



MEDICAL PROFESSIONAL LIABILITY ASSOCIATION

March 19, 2020

The Honorable Mike Pence
Vice President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. Vice President:

I am writing on behalf of the more than 50 U.S. medical professional liability insurer members of the Medical Professional Liability (MPL) Association. We are the leading trade association representing organizations owned and/or operated by their policyholders, as well as other insurance carriers with a substantial commitment to the MPL line. Our members insure more than 2 million healthcare professionals worldwide—doctors, nurses and nurse practitioners, and other healthcare providers—including more than two-thirds of America’s private practice physicians. MPL Association members also insure more than 150,000 dentists and oral surgeons, 2,500 hospitals and 8,000 medical facilities around the world.

I am writing to commend you for your efforts to help this nation address the coronavirus outbreak. Our members greatly appreciate all you are doing to help ensure that healthcare professionals have the tools they need to address this ongoing healthcare crisis, but we recognize that more needs to be done.

As the coronavirus outbreak continues in the United States, our frontline healthcare professionals are straining under an increasingly difficult burden. Our member companies are hearing every day from these dedicated individuals about the ever-growing threats they face—from the constant concern about the risks to their own health, to the regulatory and judicial hazards that lie in wait in the weeks and months ahead. In this regard, we request that you work with the relevant Federal departments and the U.S. Congress to alleviate these threats to the greatest extent possible in order to allow our healthcare professionals to focus their time and attention on meeting patients’ needs.

Medical Volunteers

The United States faced a significant physician shortage even before the coronavirus came to our shores. Now, with patients flooding the healthcare system and too many health professionals having to isolate themselves because they have contracted the virus, that shortage is only being exacerbated. The gap will likely have to be made up with volunteers, potentially from states that have been hit less hard during the early stages of the outbreak. Your efforts to allow health professionals to cross state lines without regard to state licensure requirements is an important step in making this happen. Unfortunately, state Good Samaritan laws do not always apply under circumstances like those we currently face, so the very same doctors you are trying to encourage could be placing themselves at liability risk by volunteering. As such, a federal response to extend Good Samaritan protections during national emergencies or disasters would be more than appropriate. Legislation to this effect has already been introduced in Congress (S. 1350/H.R. 6283), and I would encourage you to endorse it as a component of the federal government’s ongoing response.

Emergency Medical Treatment and Labor Act (EMTALA)

The Emergency Medical Treatment and Labor Act (EMTALA) has served patients well for many years, but under the current circumstances it could have the unintended consequence of hindering efforts to provide the most efficient and effective care possible. As such, EMTALA waivers should be implemented to provide additional flexibility to healthcare professionals on the front line in emergency departments. Such waivers should allow for screenings to take place in alternative locations and by alternative means in order to minimize the risk of exposure to healthcare providers and other patients. In addition, stabilization requirements should acknowledge the need to assess and treat large numbers of patients at a given time, and allow flexibility for emergency departments to make the critical decisions necessary to meet the needs of the largest number of patients and/or those most in need of immediate care.

Liability

Perhaps no issue concerns the health professionals we insure as much as the threat of liability lawsuits—a threat that current circumstance could dramatically increase. The following situations, which are occurring at this very moment, pose substantial risks:

- Physicians, in order to meet increasing demand, are being asked to provide treatments or care outside their general practice areas and for which they may not have the most up-to-date knowledge;
- Healthcare professionals, and the facilities in which they practice, having inadequate safety equipment that could result in the transmission of the virus from patient to provider and then to additional patients, or directly from one patient to another;
- Facilities facing shortages of equipment, such as ventilators, and being forced to ration care;
- Liability related to “elective” surgeries and procedures being delayed to provide additional capacity to treat coronavirus patients;
- Inadequate testing that could lead to delayed or flawed diagnosis;
- Patients with issues other than coronavirus having to wait substantial periods of time and receive delayed treatment.

In some cases, these circumstances are unavoidable as healthcare professionals and the facilities in which they operate are forced to shift limited resources to address urgent needs. In others, healthcare professionals and facilities are faced with no-win situations in which their only option is to choose the least detrimental course of action rather than an ideal course of action. In all cases, however, we know the healthcare professionals and facilities will make every effort to provide the best care possible to the most people. Under these circumstances, it only makes sense to protect them by limiting the threat of liability so that they can make critical decisions based on not what choice will be least likely to result in a lawsuit, but on which choice does the broadest possible good for the communities in which they serve.

In addition, the absence of liability protections poses great risk to the insurance providers themselves. Health professionals crossing state lines to provide care, in accordance with the Federal directive, are immediately placing themselves in a situation outside of that for which their medical liability policy was written. As such, they could face vastly higher risks and higher liability payments than their policy was written to cover or have no coverage at all due to geographic coverage limitations. MPL Association members may possibly be able to cover that unanticipated risk, due to their commitment to the health professionals they insure, but doing so means risking the solvency of the company itself. At a time when the MPL insurance market may already be hardening, this could push this portion of the nation’s

insurance industry into a crisis that could limit access to care due to the unavailability of adequate insurance coverage.

While the Department of Health and Human Services Declaration of March 17 provided some degree of protection for those administering medical countermeasures, additional steps should be taken immediately. Our members urge you to seek every available administrative option for reducing the threat of liability for healthcare providers and facilities who are leading the efforts to address the current outbreak, and encourage you to work with the Congress to seek legislative solutions where administrative action is insufficient.

Again, the members of the MPL Association are extremely grateful for all of your efforts to make it possible for the nation's healthcare providers and facilities to provide the most effective care possible during the coronavirus national emergency. Should you have any questions about the above recommendations for additional action, please do not hesitate to contact me at 240.813.6143 or batchinson@MPLassociation.org.

Respectfully,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first name "B." and last name "Atchinson" clearly legible.

Brian K. Atchinson
President & CEO