

A Legal Discussion of the Recent Nursing Event in TN

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What were the charges against the RN?

- Reckless Homicide
- Abuse of an Impaired Adult

What are the facts we know?



- Patient was supposed to be given 2 mg Versed to calm her before a scan.
- RN went to automatic dispensing cabinet and attempted to locate Versed; when she couldn't she typed in "Ve" using an override function.
- Vecuronium, a paralytic drug, was dispensed and administered instead on 12.24.17. Patient dies 12.27.17.
- The nurse did not *intend* to give Vecuronium.
- TN Bureau of Investigation and AG's office investigates after Medicare publishes report in Nov. 2018.
- RN indicted by a grand jury on 2.1.19; she pleads not-guilty.
- No pending civil litigation.

What are the facts we don't know?



- How was the nurse able to “override” and obtain the drug?
- What were the safe guards in place, if any, to prevent this from happening?
- Did the nurse report the error immediately, and to whom did she report?
- What was the hospital's protocol for monitoring a patient after administering a drug like Versed?
- What was going on from Dec. 2017 – Nov. 2018 when the Medicare report was published?

Illinois Statute: Manslaughter & Reckless Homicide

720 ILCS 5/9-3

- A person who **unintentionally** kills an individual without lawful justification commits involuntary manslaughter if his acts, whether lawful or unlawful which cause the death are such as likely to cause death or great bodily harm to some individual, and he performs them *recklessly*, except in cases in which the cause of death consists of the driving of a motor vehicle or operating a snow mobile, all terrain vehicle, or watercraft, in which case the person commits reckless homicide. A person commits reckless homicide if he or she **unintentionally** kills an individual while driving a vehicle and using an incline in a roadway, such as railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.
- Both are class 3 felonies.
- What constitutes “reckless?”
 - Reckless – Defendant has conscious understanding of the risk involved in his actions and deviates from standards of conduct of which normal law abiding citizen would adhere.

Illinois Statute: Adult Protective Services Act

320 ILCS 20/2

- Abuse means causing any physical, mental or sexual injury to an eligible adult, including exploitation of such adult's financial resources.
- (Sec. A) Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.

Illinois Statute: Criminal abuse or neglect of an elderly person or person with disability 720 ILCS 5/12

- A caregiver commits criminal abuse or neglect of an elderly person or person with a disability when he or she *knowingly* does any of the following: A) performs acts that cause the person's life to be in endangered, health to be injured or pre-existing physical or mental condition to deteriorate; or B) fails to perform acts which he knows or reasonably should know are necessary to preserve the life and health of the person and the failure causes the person's life to be endangered; or c) abandons the person; or d) physically abuses, harasses, intimidates or interferes with the person's liberty or e) exposes the person to willful deprivation.
- (Sec. C-1) Nothing in this section applies to a physician or nurse providing care within the scope of his/her professional judgment and within the accepted standard of care within the community.

Who pressed charges?

- The Medicare Fraud unit started the investigation in conjunction with the TBI.
- Ultimately, a prosecutor decides whether to press charges.
- The decision to press charges is multi-factorial.
- No criminal charges pending against Vanderbilt.



What do criminal charges mean for the RN?

- Cost for criminal defense attorney.
- Jail time, fine(s) and bond.
- Possible license suspension or revocation.
 - TN licensing board investigated; decided not to reprimand or suspend.
- Criminal trial and possibly more jail time if no plea deal is reached.

How does this differ and/or impact any civil litigation?

- No jail time in civil litigation; monetary recovery only.
 - Different lesser burden of proof – What would a reasonably careful nurse do under the same or similar circumstances? “More probably true than not.” vs. Reckless – “beyond a reasonable doubt.”
- Nurse license is still subject to review.
- Prior sworn statements in criminal matter can be used in civil matter.

Questions?


