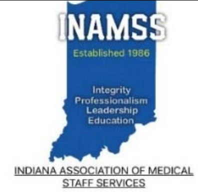
INAMSS Spring News

May 9, 2022



President's Note:

Goodbye Winter, welcome spring - I am so thankful that you have finally arrived. I am sure most can relate; winter seems to last so long. I welcome the sunshine, warmer days, and new growth. Spring brings new growth and opportunity. The change of seasons does not lessen the work we do as MSPs, nor does it change the situations we often find ourselves in; there is always an emergency, that one file that makes you go, huh or more like WHAT and there certainly is not enough hours in the day to get it "all" done. "No matter how chaotic it is, wildflowers will still spring up in the middle of nowhere" — Sheryl Crow. I find so much truth in this simple statement. It's my hope that this season you find your wildflowers in the middle of the chaos and cultivate them into something just for you. May you take time this season to feel the sunshine on your face, rejuvenate, find your joy, and move forward into the rest of the year with gusto.
Warmest Regards, Amee

Blog By Chris Eades

The Criminal Conviction of RaDonda Vaught – Thoughts and Considerations

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Final Rule

Indiana Enacts New Legislation, Senate Enrolled Act ("SEA") 5 Allowing:

- Health Care Reciprocity
- Interstate Medical Licensure Compact ("Compact")

For more information read included article submitted by: Laura Brown, IHA's Deputy General Counsel

US Department of Justice Drug Enforcement Administration Diversion Control Division:

- Final rule is effective May 11, 2022 - Requires all applications for DEA registrations, and renewal of those registrations, to be submitted online. For more information go to:2022-07570.pdf (govinfo.gov)

Doctor FBI Webinar Series

All sessions are **FREE** to INAMSS members.
Invites coming soon from Team Med Global

DOCTOR FBI
CELEBRATING SEASON 8 DOCTOR FBI
TOPICS

5/19/22
MAY 19, 2022 – TAPPING THE BRAKES
Recognizing Credentialing Red Flags

6/16/22
LEVEL UP!
Add Polish to Your Career Practices

7/21/22
THE PURSUIT OF EXCELLENCE
Physician Quality Evaluations

8/18/22
MEETING MADNESS
Effective Meeting Management

9/15/22
DEADLINE DRIVEN
Due Process and Fair Hearing

10/21/22
BUILT TO LAST
Effective Team Structures in Medical Staff Services

Graphic Source: Team Med Global

INAMSS Conferences 2022

Mark your calendars.

- **July 29th** – Virtual
- **October 28th** – Community Health Network

If you are interested in presenting a topic, contact Cindy Biehl at cbiehl@hcmhcares.org

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Seeking volunteers for the following positions:

- **Sponsorship Liaison**
- **Membership Committee Chair**

If you are interested in serving or would like more information, please contact Amee Willhite at awillhite@iuhealth.org

Indiana News

Indiana sees first COVID-19 increases of 2022 (Myers, 2022), for more information https://fox59.com/news/coronavirus/indiana-sees-first-covid-19-increases-of-2022/

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INAMSS Happenings

- StarChapter Pay fully functioning
- INAMSS Licensure Task Force met with the Indiana Hospital Association (IHA) on May 2, 2022.
- New Merch gear available for purchase on the INAMSS website
- The Scholarship Committee is working to award a scholarship this year
- INAMSS is sponsoring Team Med Global's Doctor FBI series, and its members get to attend all 6 sessions for FREE

The Criminal Conviction of RaDonda Vaught – Thoughts and Considerations
By Chris Eades, Hall Render Killian Heath & Lyman

On March 25, 2022, a Tennessee jury found Nurse RaDonda Vaught guilty of "criminally negligent homicide" and "gross neglect of an impaired adult." Nurse Vaught will be sentenced in May and may face a jail term of three (3) to six (6) years.

This particular case has captured a great deal of attention. Many health care practitioners and health care associations, such as the American Nurses Association, have understandably expressed significant concern over this decision. In particular, these individuals and groups fear that criminally convicting a nurse in relation to a medication error will: (a) prevent "transparent, just and timely reporting of medical errors, which is crucial to maintain safe patient care environments," and (b) will have a "long-lasting negative impact on the profession" of nursing, which is already short-staffed and strained due to the pandemic.

Given these concerns, it is important to understand the particular facts of this case, the nature of the particular criminal charges, and whether the matter presents any learning opportunities for hospitals and health care providers. The alleged facts in the case include the following:

- Charlene Murphey, age 75, was admitted to the Neurological Intensive Care Unit at Vanderbilt University Medical Center, due to a brain bleed.
- On or about December 26, 2017, the patient's physician ordered a PET scan. Since the patient was known to be claustrophobic, her physician ordered **Versed** for her anxiety. Nurse Vaught sought to carry out this medication order.
- Nurse Vaught was not able to locate Versed in the automated dispensing cabinet, as she was searching for the brand name and not the generic (midazolam). As a result, Nurse Vaught "overrode" the system and searched again for "VE." She then pulled vecuronium, which is a paralytic.
- The vecuronium carried a red warning label on the cap ("**Warning– Paralyzing Agent**") and was in powder (and not liquid form). Nurse Vaught reconstituted the medication. She testified that she did not observe the name of the medication on the label and did not observe the warning.
- Prior to administering the medication, Nurse Vaught did not scan the patient's wristband. She also allegedly did not remain with the patient immediately following administration. The patient died approximately 20 minutes later.

Once she discovered the error, Nurse Vaught, by all accounts, promptly disclosed the error and participated in all levels of the related investigation. While Nurse Vaught made no excuse for the ultimate error, she did note (as did many others) that it was common during that period of time to override the medication cabinet (due to constant EMR and technical issues) and that she was unable to scan the patient's wristband because there was not a scanner available in the area where the patient was located.

In addition to action taken by the Tennessee Board of Nursing, Nurse Vaught was ultimately convicted of "criminally negligent homicide" and "gross neglect of an impaired adult." The charge of criminally negligent homicide required the state to prove, beyond a reasonable doubt,

that the defendant engaged in "criminal negligence" that proximately caused a person's death. "Criminal negligence" requires a "substantial and unjustifiable risk" and the risk must be of such a nature and degree that "the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the person's standpoint." Simple negligence, as defined in civil law (and as would be applied, for example, in a medical malpractice claim), is not sufficient for liability under the criminally negligent homicide standard.

The charge of "gross neglect of an impaired adult" required the state to prove, beyond a reasonable doubt, that the defendant "knowingly, other than by accidental means, physically abuse or grossly neglect an impaired adult if the abuse or neglect results in serious mental or physical harm."

Will this case adversely impact medical error reporting? It certainly will not help – as it is easy to understand how fear of criminal prosecution could bear on decision-making. Medical errors are already under-reported. By some accounts, only 1 out of 6 medical errors are currently reported. Fear of job loss, litigation, etc., clearly play a role. Many suggest this case will only make matters worse.

This does not, of course, alter the legal and ethical obligation to report unanticipated outcomes. Indiana's hospital licensure rules require certain events, including but not limited to medication errors resulting in serious disability or death, to be reported to the Indiana Department of Health. Pertinent federal rules and accreditation standards also require reporting – including disclosure to the patient (or patient's representative).

Will this case lead to a significant increase in criminal charges against health care providers? Although I suspect likely not, I can certainly appreciate why a provider may have this concern. A few considerations, which may (perhaps) alleviate some of this concern in Indiana include the following:

- As an initial thought, the criminal charges in this case are unique to Tennessee. Indiana does not maintain the "lessor" criminal charge of "criminally negligent homicide." Rather, Indiana maintains a higher standard of "reckless homicide standard." Notably, Nurse Vaught was actually charged with reckless homicide. The jury in Tennessee refused to convict her at this level, and instead, convicted her of the lessor charge.
- This particular case is not about a single medical error. Several mistakes were admittedly made in this case, involving a non-urgent medication, which then admittedly resulted in the patient's death.
- Many individuals have suggested this particular case, at least in part, was outcome driven (that there was "outcome bias"). In other words, they believe the particular patient outcome, bad publicity, hospital's position, etc., contributed to increase the chance of prosecution.

What else should we consider? Even though many individuals are understandably troubled by this case, most agree that there are lessons to be learned. A few thoughts along these lines include:

- Consider whether there are opportunities at your own organization to improve medication controls. Many health care professionals have noted that Nurse Vaught's candor in this matter has resulted in operational improvements and improved patient safety. One source, for example, notes her hospital has moved paralytic drugs out of automated dispensing cabinets and into separate secured areas. Others have revised the search term parameters in relation to automated dispensing cabinets (increasing the number of letters required to search). Still others now prevent any overrides to these cabinets without more significant measures. Another measure is to ensure that scanners (to scan patient wristbands) are available anywhere non-urgent medications may be administered (and otherwise prohibit such administration of non-urgent medications if a scanner is not present). Consider whether such measures, and/or others, may facilitate process improvements in your own organization.
- Understand and carefully consider your disclosure obligations. Relevant legal requirements and accreditation standards require the disclosure of certain medical errors (such as medication errors resulting in serious injury or death) to the Indiana Department of Health, the relevant Hospital/Medical Staff quality committee, and to the patient (or patient's representative). While these disclosures certainly need to be made, and for good reason, the manner in which they are communicated is important. Several individuals have noted that comments made by Nurse Vaught (that did not need to be made) were ultimately used against her (such as stating "I killed the patient"). Indiana's "Apology Statute" (at Indiana Code 34-43.5-1) protects certain "communications of sympathy" from being used against the declarant in court. However, this statute does <u>not</u> protect "admissions of fault." Consider appropriate education and training of staff around these disclosures.
- Once potential medical errors are disclosed or reported, it is critical to evaluate these concerns through the Hospital/Medical Staff's appropriate "peer review process." Indiana's Peer Review Statute (at Indiana Code 34-30-15-1) provides robust confidentiality and privilege protections for communications to, determinations of, and proceedings of legitimate peer review committees. It is important to establish these peer review processes in a manner that will facilitate the work that needs to be performed, but that will also maximize peer review protections.

Indiana Enacts Legislation Allowing for Health Care Reciprocity

On March 18, Governor Eric Holcomb signed [Senate Enrolled Act ("SEA") 5] into law to establish a process for health care license reciprocity. Under SEA 5, each board listed under [IC 25-0.5-11] will be required to issue a license or certificate to an applicant if the applicant satisfies the following conditions:

- Holds a current license or certificate from another state or jurisdiction that has substantially equivalent requirements, or when the person was licensed or certified by another state, there were minimum education requirements in the other state, the person met any work experience and clinical supervision requirements, and the person previously passed an examination required for the license or certification if required by the state.
- Has not committed any act in any state or jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license or certificate to practice that occupation in Indiana at the time the act was committed.
- Does not have a complaint or an investigation pending before the regulating agency in another state or jurisdiction that relates to unprofessional conduct.
- Is in good standing and has not been disciplined by the agency that has authority to issue the license or certification.
- If a law regulating the applicant's occupation requires the board to administer an examination on the relevant laws of Indiana, the board may require the applicant take and pass an examination specific to the laws of Indiana.
- Pays any fees required by the board for which the applicant is seeking licensure or certification.

If a national criminal history background check is required, within five (5) business days of the Indiana Professional Licensing Agency ("PLA") receiving an individual's application and the individual paying any fees required by the applicable board, PLA will notify the applicant that he/she is eligible to submit a national criminal history background check.

SEA 5 states that if a board has a pending application for initial licensure or certification that requires final approval by the board, the board shall meet not more than 31 days after the application is ready for approval.

SEA 5 also provides for a provisional licensing process to allow an applicant to apply for a provisional license without having yet taken an examination if the following is met:

- The individual submits a signed affidavit affirming the following:
    - The individual is in good standing in all states and jurisdictions in which the individual holds a license or certificate for the occupation applied for.
    - The individual has not had a license revoked and has not voluntarily surrendered a license in another state or jurisdiction while under investigation for unprofessional conduct.
    - The individual has not had discipline imposed by the regulating agency for the occupation in another state or jurisdiction.
    - The individual does not have a complaint or an investigation pending before the regulating agency in another state or jurisdiction that relates to unprofessional conduct.
- The individual does not have a disqualifying criminal history, as determined by the board, if a national criminal history background check is required.

- The individual submits verification that the individual is currently licensed or certified in at least one (1) other state or jurisdiction in the occupation applied for.
- The individual has submitted an application for a license or certificate and has paid any application fee.

A provisional license shall be issued not more than 30 days after the requirements are met and is valid for a 365-day period or until the license is issued.

INAMSS has been coordinating with the Indiana Hospital Association (IHA) regarding implementation of SEA 5, and IHA recently met with PLA leadership to discuss its implementation. While an exact timeline is not yet known, IHA has asked PLA to prioritize full implementation of the legislation, including providing information on which states will qualify for reciprocity for each health profession. IHA has also asked for clarification on PLA's interpretation of the provisional licensing status and has collaborated with INAMSS to ensure that provisional licenses are treated as permanent licenses for purposes of enrollment, billing, prescribing, and medical malpractice insurance. INAMSS will continue to keep you updated on this front.

SEA 251 was also recently signed by Governor Holcomb on March 10 and enters Indiana into the Interstate Medical Licensure Compact ("Compact"). The Compact currently includes 34 states, the District of Columbia, and the Territory of Guam. Physicians who are eligible can qualify to practice medicine in multiple states by completing just one application within the Compact, receiving separate licenses from each state in which they intend to practice. These licenses are still issued by the individual states – just as they would be using the standard licensing process – but because the application for licensure in these states is routed through the Compact, the overall process of gaining a license is streamlined. PLA expects the Compact to be fully implemented within 18 months to two (2) years.

Submitted by Laura Brown, IHA's Deputy General Counsel

INAMSS Officers/Board 2022 - 2023

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- Darla Traylor

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- Vacant, Sponsorship Liaison

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- Lisa Cooper

The INAMSS Mission:

- Promote a positive and professional image for the Medical Services Professional.
- Provide opportunities for networking.
- Create an atmosphere to promote an understanding of the continuous changes in the organizational structure of healthcare.
- Advocate the expertise of the Medical Services Professional.
- Stimulate professional educational activities through formalized workshops and programs to improve skills and competence.