

Ohio nurse responds to WSWS coverage of nursing home witch-hunt

Esther Galen
1 July 2022

Kimberly Potter, a certified nurse practitioner working for a contracting agency at the Whetstone Gardens nursing home, wrote to the World Socialist Web Site after we published an article headlined: “Ohio attorney general prosecuted more than 100 nursing home workers, but no owners.”

Attorney General Dave Yost viciously went after nursing home staff at a press conference in 2019. He focused on the death in 2017 of James Chandler, a resident of Whetstone Gardens, near Columbus, and had seven nurses indicted. Kimberly Potter was one of the nurses indicted. This was part of a broader campaign in which a total of 106 nurses and staff were prosecuted, scapegoated for the poor conditions in nursing homes.

Potter gave this account of how she was indicted and the outcome of her case.

“I was not an employee of Whetstone. My case went to trial in early January 2022 after a nearly three-year battle with the state of Ohio. The prosecutor’s case was completed within a short three days.

“A defense was never required, as Judge Chris Brown granted a motion by the defense for a Rule 29 acquittal immediately after the prosecution rested. Any good defense attorney will request this in a criminal trial. An acquittal would have indicated there was a case, but it was not sufficient. This is not what happened. The motion was granted in record time (after a brief break) on the same day.

“What makes this ruling especially interesting and complementary to your article is that it was NOT technically an acquittal. IT WAS A DISMISSAL of all charges. His ruling stated there was never a case. Period. There was no evidence to consider indicating I had done anything wrong. As a result, expungement was granted as well, and the case was expunged in April 2022.

“Dave Yost and Deb Wehrle, SAAG [senior assistant attorney general] who knew they had no probable cause—no case against me—continued to lead a team to file three separate indictments against me in a series of desperate and malicious attempts to make something stick or to wear me down. They did not care if their accusations were true, accurate, or ethical. Apparently admitting he had made a mistake was not an option.

“It is not surprising that Dave Yost, along with his SAAGs and their investigators, have abused their office for his political gain and their professional ambition at the expense of the public who trusts the AG to protect them. Dave Yost had his 15 minutes of fame standing on his grandstand on February 14, 2019, spewing unfounded, unproven lies in regard to Chandler and the three nurses in a live media interview.”

Regards, Kimberly Potter, MSN, APRN, FNP-C

Below we append the original article, published June 8, 2022.

Esther Galen

At a meeting in May, nurses founded a national health care workers steering committee to assist in the building of rank-and-file committees at every hospital and workplace to defend nurses and health care workers,

and to connect opposition to victimization to a struggle to advance the interests of nurses and patients against the for-profit health care system. One of the nurses at the meeting reported that workers at nursing homes in Ohio were being victimized in large numbers. The Health Care Workers Newsletter decided to investigate, and this article is the first result.

The steering committee would like to hear about your experiences in health care wherever you work. Use the form at the bottom of this article to contact us confidentially.

In answer to the question “Why do nursing homes often have a bad reputation?,” nurse Jill E. Griffin answered: “Often they are warehouses for people who have no perceived use. Generally that’s the elderly and the dying. ... The employees are paid the least amount that they will work for, which is usually less than they need to live well on. ... The owners are literally making a profit off of paying the least they can to provide care for those who generally have the highest needs, by taking advantage of their workers’ basic humanity. Most of the nursing homes in the USA are for profit. Think about that for a moment ... really think about making a profit on the sick and dying.” (Quora)

Many nurses and others are familiar with the indictment and trial of hospital nurse RaDonda Vaught for a medication error. Nurses by the thousands campaigned in her defense. Even more than hospital settings, nursing homes are infamous for having terrible conditions. In recent years, state prosecutors have adopted a policy of indicting nurses to scapegoat them for the unsafe conditions created by their owners.

An example can be seen in Ohio, where state Attorney General Dave Yost has viciously gone after nursing home staff, bringing charges of varying severity against 106 workers, but none against the owners responsible overall.

A particularly outrageous case involved James Chandler, who had been a patient in Whetstone Gardens and Care Center in Columbus for several years and had extremely serious health problems. He was taken to a hospital in May 2017 where he died from septic shock that was the result of a bed sore. The nurses Yost indicted had worked at Whetstone during that time.

In December 2017, Whetstone was fined \$98,765.45 by the federal Centers for Medicare and Medicaid Services (CMS) for problems outlined in an April 2017 investigation by the Ohio Department of Health, which identified practices that placed 123 patients at risk of serious harm. Following that, the Ohio Attorney General’s office conducted its own investigation so it could indict the workers, which it did in February 2019. The seven defendants, who worked at Whetstone in 2017, faced 34 charges, including involuntary manslaughter, patient neglect and tampering with records.

The nurses indicted included:

- Jessica Caldwell, 30, of the Columbus southeast side, a floor nurse and unit manager. In January 2021, a jury found her not guilty of all charges.
- Kimberly Potter, 53, of Delaware, Ohio, a certified nurse practitioner contracted to work at the facility. In January 2022, trial judge Chris

Brown granted the defense motion for a Rule 29 acquittal, which means the prosecution did not present enough evidence to even make a case. As a result, Potter’s lawyer did not have to present a defense before the judge issued his ruling.

- Sandra Blazer, 55, of Grove City, Ohio, assistant director of nursing, was to be the next to face trial. The resolution of her case has not been reported.

Four other nurses were charged with tampering with records in connection with the records of a second patient. Prosecutors have dismissed felony forgery charges against three other nursing home employees, all floor nurses, in exchange for guilty pleas to misdemeanors:

- Akosua Ayarkwa: A 30-day jail sentence was suspended in exchange for her paying court costs.
- Iluminee Muhongere: She was sentenced to one day in jail and ordered to pay court costs.
- Maegan Van Syckle: A 30-day jail sentence was suspended, and she was fined \$500.
- Sheila Dains: A pre-trial was scheduled for March 2022. The resolution of her case has not been reported.

Nurses are not responsible for directing, certifying, inspecting, paying and supervising nursing homes. Those responsibilities lie with the owners and state and federal agencies. For years, nursing homes have been synonymous with the poorest quality care. Federal government statistics rate Ohio’s nursing homes quality of care among the nation’s lowest.

Some facts highlight Ohio nursing home deficiencies. Medicare reports that of 966 nursing homes in the state, 212 (32 percent) were found to have severe violations and deficiencies that led to harm. Nursing homes are required to provide only 2.5 hours a day of nursing staff time for each resident. Additionally, the state requires only 75 hours of training for aides who are the main caregivers.

A large factor in providing poor care is that four out of five nursing homes are operated by for-profit organizations, which are more than three times as likely to be ranked at the bottom of the federal Nursing Home Compare scale. The American Association of Retired People reports that in April this year, 40.3 percent of Ohio facilities had shortages of nurses and/or aides.

In May 2017, a study by the Scripps Gerontology Center at Miami University of Ohio found the quality of Ohio’s nursing homes is below the national average on all 10 quality indicators, including falls, depression, use of restraints and use of anti-psychotic drugs.

Once the COVID pandemic ripped through the country, the criminality of nursing home owners became a national scandal. A January 28, 2022 article headlined “‘Immediate jeopardy’: Ohio nursing home inspections reveal errors, deception preceded deadly COVID-19 outbreaks” presents the results of an *Ohio Capital Journal* investigation: “Regulators found infection control violations in at least three dozen Ohio nursing homes placed the health and safety of patients in ‘immediate jeopardy’ during the COVID pandemic.

“Between allowing nurses with active COVID-19 infections to report for their care duties, placing infected residents in shared rooms with uninfected roommates, flouting preventive measures like masks and quarantines during outbreaks, and other preventable errors, inspectors found several instances of infection control failure from nursing homes that preceded massive and deadly outbreaks during the pandemic.”

While COVID intensified the nursing home crisis, the dangerous conditions existed for many years before the pandemic. CMS fined Ohio nursing homes hundreds of thousands of dollars each for violations, still a drop in the bucket compared to the \$6.2 billion in Medicaid revenue they raked in.

Has the Office of the Attorney General indicted any of the owners? Have Ohio legislators launched a public campaign against the owners for endangering public health? The Ohio government has clearly

demonstrated which side they are on and who they are protecting—the capitalist nursing home owners.

The industry has made sure that Ohio government protects them. The *Ohio Capital Journal* reported that the state’s nursing home industry poured at least \$6.1 million into Ohio politics and dark money political groups between 2016 and 2020. Most of the political contributions trace back to the Ohio Health Care Association, that represents over 1,000 facilities.

Nursing home owners are also big donors. Brian Colleran operates Foundation Health Solutions that manages 57 nursing homes around the state. He and his wife jointly were the largest political donors in the industry between 2011 and 2020, according to an *Ohio Capital Journal* analysis of campaign finance data.

Together, the Collerans gave about \$77,000 to the campaigns of House Speaker Larry Householder (later convicted and sent to prison for bribery); \$68,000 to the campaign of Governor Michael DeWine; \$50,000 to Attorney General Dave Yost’s campaign; and large donations to an array of PACs; and nearly \$200,000 split between 12 more candidates.

State legislators and the governor rewarded the nursing home very well for their contributions. Unlike other forms of health care reimbursement, which are determined administratively by the state government, Medicaid reimbursement rates to nursing homes are guaranteed in state law. The state law sets an incentive system that guarantees higher payments.

While nursing home reimbursements rise, the state protects them against lawsuits for poor care. In 2021, Ohio Governor DeWine signed into law House Bill 606. It makes it harder to sue health care providers such as nursing homes for pandemic-related claims, including COVID deaths, unless a person proves either “gross negligence” or a “reckless disregard of the consequences or intentional, willful, or wanton misconduct.”

It was the second-most lobbied bill of 2020, according to a state report, and passed with bipartisan support.

Corruption in Ohio government is so flagrant that federal prosecutors have been investigating state lawmakers and regulators, even charging some with racketeering. One of those indicted was Neil Clark, a powerful GOP lobbyist who committed suicide in early 2021. In a memoir published posthumously, he wrote:

“The [Ohio Health Care Association’s] access to soft or dark money is outperformed only by the utility companies,” he wrote. “OHCA’s ability to solicit individual members’ corporate accounts, the OHCA is the envy of most ... the nursing home industry is like having 500 ATM machines located around the state. Walk up, punch in a number and take out what you want. They have perfected the art of keeping politicians happy.”



To contact the WWS and the Socialist Equality Party visit:

wsws.org/contact