



PREVENTING THE CRIMINALIZATION OF MEDICAL ERRORS

Policy Position | 2026-2027 Policy Council

INTRODUCTION

Recently, across the country, we have seen an increase in the use of criminal law to address medical errors. This is a disturbing new trend with significant chilling impacts on the health care workforce. It also cuts against decades of work states have been doing to treat the health care industry as a high-risk industry that promotes open inquiry into systems errors. Like a car manufacturer being able to halt the line when a system error occurs, health care professionals need to be able to report issues as they occur without fear of criminal prosecution. This helps keep everyone safe.

CASE STUDY

In 2017, a Tennessee nurse named RaDonda Vaught made a medication error that killed a patient in her facility.¹ Ms. Vaught was instructed to administer Versed to a patient, but instead administered Vecuronium (a paralyzing drug). Ms. Vaught tried to withdraw Versed from an automated dispensing cabinet which is designed to communicate with the medical record software. However, the systems did not communicate as intended because the hospital was in the middle of implementing new Electronic Health Record (EHR) software. At the time, this was a frequent error in the EHR, so she entered an

¹ Kelman, B. (2022). *Nurse Convicted of Neglect and Negligent Homicide for Fatal Drug Error*. Retrieved from KFF Health News: <https://kffhealthnews.org/news/article/radonda-vaught-nurse-drug-error-vanderbilt-guilty-verdict/>

override of the system to retrieve the drug. The override gave Ms. Vaught access to a larger array of medications, including potentially dangerous medications. In the rush of her workday, she did not realize she had withdrawn the incorrect drug until after it had been administered. The medication error was unintentional, and Ms. Vaught immediately reported the error when she realized what had occurred.

The Tennessee Board of Nursing originally determined it was an accident that did not require punitive action. However, in 2019, the Tennessee Board of Nursing reversed their decision and charged Ms. Vaught with unprofessional conduct, abandoning or neglecting a patient who required care, and failing to maintain an accurate patient record.

Ms. Vaught was arrested in 2019 and criminally charged because of the medication error. In 2022, a jury convicted Ms. Vaught of gross neglect of an impaired adult and negligent homicide.

CRITICISM OF THE RADONDA VAUGHT PROSECUTION

The RaDonda Vaught case has been the subject of significant criticism from health care groups.^{2 3} Medical errors are, unfortunately, a significant cause of death in America, although the precise frequency is heavily debated in academic literature. Health care organizations have criticized the RaDonda Vaught prosecution because it sets a precedent that will cause health care professionals to question whether they can honestly report medical errors without fear of criminal prosecution. Given the risk of medical errors causing death, it is well recognized in the health care industry that prompt and honest reporting of errors is essential for ensuring patient safety.

Typically, medical errors are addressed by professional licensing boards. RaDonda

² McClendon, S., & Proctor, K. (2022). *ANA Reacts to Sentencing of Nurse RaDonda Vaught: We are Grateful to the Judge for Leniency*. Retrieved from American Nurses Association: <https://www.nursingworld.org/news/news-releases/2022-news-releases/ana-reacts-to-sentencing-of-nurse-radonda-vaught/>

³ Begley, R. (2022). *Statement in Response to the Conviction of Nurse RaDonda Vaught*. Retrieved from American Hospital Association and American Organization for Nursing Leadership: <https://www.aonl.org/press-releases/Statement-in-Response-to-the-Conviction-of-Nurse-RaDonda-Vaught>

Vaught's case signals a shift in how the law addresses these errors. To protect patients from systematic errors that cause harm, such as a faulty EHR system, it is important to continue addressing medical errors through professional licensing boards and not the criminal justice system. If every nurse or doctor that commits a medical error feels the need to plead the fifth instead of reporting what happened, the medical system will become less safe for patients.^{4 5}

LEGISLATIVE ACTION

In response to the RaDonna Vaught case and others like it, Kentucky recently passed a law to provide immunity from criminal liability for health care providers in certain circumstances.⁶ The law states, "...a health care provider providing health services shall be immune from criminal liability for any harm or damages alleged to arise from an act or omission relating to the provision of health services..." This immunity does not apply in cases of, "...gross negligence or wanton, willful, malicious, or intentional misconduct."

By passing this law, Kentucky codified long-standing precedent that medical errors are not criminal violations unless they involve aggravating circumstances or an intent to harm. Meaning, a healthcare professional who intentionally administers a deadly drug could be criminally charged, but a healthcare professional who unintentionally administers a deadly drug would be disciplined through their state licensing board.

RECOMMENDATION TO THE TEXAS LEGISLATURE

The Texas Legislature should follow Kentucky's lead on this issue and codify long-standing practice of addressing medical errors through state licensing boards instead of the criminal justice system. Codifying the understanding of the system would provide

⁴ Hurley, S. P., & Berghahn, M. J. (2010). *Medication Errors and Criminal Negligence: Lessons from Two Cases*. Retrieved from Journal of Nursing Regulation: [https://doi.org/10.1016/S2155-8256\(15\)30365-3](https://doi.org/10.1016/S2155-8256(15)30365-3)

⁵ Dickinson, J. (2022). *The Criminalization of Human Errors in Healthcare*. Retrieved from ABA Health eSource: https://www.americanbar.org/groups/health_law/publications/aba_health_esource/2021-2022/july-2022/criminalization-of-human-errors-in-healthcare/

⁶ See 24 RS HB 159/GA, 159th R.S. (2024). Retrieved from: <https://apps.legislature.ky.gov/lrcsearch>

confidence to health care professionals in Texas that they can honestly report medical errors without fear of criminal liability.

CONCLUSION

The recent shift in legal precedent for how to address medical errors is causing a negative impact on health care professionals' efforts to increase patient safety. Texas can prevent the chilling effect of this shifting precedent by codifying its long-standing framework for how to address medical errors.