

PRESENTED AT**34th Annual Health Law Conference**

April 6-7, 2023

Houston, Texas

**Medical Staff, Nursing Staff, and Patient Rights in a
Post-COVID Apocalyptic World****Doug Wolford, Holland & Knight, Nashville, TN
Hilary H. Young, Joy & Young, L.L.P., Austin, TX**

Author Contact Information:

Doug Wolford
Holland & Knight
511 Union Street, Ste 2700
Nashville, TX 37219
Doug.Wolford@hklaw.com
615.850.8927

Hilary H. Young
Joy & Young, L.L.P.
2499 S Capital of Texas Hwy, Ste A-101
Austin, TX 78746
hyoung@joyyounglaw.com
512.330.0228 ext. 2

Medical Staff, Nursing Staff, and Patient Rights in a Post-COVID Apocalyptic World

Doug Wolford, Holland & Knight, Nashville, TN
Hilary H. Young, Joy & Young, L.L.P., Austin, TX

UT Law 34th Annual Health Law Conference
April 6, 2023

Medical & Nursing Staff Issues

Medical and Nursing Staff Shortages

Many of us are aware of the current shortage of physicians in the United States. Currently, the U.S. Department of Health And Human Services, Health Resources and Services Administration (HRSA) data shows nation-wide shortages which are specifically acute in the specialties of primary care and psychiatry. With respect to psychiatry, HRSA indicates a shortage of 8,2020 Mental Health practitioners in 6,062 Health Professional Shortage Areas.¹ In addition, there are a number of demographic forces that are conspiring to exacerbate the problem and create potential crisis-level conditions in the near future. For example, the population of the United States continues to grow and is expected to increase by about 10% by 2034.² To make things worse, the number of Americans over the age of 65, an age group that generally requires more care, is expected to grow by 47% over the same time period.³ Further, the American Medical Association (AMA) predicts that many current baby boomer physicians will also be leaving the workforce at the time same time and that over 1/3 of current active physicians will also be over the age of 65 by 2030.⁴ By 2034, the Association of American Medical Colleges (AAMC) projects a supply and demand shortage of up to 135,000 for both primary and non-primary care.⁵ With respect to the psychiatry, the AAMC states that over 150 million Americans lived in federally designated mental health shortage areas, and within a few years, the country will be short between 14,280 and 31,109 psychiatrists.

For Hospitals attempting to staff their specialty-on-call rosters, (including psychiatry), there are additional concerns that are emerging. An increasing number of specialist physicians are choosing to

¹ See HRSA Health Workforce Shortage Areas, found at (<https://data.hrsa.gov/topics/health-workforce/shortage-areas>)

² Robeznieks, Andis, "To overcome doctor shortage, get rid of obstacles to primary care," June 1, 2022, (<https://www.ama-assn.org/practice-management/sustainability/overcome-doctor-shortage-get-rid-obstacles-primary-care>)

³ Robeznieks, Andis, 2022.

⁴ *Id.*

⁵ "The Complexities of Physician Supply and Demand: Projections From 2019 to 2034," Association of American Medical Colleges, June 2021, (<https://www.aamc.org/media/54681/download>)

work not only work less grueling hours in order to achieve more work-life balance⁶, but some are increasingly choosing to practice outside of a hospital setting. In addition to the negative impacts associated working in the Hospital during the pandemic (which will be covered in more depth below) recent technological advances, lower costs, and regulatory changes⁷ have pushed more surgeries and procedures to ambulatory surgery centers and physician offices in recent years, allowing for some specialist to be able to become less dependent on hospitals for their income.⁸

Many of the same demographic pressures reflected in the current and looming physician shortage crisis are present with nursing and other hospital front-line staff as well, but the impact of the pandemic was likely much stronger on RNs. Experts found that the total supply of RNs decreased by more than 100,000 between 2020 and 2021, as many nurses retired or moved into outpatient settings.⁹ Most are aware that hospitals worked through the pandemic with higher nurse to patient staffing ratios than normal, often relying on contract nurses to attempt to get by.

All of which is putting an inordinate amount of mental and physical stress on hospitals and the remaining providers manning the front lines - who are also now tasked with treating and managing a rising number of patients presenting with mental health concerns and/or exhibiting violent behavior, increasingly without the assistance of psychiatrist.¹⁰

Burnout and and Unresolved Mental Health Issues Amongst Providers

The American Psychologist Herbert Freudenberger identified the phenomenon of “burnout” in 1974, describing it as a “*state corollary to protracted pressure and apprehension manifesting in those engaged in the “healing professions” who are particularly predisposed to employment-associated emotional and physical debilitation.*”¹¹ The negative impact of the pandemic on the mental health of frontline healthcare providers cannot be overstated. Mental health and burnout are issues that have plagued the practice of medicine for decades, and the stress of treating patients in a pandemic setting for 2-3 years straight did not provide a respite. Downstream effects include compromised patient care quality and satisfaction, an increase in medical oversight and errors, diminished physician productivity, decreased access to patient care, and likely increases in impairment and disruptive behavior.¹²

Hospital Responses

⁶ Miller, Robert Nagler, "Millennial physicians sound off on state of medicine today," (<https://www.ama-assn.org/practice-management/physician-health/millennial-physicians-sound-state-medicine-today>)

⁷ CMS Hospital Outpatient (OPPS) and Ambulatory Surgical Center (ASC) Reimbursement Prospectus: 2023 ABBOTT REIMBURSEMENT GUIDE: <https://www.cardiovascular.abbott/content/dam/bss/divisionalsites/cv/cv-live-site/hcp/reimbursement/CMS-OPPS-ASC-Prospectus.pdf>

⁸ <https://www.mckinsey.com/industries/healthcare/our-insights/walking-out-of-the-hospital-the-continued-rise-of-ambulatory-care-and-how-to-take-advantage-of-it>

⁹ "A Worrisome Drop In The Number Of Young Nurses." *Health Affairs*. April 13, 2022 (<https://www.healthaffairs.org/doi/10.1377/forefront.20220412.311784/>)

¹⁰ Boyle, Patrick, "Threats against health care workers are rising. Here's how hospitals are protecting their staffs," *AAMCNews*, Aug. 18, 2022 <https://www.aamc.org/news-insights/threats-against-health-care-workers-are-rising-heres-how-hospitals-are-protecting-their-staffs>

¹¹ Bhardwaj, Anish, "COVID-19 Pandemic and Physician Burnout: Ramifications for Healthcare Workforce in the United States," NIH National Library of Medicine, June 13, 2022 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9206033/>)

¹² Bhardwaj, Anish, June 13, 2022.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Medical Staff, Nursing Staff, and Patient Rights in a Post-COVID Apocalyptic World

Also available as part of the eCourse

[2023 Health Law eConference](#)

First appeared as part of the conference materials for the
34th Annual Health Law Conference session

"Medical Staff, Nursing Staff, and Patient Rights in a Post-COVID Apocalyptic World"