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Conflict of Interest Disclosure

- I, Rhonda Sullivan certify that, to the best of my knowledge, no affiliation or relationship of a financial nature with a commercial interest organization has significantly affected my views on the subject which is being presented.

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Learner Objectives


Upon completion of this educational program, you will be able to:


- Explain criminal culpability as it relates to nursing practice
- Describe the staffing crisis & its relationship to healthcare quality
- Elucidate LNC strategies for overcoming challenges presented by the nursing shortage, medical errors, and criminal culpability

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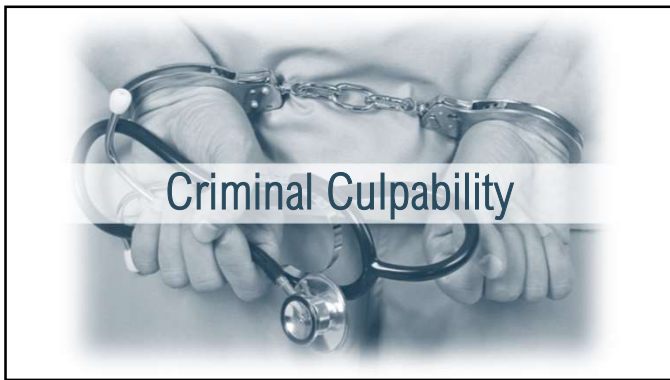
Let's Talk About It

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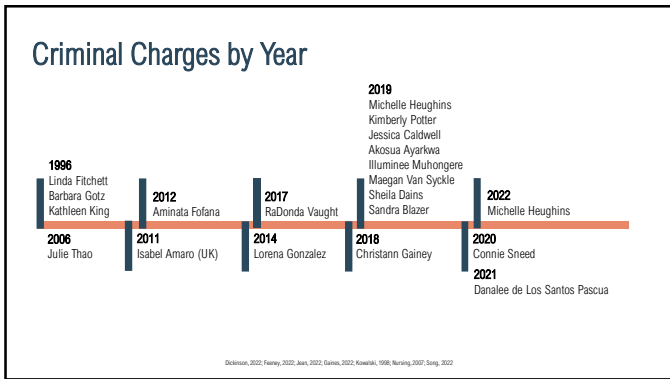


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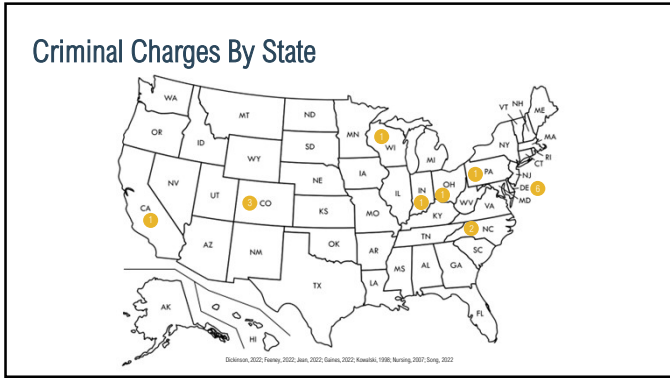


Criminal Culpability

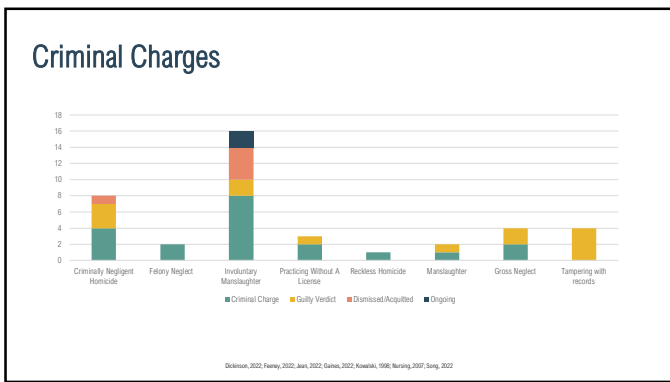
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Definition & Class

Varies by State


- Criminally Negligent Homicide
- Felony Neglect
- Involuntary Manslaughter
- Practicing Without A License
- Reckless Homicide
- Manslaughter
- Gross Neglect
- Tampering with records
- Felony Forgery

Dickinson, 2022; Feeley, 2022; Jan, 2022; Gaines, 2022; Kowalski, 1998; Nursing, 2007; Song, 2022; Justice, 2023a; Justice, 2023b; Oregon Law, n.d.

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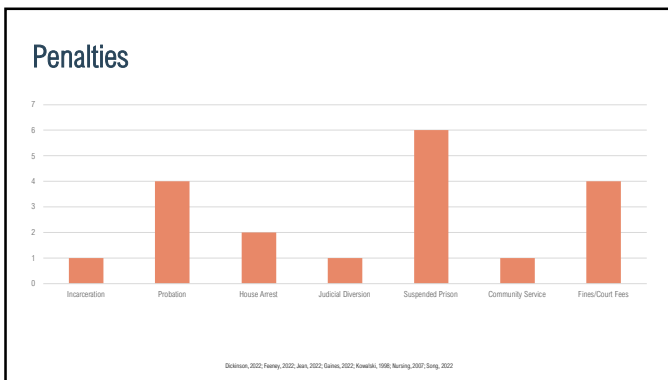
Involuntary Manslaughter

- Unintentional killing from recklessness or criminal negligence
- Class C or D felony in most states
- No deliberation or premeditation



April, 2023; April, 2023; Oregon Law, et


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Do You Know Her?"

- Christann Gainey, LPN
- Charge:
 - Felony neglect
 - Involuntary manslaughter
- Pled guilty to misdemeanors
 - Neglect of a care-dependent person
 - Tampering with records



June, 2022

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Nursing Workforce




- Registered Nurses
- Licensed Practical Nurses
- Advance Practice Registered Nurses
 - Nurse Anesthetist
 - Nurse Practitioners
 - Nurse Midwives
- Unlicensed Assistive Personnel
 - Nursing Assistants

ANCA, 2023

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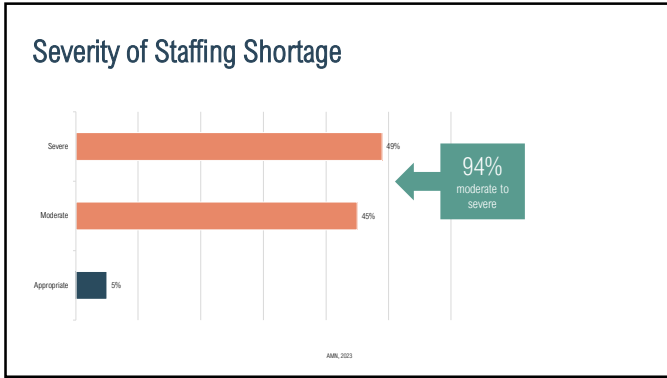
Nursing Shortage

- Existed for decades
- **100,000** left due to stress, burnout, retirements¹
- **610,388** intend to leave by 2024¹
- **195,000** vacancies for the next decade



ANCA, 2023; Elsevier, 2022; Cohen, 2020

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Contributing Factors

COVID	ACADEMIC	AGING
52% of nurses are considering leaving their current position ¹	91,938 qualified applications turned away in 2021 ¹	1M RNs will retire by 2030 ¹
Increased Workload	Licensure Delays	Aging Population
Nurse Burnout	Less Faculty	
Lower Salaries	Fewer Preceptors	

ANA, 2023; Elsevier, 2022

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Staffing & Safety

Many scientific studies point to the connection between adequate levels of registered nurse staffing and safe patient care.

ANA, 2023

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Staffing & Quality Outcomes



High Patient-Nurse Ratio

- ↑ Mortality
- ↑ Readmission
- ↑ Infections
- ↑ LOS
- ↑ Failure to Rescue

ANCC, 2023

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Skill Mix & Quality Outcomes

IOM (Future of Nursing): 80% to enhance patient safety

- Higher BSN ratio
 - ↑ patient & nurse outcomes
 - ↓ mortality
 - ↓ failure to rescue

62.5% of RNs baccalaureate or graduate degree level

ANCC, 2023

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Addressing the Shortage

Recruit & Retain

- Legislation
- Loosening licensing requirements
- Transient Staffing
- Bolstering educational programs
- Changing scope of practice laws
- Compacts
- Offering monetary incentives


ANCC, 2023 | Future, 2022 | Congress.gov, 2023 | ANCC, 2023

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Primary Actors

Plaintiff	Defendant
	
<ul style="list-style-type: none">• State Prosecutor• Attorney General	<ul style="list-style-type: none">• Healthcare provider

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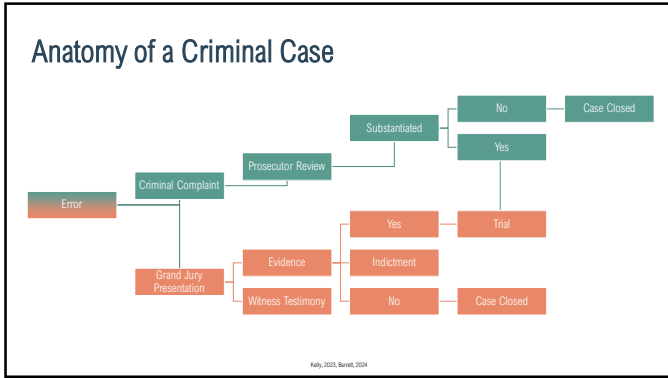
Reporting of Criminal Acts



- Any person with knowledge can report
- Nurse or peers
- Facility leadership
- Family members
- BON

NCJRM, 2024

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Criminal Charges

- Brought by the state against a defendant accused of breaking the law
- Charge is defined in the state criminal statutes
- State has burden of proof

Kelly, 2023, Bennett, 2024

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Nurses & Criminal Charges

- Failed to meet the legal standard of conduct
 - Values, rules, standards, & principles outlining what employers expect from staff
- Professional negligence
- Actions in bad faith
- “Reckless disregard for human life”

Kelly, 2023, Burnell, 2024

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Indictment

- Prosecutor (only) presents to grand jury
- Grand Jury:
 - Panel of citizens
 - Secret
 - One-sided

Probable Cause Standard

- Majority or Required # Grand Jurors
- Likely accused committed the crime = Indict

Evidence Does Not Support Charges

- No indictment
- No charges

Kelly, 2023, Burnell, 2024

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Potential Outcomes



Kelly, 2023, Burnell, 2024

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Act Before the Act

<p>Did the nurse...</p> <ol style="list-style-type: none"> 1. Practice within the NPA scope 2. Comply with systems & processes 3. Utilize error reporting system 	<p>Did the healthcare organization provide...</p> <ul style="list-style-type: none"> • Systems & processes for safe care • Safe staffing ratios • Error reporting mechanisms
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ANA, 2024; Jones & Bartlett, ed; Ziegenfuss, Minnesota, 2023; AANA, 2023

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"Second Victim"

- Internationally recognized but widely disputed
- Neutralize negative publicity
- Promote accomplishments, especially those related to quality care & safety
- Assess for PTSD, burnout, moral injury

Ziegenfuss, Minnesota, 2023

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Medical Liability Immunity Statutes

Health care providers "immune from civil or criminal liability" for actions they take "in good faith" during a declared "catastrophic health emergency."

- COVID-related
- Vary by state
 - Timeframe
 - Provisions

None of these provisions offer immunity for gross, willful, or wanton negligence, recklessness, or intentional misconduct

Colvin, Creger, & Wain, 2020; AMA, 2020

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Safe Harbor

- In good faith
- Before engaging in activity



Protects nurses who believe in good faith that they are being requested to engage in conduct that would violate a nurse's duty to patient

- Safe Harbor Nursing Peer Review (Texas Occupations Code 303.005, 2019)
- House Bill 2410 Oral Safe Harbor (Texas House Bill No. 2410, 2019)

AMA, 2024; Merriam-Webster, 2020

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Whistleblower Protections

- Nurse whistleblower is someone who reports misconduct, usually within an organization. This can include illegal activity, such as fraud or corruption, or abusive or dangerous working conditions



King, 2022; AMA, 2024; Merriam-Webster, 2020; Kabanek, 2022

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Whistleblower Protections

- California (SB 322)
- Whistleblower Protection Act (Federal or government employees)
- National Labor Relations Act (NLRA)
- Occupational Safety and Health Act (OSHA)
- False Claims Act (FCA)

King, 2022; AMA, 2024; Merrill & Zimmerman, 2020; Kahanek, 2022

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NDNQI®

- National Database of Nursing Quality Indicators™
- Patient and nurse outcome indicators
 - Nursing hours per patient days
 - Skill mix (% nursing hours by provide type)

AMA, 2024; Merrill & Zimmerman, 2020

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Ratio Regulation

Legal Mandate:

- California
- Massachusetts

Public Reporting:

- Illinois
- New Jersey
- New York
- Rhode Island
- Vermont

Hospital Staffing Committees:

- Connecticut
- Illinois
- Nevada
- New York
- Ohio
- Oregon
- Texas
- Washington
- Minnesota

Quirkley, 2023; Merrill & Zimmerman, 2020

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Plausible Deniability

- Just Culture (Culture of Safety)
- Blame-free environment
- Report errors or near misses
- Without fear of negative consequences, reprimand, or punishment
- Highlight root causes of error

Most adverse events result from a series of circumstances in environments with underlying system flaws and failure points.

Zingales, Minnick, Moschberg, 2003

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Position Statements

Condemning Criminalization of Error

- American Association of Critical-Care Nurses
- American Nurses Association and Tennessee Nurses Association
- American Hospital Association and American Organization for Nursing Leadership
- Academy of Medical-Surgical Nurses
- American Society of Health-System Pharmacists
- Institute for Healthcare Improvement (IHI) and IHI Lucian Leape Institute
- Outcome Engenuity and The Just Culture Company



SNP_2022

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