
Case and Comment



Considerations in Response to Criminal Charges Against Providers for Medical Negligence

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Over the last year, there have been a number of cases in which healthcare providers have been criminally charged with intentionally and/or recklessly negligent acts and/or omissions in the rendering of patient care, leading to patient injuries or death. Additionally, with the [U.S. Supreme Court's repeal of *Roe v. Wade*](#), healthcare providers now will be faced with potential violations of state laws criminalizing the provision of reproductive healthcare services in a variety of situations.

While criminal proceedings against healthcare providers have been fairly rare, they do occur. This article highlights four recent developments and discusses several considerations that healthcare systems and

providers may adopt to address the risk of exposure, while acknowledging the lack of guidance around the issues emerging from these cases.

Case Details

In 2019, Dr. William Husel was indicted for multiple counts of murder for allegedly ordering excessive and fatal doses of fentanyl for at least 25 patients. Dr. Husel sued the captive insurance company that provided his malpractice coverage, requesting payment of criminal defense expenses under the policy. The lower court dismissed his complaint. On appeal, the Sixth Circuit affirmed the dismissal, finding that criminal expenses were not covered under the terms of his healthcare professional liability policy. In April 2022, Dr. Husel was found not guilty and acquitted of all criminal charges.

In 2019, RaDonda Vaught, a former employed nurse of Vanderbilt University Medical Center, was criminally indicted for her medical error in administering a paralyzing drug to an elderly patient, resulting in the patient's death. In May 2022, Vaught was found guilty of reckless homicide and felony abuse of an impaired adult. While she faced up to 12 years in prison, the presiding judge chose not to impose jail time, and instead granted Vaught a "judicial diversion," with the result being that her conviction would be expunged if she completed a three-year probation.

Most recently, in August 2022, a Kentucky-licensed registered nurse, Eyvette Renee Hunter, a former employee of Baptist Health Lexington, was charged with murder for allegedly causing the death of a 97-year old patient by administering a drug to the patient without a physician order, therefore "intentionally performing acts of medical maltreatment." Hunter's employment with Baptist was terminated, and her nursing license was suspended by the Kentucky Board of Nursing. The criminal case against her is pending.

Finally, with the Supreme Court's repeal of *Roe v. Wade*, healthcare systems face uncertainty as to how to reconcile medical treatment obligations with state statutes that prohibit or restrict abortion-related services. Since the case of *Dobbs v. Jackson Women's Health Organization*, some states have seen long-dormant laws related to abortion spring into effect while others have enacted new criminal statutes concerning abortion. Meanwhile, the federal government has issued guidance saying that the Emergency Medical Treatment and Labor Act requires emergency abortion care in some circumstances and preempts state abortion laws in such cases.

The Healthcare Industry's Response

Healthcare systems and professionals are grappling with the issues raised by these legal developments in the context of their delivery of medical services. These entities should also consider what defense and indemnity obligations exist when acts are intentional or mistakes are deemed so egregious that they result in criminal charges. In addition, applying this same standard to interpreting and evaluating a host of new and untested state criminal laws related to professional services is also a good idea.

While the insurance and healthcare industry reaction to these scenarios is still developing, some possible consequences may include the following:

- Healthcare providers may be less willing to report adverse events or errors in the rendering of medical services or cooperate in investigations, which ultimately may affect claims and litigation costs and lead to a general decline in the quality of patient care.
- Healthcare systems are likely to be asked by providers about their stance on providing criminal defense support and funding, whether through the health system or available insurance policies.

- Commercial carriers may more explicitly address in policy language whether or not criminal defense expenses can be covered.

Issues to Consider

As these novel cases are litigated and new standards emerge, there are a number of considerations that healthcare systems and providers can undertake to address the risk of exposure to professional liability for criminal acts.

- 1. Establishing system-wide policies regarding criminal conduct arising out of professional services:** The mission and guiding principles of a healthcare system and its staff are prominent factors in how criminal claims involving physicians are handled. For example, a hospital likely would not want to defend an “angel of death” who is purposely killing patients, but may wish to defend a provider facing criminal charges related to a medication error or similar event. It is important for health systems to establish policies and procedures with respect to the provision of healthcare services and to make sure providers and staff are aware of and educated as to what activities are considered to be in accordance and consistent with those policies and procedures, such that they may warrant a defense in the event of a criminal proceeding.
- 2. Varying laws by state:** Depending on the location of a hospital and its providers, especially in relation to the fact that a patient may live in a different state, considerations should be given to the laws of various states. With the expansion of telehealth services and patients traveling across state lines for abortion-related services, health systems and providers may find themselves not only subject to the laws of their home state, but also subject to the jurisdiction of a different state where the patient resides at the time of the professional service.
- 3. Defending criminal acts:** Historically, professional liability policies have excluded coverage for criminal acts on the basis that public policy prohibits insuring loss arising out of an insured’s own true intentional acts. This is primarily out of concern that such coverage extends a license to commit harmful or criminal acts. Additionally, until now, lawsuits alleging medical negligence or wrongful death have, for the most part, been brought in a civil or disciplinary context. With medical negligence claims now being asserted in the criminal context, providers will need to consider whether and how they are covered for criminal acts arising out of sanctioned professional services. For example, some health systems are choosing to pay for a defense to providers for some/certain criminal proceedings. Others are looking to have coverage for these expenses provided through their professional liability insurance policies. Still others desire to maintain the status quo or not pay for or provide coverage in any circumstances. The decision to provide a defense for criminal acts likely depends upon the provider’s desire for it, coupled with the system’s intent to provide it and other motivations, such as ethical standards.

In light of the current legal and political environment, it is anticipated that questions of coverage for criminal or disciplinary proceedings arising out of criminal conduct will be more frequent. Determining the provider’s desire for coverage and a hospital’s intent to provide it will be critical in addressing criminal defense expenses arising out of medical negligence.