNeil closed the investigation and did not notify the Food and Drug Administration (FDA) that it had conducted one. In November 2008, McNeil reported to the FDA that some adult Motrin products were defective. In March 2009, McNeil reported to the FDA that it had hired a third-party contractor to conduct an "in-store assessment" to remove

products from shelves discreetly and thus, initiate a "phantom recall". The FDA understood this assessment to be an evaluation of whether contaminated products had reached stores (Monseau & Lasher, 2015).

After receiving more reports of adverse events related to consuming Tylenol products from April to August 2009, McNeil relaunched a 2nd investigation to find the cause (J&J, 2010). In September 2009, McNeil detected a chemical 2-4-6 tribromoanisole (TBA) as a contaminant. In December 2009, McNeil recalled all lots of a certain Tylenol product due to the contamination issue with TBA (Johnson & Johnson, 2010). On January 15, 2010, the FDA issued a warning letter to McNeil for the delay in reporting incidents (J&J, 2010). On the same day, McNeil announced a voluntary recall of certain over-the-counter (OTC) drug products after consulting with the FDA.

Literature Review

The general scholarly discussion surrounding this case declares that Johnson and Johnson was morally at fault. It is generally agreed that the firm did not live up to the commitment to its values as stated in its Credo. However, scholars analyze J&J's role in this case through the lens of corporate ethics and only do so at a surface level. In analyzing this case, scholars attribute the issues at J&J to poor management and leadership decisions but in doing so, their methods dismiss a holistic approach and limit moral wrongdoing to inadequate management rather than poor attitudes and reinforcement of values in the firm. This is problematic as J&J is first and foremost a company involved in helping people to care for themselves.

Stewart and Paine critique McNeil using a modern ethical business theory framework where trust is considered as having both economic and moral value (Stewart & Paine, 2011). They argue that J&J has an ethical responsibility to perform certain actions to correct their

shortcomings to ultimately maintain trust with key stakeholders and emphasize that J&J should have performed these actions at a timelier rate than they had. They also note that stakeholders have expectations of J&J based on their reputation for "caring for the vulnerable". Therefore, trustworthiness as a virtue for J&J depends on how well it provides care. Stewart and Paine also criticize McNeil's inability to address issues and deem that it should have been an easy "gut decision" to take responsibility. Unfortunately, their analysis does not explore what factors may have impeded this view and sense of duty at J&J.

Monseau and Lasher provide background information about the case, the power of the FDA, and corporate governance at J&J to draw an analysis of the legal relationship between corporations and federal regulations (Monseau & Lasher, 2015). Like Stewart and Paine, they argue that J&J's actions fall short of their Credo due to prioritizing cost reduction and publicity. They also argue that since J&J's stock price dropped, the board of directors did not adequately act in the best interest of shareholders whom they ultimately serve as owners of the company. Monseau and Lasher assess the responsibility that J&J had in this case but unfortunately, limit their analysis by commenting mainly on organizational protocol instead of the duty J&J has as a company to protect consumers.

Both scholars also briefly touch on J&J's past exemplary actions to handle crises around quality, particularly in the 1980s, and the noticeable change in its diligence to its Credo as made clear in this incident (Monseau & Lasher, 2015). However, they do not attribute much of this change to any factors other than the management strategy to cut costs at J&J. In this paper, I will address the issues of social attitude and responsibility at J&J with a more deliberate focus on J&J's moral missteps by using care ethics to follow the events leading up to the recalls of Tylenol and Motrin products and assessing where the company's ability as caregivers subsided.

Conceptual Framework

My analysis of the 2010 children's medicine product recall by J&J draws on care ethics which allows me to focus attention on the moral responsibilities and obligations, specifically the act of caring, that J&J has to its customers. Care ethics was developed by ethicist and psychologist Carol Gilligan from the idea that morals are developed not from learning principles, but from learning in settings or contexts with certain norms and values and encountering others. Therefore, the idea that relationships between people and the attitude to have compassion, attention, and responsibility towards others is the central basis for the care ethics framework (Poel & Royakkers, 2016).

I will draw from Fisher and Tronto's notion of the four phases of care: "caring about", "taking care of", "caregiving", and "care receiving" (Fisher & Tronto, 1990). "Caring about" is the phase in which people become aware of and pay attention to things that need care. This phase requires attentiveness but the level at which people are willing to pay attention may be impacted by the resources, time, knowledge, and skills they may have. Next, "taking care of" is the phase in which someone assumes responsibility to provide for the need that has been brought to attention. To assume responsibility, one must devote more time, have explicit knowledge of the situation, have the essential resources, and accept that they are accountable for any consequences resulting from providing care. Then, "caregiving" is the phase in which the actual care work is performed as an action to "maintain and repair the world". In addition to committing time and resources, "caregiving" requires detailed knowledge of how to care which means care plans must be adjusted as needed depending on the conditions and response. Therefore, to make these proper adjustments, one will need experience, skill, and judgment. Lastly, "care receiving" is the phase in which those who receive the care respond to the care provided by the caregivers, whether that

care was successful or not, and may lead to new needs for care being brought to attention. It is important to note that those that receive care define their own time frame in which to receive care and more thoroughly understand their needs by experiencing them.

Drawing on the four phases of care, I will follow alongside the timeline of events and expand upon a couple of key missteps of J&J to show how it failed to provide attentive, responsible, and competent care. Using the definition of care as an action and attitude, I will also show how in the process of failing to provide that care, how J&J's moral sensibilities were hindered.

Analysis

To apply the framework of care ethics, I will define the caregiver in this case as the J&J subsidiary and manufacturer of children's Tylenol and Motrin – McNeil Consumer Healthcare – and the care receivers as McNeil's customers, those whom McNeil is selling their products to.

Financial Preoccupations

McNeil's preoccupation with the finances of the company is one of the main factors that hindered its ability to provide attentive and responsible care. In May of 2009, upon being informed that the "soft market withdrawal" or phantom recall plan for Motrin products may double in costs and the deadline to carry out this plan is nearing in about one and a half months, McNeil's president, Peter Luther, sent an email to his team that reads as follows:

> Group,
>
> Where is the miss here? Given our current financial situation, I hope we're not going to really double our cost to do this. Let's make this happen ASAP.

Thanks, **(**H.R. Doc. No. 111-111, 2010)

First, note that Luther addresses his team collectively, starting the email with "Group," and uses plural first-person pronouns such as "our," "we're", and "let's". By employing these pronouns, Luther sets the atmosphere that the plan will truly be a success when it is a group effort. These pronouns mobilize his team and bind them together and, in that process, Luther associates the objective to carry out this plan to be an obligation to the company since everyone in the team is an employee of McNeil. Here, Luther is responsible regarding his duty as president to organize and lead others; however, he is "caring for" a separate concern because he failed to "care about" customers, preoccupied with the company's finances. Note how Luther precedes his opinion on the situation by writing "Given our current financial situation…" This preceding clause justifies his opinion and reminds his team to focus on the company's finances as being the most paramount concern. The redirection of focus for the team and Luther himself show that a decision is made to care about certain needs and not others, such as the need to care for and protect the customers who buy Motrin products. Luther assumed responsibility to marshal the manpower needed to carry out the plan, but the plan was not created to care for the interests of McNeil's consumers. Thus, McNeil failed in the process of practicing care to be attentive to the needs of its customers, and as a result, could not care responsibly.

Tylenol Testing

McNeil also failed to provide competent care by lacking the diligence to determine and eliminate the source of harm to its customers. The testimony that follows is from the CEO and Chairman of J&J – William Weldon -- at the second hearing before the Congressional Committee on Oversight and Government Reform in September of 2010, recalling his memory

of J&J attempting to find microbial contamination in Tylenol products in 2008 before it finally discovered the chemical TBA from product testing in 2009:

> "…in 2008, there were adverse events reported that we knew, and it had to do with the aroma in the product and then some reported cases of nausea and vomiting. We investigated that to see if there was a microbial content or any content in the product. We found that there was not. And we saw that the adverse events fell off." (Johnson & Johnson's Recall of Children's Tylenol and Other Children's Medicines and the Phantom Recall of Motrin (Part 2), 2010)

It is important to carefully follow the order of events Weldon describes in his testimony to follow his logic and the process of how McNeil practiced care. Upon receiving reports regarding "adverse events" regarding Tylenol products, the company did indeed investigate to "see if there was a microbial content or any content in the product." McNeil can be considered to have been attentive as it recognized the needs of its consumers and decided to devote time to investigating further into the issues reported by customers. McNeil can also be considered to have been responsible, since, to conduct the product testing, the relevant personnel would need to be hired and perform the actual testing.

The results of these tests returned and the company "found that there was not" any contamination. Here, McNeil can be considered to have been competent as it performed the necessary tasks that were able to verify whether products were contaminated. However, this characterization of McNeil may only be applicable to a certain extent. From the basis of the microbiological test results showing no contamination in the product, McNeil reached the conclusion that "adverse events fell off." It is important to note that after contamination was not detected during this time, McNeil did not conduct another investigation until the next year, 2009.

The conclusion that was reached and the fact that McNeil did not continue the investigation directly after, shows that it did not provide competent care due to a lack of careful judgment. Simply closing the investigation with this conclusion leaves the original concern unresolved and leaves no opportunity for McNeil to revise its care plan to continue providing competent care for its customers. Competent caregiving requires that the plans designed to provide care are regularly revised, if need be, based on the response of the care receiver or results. McNeil cannot be characterized as fully competent in providing care as it lacked the good judgment needed to ensure a thorough investigation to provide answers to its customers and ensure that their concerns will not be rehashed as they were in the following year. Further, this conclusion and inaction by McNeil strongly imply that it dismissed the original concerns and experiences that were reported as "adverse events" by customers. The cycle of care returns to McNeil being inattentive and incompetent in remembering what to care for, to begin with: the protection of a lauded brand reputation or the safety of its customers.

Reporting to the FDA

In the previous section, I have shown that McNeil failed to practice care with competence by lacking the judgment to pursue further investigation into finding the root cause for possible defects or other issues with its Tylenol products in response to initial reports of adverse events from customers in 2008. Some may argue that, eventually, McNeil did succeed in providing competent care with the discovery of the chemical TBA contaminating the products in 2009, after working in close collaboration with the FDA. In fact, in the same testimony presented in the previous section, J&J CEO William Weldon elaborated on that process of collaboration to investigate the issue as follows:

> "What we did do, though, in working closely with the FDA, was able to identify this. It was a very, very difficult initiative that needed to be undertaken and we were able to determine it. I think as the FDA said, this actually helped to lead to some new guidance documents from the FDA for everybody to benefit by." (Johnson & Johnson's Recall of Children's Tylenol and Other Children's Medicines and the Phantom Recall of Motrin (Part 2), 2010)

However, this view also fails to consider that although the company was able to find the chemical contaminant, which was a necessary step to further investigate the issue, it failed again to prove its competence when it did not notify the FDA of this breakthrough in a timely manner and company executives claimed to be unaware of this neglected duty to report to the FDA. In the same hearing mentioned previously, Weldon and Colleen Goggins, the worldwide chairman of the J&J Consumer Group, were asked by committee member Congressman Clay to comment on why McNeil, when required by FDA regulations, did not submit a field report within three days of confirming defects in its products. The dialogue between Clay and the J&J officials transpired as follows:

> Ms. GOGGINS: I do understand the question, and I don't, to Mr. Weldon's point, we are aware of the regulations for the FDA, and you are absolutely right, we are supposed to report these within 3 days to the FDA.
>
> Mr. CLAY: And you didn't.
>
> Ms. GOGGINS: I don't know which incident you are talking about. If we did not, sir, we should have.
>
> …

Mr. CLAY: So why didn't you?

Mr. WELDON: That I——

Mr. CLAY: Simple question.

Mr. WELDON: That I cannot answer. I would say, though, in all instances, in some instances, I know that we did, I don't know the specific instance. If we did not, it was a mistake on our part and we should have, you are absolutely correct. (Johnson & Johnson's Recall of Children's Tylenol and Other Children's Medicines and the Phantom Recall of Motrin (Part 2), 2010)

First, note that Goggins explicitly states that the company was "aware" of this regulation and that Weldon implies that the company was aware by recalling that field reports were indeed submitted "in some instances." Although it is not clear to what degree the company decided to pay attention to this policy, the company did have awareness, and thus, at least somewhat cared about the responsibility to adhere to FDA regulations in the best interests of consumers. Also, note that both Goggins and Weldon concede to the FDA's "absolute" authority to enforce this regulation. Here, both executives assume some level of responsibility by acknowledging that this duty must be fulfilled without resistance as per requirement by the FDA. By conceding to the FDA's absolute authority in this regard, it can be argued that the executives were somewhat responsible caregivers by acknowledging an existing duty to cooperate and obey, knowing the consequences of overstepping the FDA.

The fact that the executives were aware of this regulation can also support the fact that they were knowledgeable of how to care, supporting their competence. However, note that neither of them claims to know which specific incident that Clay is referring to. If this claim is

true, then management at J&J did not possess the most detailed understanding of the issue, which is a requirement in the phase where care work is performed. A detailed understanding of the issue would consist of organized information relayed regularly to update J&J's management on the situation as it evolves. If the executives are unable to distinguish between several concerning quality issues and events, then there must be a lack of organization and systematic design in the company to revise care plans and perform new duties, including reporting to the FDA after new discoveries of contaminants are confirmed. Yet again, J&J failed to provide competent care and can only be characterized as so to a limited extent, as it detected the contaminant but did not follow through to report this to the FDA.

Conclusion

In this paper, I have employed the care ethics concept of the phases of care in parallel to the events that led up to the recall of children's Tylenol and Motrin by Johnson and Johnson to identify how the company failed to practice attentive, responsible, and competent care. By analyzing the company's engrossment in its financial circumstances, I showed how J&J was not attentive to its customers' needs and therefore, was irresponsible in the plan it devised to handle the situation of defective products. I also illustrated that while J&J may have demonstrated a certain level of attentiveness and responsibility in some instances, its demonstration of competence to perform the necessary actions to provide care was limited through its lack of judgment and organization in understanding how to provide continuous care. Through my analysis using care ethics, the general reader will gain a new understanding of J&J's misconduct as a failure in its ability to provide care, rather than just attributing its missteps to a collection of unvirtuous behaviors.

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