

U.S. doctors on coronavirus frontline seek protection from malpractice suits

Thursday, April 02, 2020 11:58 a.m. EDT by Thomson Reuters



FILE PHOTO: A doctor wears a protective mask as he walks outside Mount Sinai Hospital in Manhattan during the outbreak of the coronavirus di

By Tom Hals

(Reuters) - U.S. medical professionals on the front line of the coronavirus pandemic are lobbying policymakers for protection from potential malpractice lawsuits as hospitals triage care and physicians take on roles outside their specialties.

State chapters of the powerful American Medical Association and other groups representing healthcare providers have been pressing governors for legal cover for decisions made in crisis-stricken emergency rooms.

More than half a dozen emergency room doctors and nurses told Reuters they are concerned about liability as they anticipate rationing care or performing unfamiliar jobs due to staff and equipment shortages caused by the outbreak.

Governors in New York, New Jersey and Michigan have responded with orders that raised the standard for injuries or deaths while working in support of the state's response to COVID-19 from negligence to gross negligence, or an egregious deviation from standard care.

Physicians, who have long blamed malpractice lawsuits for driving up healthcare costs, hope other states will follow.

“There are too many variables here. We are going to be second-guessed,” said Jeremy Faust, an emergency physician at Brigham and Women’s Hospital (BWH) in Boston. “We need better protection, if only to guard against unreasonable claims.”

On Monday, U.S. Senator Ben Sasse, a Republican from Nebraska, introduced legislation that would protect U.S. doctors who practice outside their area of specialty or who use a modified medical device. Doctors would also be protected for providing treatment outside standard healthcare facilities.

Plaintiffs firms that specialize in malpractice are keeping an eye on how healthcare providers are responding to the crisis.

The Doan Law Firm, which has offices nationwide, said on its website that some providers are adopting “untested treatment plans or use hastily-designed and manufactured patient care equipment” that could “lead to medical malpractice.”

Jimmy Doan, the firm’s founder, did not respond to a request for comment.

President Donald Trump warned on Tuesday that the outbreak could kill up to 240,000 in the United States and said that the impact would intensify in coming weeks, potentially overwhelming hospitals.

Doctors and nurses said they worried about the lack of equipment and obligations to resuscitate patients without the ventilators needed to do it.

In an example of how healthcare professionals could be exposed to malpractice lawsuits, several doctors said the increasing demand for hospital beds meant they weren’t able to be as cautious as they normally might be with non-coronavirus patients.

Doctors routinely order extensive testing and overnight observation for patients with mild heart conditions or strokes, even if their symptoms have disappeared once they get to the hospital, for example. Now, they are sending these individuals home to make room for COVID-19 patients.

COSTLY

Malpractice lawsuits can be very costly. A Baltimore jury last year awarded \$229 million for brain damage suffered by a girl born at Johns Hopkins Bayview Medical Center, for example.

Insurance premiums can top \$100,000 a year for some specialists in states without caps on damages.

An image was posted on Twitter last week of a malpractice law firm’s website which featured a blog post titled “What you should know about medical negligence during the COVID-19 crisis.”

“It truly disgusts me to see what badness comes out during a crisis like this,” wrote Eugene Yang, a professor of medicine at the University of Washington who tweeted the post, which drew dozens of comments, many from healthcare professionals, sharing his rage.

The website of the law firm, Mannarino & Brasfield, has been taken offline and a recorded message on the firm’s answering system said the post was published by an outside contractor. The firm’s phone message apologized and said the post did not reflect the firm’s values.

Joe Belluck, a New York lawyer who brings medical malpractice cases, said he’s concerned the

coronavirus crisis could be used to enact a wish list of changes sought by doctors, hospitals and the medical industry to curb unrelated lawsuits.

“I just hope these things are done in a way that is tailored to the crisis taking place,” he said.

Lawyers who represent patients said the law already protects medical professionals. To make their case, patients must show a medical provider negligently deviated from the reasonable standard of care for the particular circumstances.

An emergency room doctor operating in the peak chaos of the coronavirus outbreak wouldn't be judged against the standard of care provided in a physician's private office, they said.

“The question I would ask is, why aren't the ordinary liability rules already sufficient to address the issues?” said Chip Becker of the Kline & Specter law firm in Philadelphia.

Kimberly Chernoby, an emergency room doctor in Indiana who works with BWH's Faust on brief19.com, a website that reviews COVID-19 research and policy, said she's not reassured.

“We're in a once-in-a-lifetime experience. Who knows what's reasonable?” she said.

(Reporting by Tom Hals in Wilmington, Delaware; Editing by Noeleen Walder and Sonya Hepinstall)