

May 5, 2022

Honorable Jennifer L. Smith  
Judge, Division IV, Criminal Court, 20th Judicial District  
Justice A. A. Birch Building  
408 2nd Avenue North Suite 6100  
Nashville, TN 37201

RE: Sentencing of RaDonda Vaught, Case number 2019-A-76, Scheduled for May 13, 2022

Dear Judge Smith,

On behalf of our organizations, which comprise and represent patient safety experts and health care leaders and practitioners in the US and abroad, we respectfully submit this letter in advance of the May 13 hearing on Ms. RaDonda Vaught's sentencing. We have had no contact with any of the parties of this case or their counsel. We are writing for the sole purpose of articulating our views about the criminalization of medical errors, based on decades of experience and maturation of the sciences that underlie safety. Many on this letter have devoted their personal and professional lives to improving health care, and we share a collective commitment to patient safety.

We mourn the tragic death of Charlene Murphey, who died at Vanderbilt University Medical Center in 2017 after a medication error. While we were not present at the trial, we have studied the publicly available information about the case.

Since Ms. Vaught's conviction was announced on March 25, we have heard from our clinical colleagues, partners, patients, and family members in unprecedented numbers. They are looking for support, clarity, and guidance on how best to move forward in the service of patient safety in reaction to the news of this case. This extraordinary outpouring has compelled us to reach out to you as you deliberate the sentencing of Ms. Vaught.

For the reasons set forth below, we urge you to impose a sentence that does not include a period of incarceration for Ms. Vaught. This case has already had far-reaching and detrimental implications for the health care professions and the patient safety movement, and any sentencing that involves prison time will further exacerbate these growing concerns.

## **I. Why This Case Matters: Consequences for Patients**

Ms. Vaught's criminal conviction has already had a chilling effect on the patient safety movement and health care providers everywhere. In the absence of evidence of intentional wrongdoing or reckless behavior, the simple fact that a nurse has been criminally prosecuted for a mistake is troubling to us. But it has happened, and now the sentencing will send a second message to the medical community about how mistakes are going to be treated in the future. We ask you to consider what we know professionally and scientifically to be true: that most human errors and the resulting harm are caused by system failures, and that preventing medical errors and harm therefore requires changing faulty systems, not expecting providers to be perfect or to simply try harder. It appears from the [CMS Statement of Deficiencies and Plan of Correction<sup>1</sup>](#) that there were many systems failures in this case that led to Ms. Vaught's erroneous behavior. It also appears from the record that Ms. Vaught did not intentionally expose the patient to harm.

Patients will be at greater risk if cultures of fear and blame become commonplace in medicine. If nurses and physicians fear being blamed for system failures – to include even criminal conviction and imprisonment – those errors are likely to be hidden or underreported. And when there is less transparency and accountability at the system level, no corrective action can take place, and the safety of our patients and families deteriorates. Put simply, it is our view that if medical errors are criminalized and caregivers are incarcerated, patients will be less safe, and more lives will be lost. Based on our collective expertise, we have no doubt that a sentence of incarceration for Ms. Vaught will have a predictable and profoundly negative impact on the safety of patients.

## **II. Why This Case Matters: Consequences for the Health Care Community**

Nurses, physicians, pharmacists, and other health care providers often describe their professions as a calling, and indeed most have dedicated themselves to a lifetime of service and compassionate care. We have no reason to believe this was any different for Ms. Vaught. A sentence of incarceration for Ms. Vaught would send an unambiguous message to the medical community that anyone who makes an error, especially one that results in harm to patients, is at risk of criminal prosecution and incarceration. Fearing reprisal and possible imprisonment for making an honest mistake while doing one's job – which by nature is fraught with complexity and risk – will undoubtedly lead nurses and others to withhold information that might make care safer for patients. Additionally, it will drive health care providers out of the profession, exacerbating an already dire shortage in our communities, and discouraging the next generation of caregivers. The caregiving industry has been pushed to the brink during the COVID-19 pandemic, and we are concerned that cases like this will create even more of a breaking point for many.

It is often said that one of the chief purposes of criminal law is deterrence, both specific deterrence as to the defendant and general deterrence as to the population. Criminal

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<sup>1</sup> Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) Statement of Deficiencies and Plan of Correction, 11/08/2018:  
<https://www.documentcloud.org/documents/6535181-Vanderbilt-Corrective-Plan.html>

prosecution is not needed as a deterrent to the defendant. Having a patient die from a mistake you made is a devastating experience for a medical professional. You never forget it. With respect to general deterrence, however, this conviction – and any sentence of incarceration for Ms. Vaught – will not deter mistakes or negligence. This conviction and sentence will simply deter nurses and physicians from coming forward to truthfully admit mistakes for fear of being blamed and even prosecuted – it will not serve a deterrent effect and will not create the outcome sought. Reporting, analysis, and system change are the behaviors that should be encouraged – this decision runs counter to that.

We know and respect that you will hear from many voices other than ours, including from the parties and presumably the family of the decedent. That is, of course, as it should be. But we ask you to consider that the public policy impact of Ms. Vaught’s sentence will have an enormous unfavorable impact on patient safety and health care providers. The criminal prosecution of a medical error is itself devastating and undermines a culture of safety. A prison sentence in this case would do much more harm than good and would undermine the work of our organizations and colleagues over the past twenty years to improve patient safety, health systems’ accountability, and open, truthful communication in the patient-provider relationship.

We, the undersigned, are nurses, doctors, health system leaders, patient safety advocates, and, in a number of instances, loved ones of patients who have been harmed by medical errors. We respectfully request that you consider the potential impact of Ms. Vaught’s sentencing on patients and health care professionals for years to come.

Thank you for considering our views on this matter. We have not copied the parties at this point, but we have no objection to doing so if so instructed, or if the Court wishes to share this letter with the parties.

Respectfully,

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