

Following the conviction of Radonda Vaught in Tennessee North Carolina Supreme Court rules that nurses can be held criminally liable for medical errors

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A decision last month by the North Carolina Supreme Court exposes nurses to legal liability for medical injuries, even when the nurses are working under the direction of a doctor. The justices overturned a state precedent that had stood for 90 years.

This ruling arrives amid an ongoing campaign to scapegoat health care workers for tragedies that result from the conscious negligence of the health care corporations and often the state. It follows the conviction of former nurse RaDonda Vaught for criminally negligent homicide over a medication error. Moreover, the current ruling was handed down in the same state where former detention center nurse Michelle Heughins is being prosecuted for involuntary manslaughter related to the death of an inmate.

The case before the North Carolina Supreme Court, *Connette v. Charlotte-Mecklenburg Hospital Authority*, involved a girl named Amaya Gullate. In 2010, when she was three years old, Gullate had a heart condition for which doctors at Atrium Health recommended an ablation procedure. After the child underwent anesthesia, her heart stopped, thus depriving her brain of blood and oxygen for about 12 minutes. Gullate sustained permanent brain damage and developed cerebral palsy and profound developmental delay. She now requires constant care.

Attorney John Edwards (the former US senator and Democratic presidential candidate) represented Gullate's family, which sued the certified registered nurse anesthetist (CRNA), three doctors and the hospital over the incident. In 2018, a trial judge excluded testimony that would have questioned the decisions that CRNA Gus Vansoestbergen made in relation to Gullate's care. The judge cited the precedent set in North Carolina by *Byrd v. Marion General Hospital* as justification for this move. That 1932 decision protected nurses who work under a doctor's supervision.

Edwards and the family appealed this ruling. In 2020, a state appeals court panel unanimously affirmed the trial judge's decision to exclude testimony about Vansoestbergen's work.

The family continued its appeals, and the case ultimately reached the North Carolina Supreme Court. In late August, the court issued a 3-2 decision in favor of the family, thus overturning the *Byrd* precedent.

"Due to the evolution of the medical profession's recognition of

the increased specialization and independence of nurses in the treatment of patients over the course of the ensuing 90 years since this Court's issuance of the *Byrd* opinion, we determine that it is timely and appropriate to overrule *Byrd* as it is applied to the facts of this case," wrote Justice Michael Morgan for the majority. But regardless of the "specialization" of the CRNA in this case, he was not acting with "independence" but under the supervision of a physician, who ultimately chose the treatment.

In a dissenting opinion, Justice Tamara Barringer argued that the majority had no reason to change the standard and expose nurses to liability. The majority had held that developments in medicine had made *Byrd* obsolete. "However, adhering to the principles of *stare decisis* [i.e., that precedent should guide decisions], this Court should not disturb settled precedent that clearly defines the liability of doctors and nurses when treating or diagnosing patients," Barringer wrote. Courts will now have to determine which nurses are advanced and specialized enough to warrant liability and which nurses remain not liable. But the courts do not have the medical background to make such decisions, nor does the law guide them here.

The legislature is free to enact new rules of liability in response to the development of the medical profession. Instead, it "has adopted and codified the holdings in *Byrd* in its statutes and regulations rather than supplanting them," Barringer wrote. Thus, the current decision not only overturns judicial precedent, but also ignores current law.

Health care workers say that the majority on the Supreme Court has made a judgment that it was not qualified to make. "None of the judges are in the health care arena. So that's very dangerous to me," Ashley Hughes, a critical care nurse and legal nurse consultant, told *Queen City News*. "To make decisions, especially about the standards of care, without going through the due processes of going through the General Assembly."

Hughes predicted that the ruling would exacerbate the national nurse shortage. "They're already short-staffed. On top of that, there is the issue of violence against nurses; nurses are being attacked. There's the issues about the pay—nurses not being paid appropriately," she said. "Along with that nurses now are being

held more on a criminal level, rather than just civil.”

The case of RaDonda Vaught brought national attention to the push by the giant health systems to hold nurses criminally liable for medical errors caused by management negligence. Vaught, who had worked as a nurse at Vanderbilt University Medical Center (VUMC), was charged with reckless homicide in the death of elderly patient Charlene Murphey. While preparing Murphey for a PET scan, Vaught administered vecuronium bromide, a neuromuscular paralytic agent, to her instead of the sedative that had been prescribed. The error occurred when the automated medication dispenser did not provide the required drug. Vaught overrode the dispenser, which is a common practice for nurses—and one that VUMC had authorized. She was convicted on the lesser charge of criminally negligent homicide.

Although vecuronium bromide is an especially potent drug, VUMC had no system in place to double check that the correct drug was being administered or to limit the dose. VUMC lied about what had happened to the family and to the authorities. Instead of investigating the preventable tragedy, the administration fired Vaught to protect the hospital’s reputation. No examination of the hospital’s policies or criticism of the executive board was allowed during the trial. In protest of her sentencing, nurses across the country are still carrying out a de facto work refusal against Vanderbilt, though most agree the problem goes far beyond a single institution.

The scapegoating campaign continued when Michelle Heughins, a former county detention center nurse in Winston-Salem, North Carolina, was charged with involuntary manslaughter in connection with the death of inmate John Neville. Five officers responded to Neville’s cell after he fell from his top bunk and began vomiting, shaking and sweating. Heughins attempted to provide Neville with care, but the officers handcuffed him and moved him to another part of the prison.

After bringing Neville into a new cell, the officers placed him face down on the floor, knelt on his back and legs and hog-tied him. Heughins, who for a time was kept outside the room, is the only person who tried to save Neville’s life. She now is the only one facing charges in Neville’s death, even though the officers placed him in a prone position that is known to cause asphyxiation.

The decision of the North Carolina Supreme Court must be understood in this context. Throughout the pandemic hospitals have maintained dangerous understaffing and cut costs, enabling them to reap enormous profits.

Opposition is mounting among health care workers, who have endured overwork and psychological trauma. Like workers in other industries, health care workers across the country are voting nearly unanimously to strike, as they did recently at Michigan Medicine and at several facilities in Minnesota. The campaign to victimize health care workers is aimed at suppressing this growing opposition.

Diana, an ICU nurse in the southwestern US spoke to the *World Socialist Web Site* about the dangerous precedent set by the North Carolina ruling as well as the cases of Michelle Heughins and RaDonda Vaught. “It’s taking the integrity out of the profession and people are going to be scared to be nurses.” Adding, “What

was she [Heughins] supposed to do, worry about getting restrained herself by a police officer? And then RaDonda was the perfect Swiss cheese model where everything was lined up to go wrong. The hospital didn’t report it. They tried to cover it up. She never should have been charged. She reported it, she did everything right, and they still went after her. It could have been any of us. Anybody can get distracted in an instant you know, it happens, especially with short staffing. When you’re rushing to do things it could happen. Absolutely.”

It is significant that none of the nursing unions waged a struggle, protest or strike in defense of RaDonda Vaught, Michelle Heughins, or against the North Carolina Supreme Court ruling. That is because over the last decades the increasingly corporatist unions have degenerated into a labor police force, which uphold the interests of management, the state and the financial elite. In health care the unions have worked to impose concessionary contracts on their members and have blocked any opposition to the decades-long destruction of the health care industry.

The unions work systematically to isolate, limit and defeat strikes when they cannot suppress them outright. The Minnesota Nurses Association, for example, is set on limiting today’s powerful strike of 15,000 nurses to three days, giving all the hospitals ample time to hire strikebreakers and ensure minimal disruption.

To oppose victimization and to fight for safe staffing and better wages health care workers need to build rank-and-file committees that are independent of the discredited trade unions. Rank-and-file committees are currently being built in numerous industries, from railroad workers, to nurses, educators and autoworkers. At the forefront of this fight is the campaign of Will Lehman for president of the United Auto Workers. Will is a socialist and a rank-and-file autoworker who is running on a campaign aimed at abolishing the criminal UAW bureaucracy, and to put power in the hands of workers through the building of their own democratically controlled rank-and-file committees.



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