Covid-19 Crisis –Medical-Legal Concerns

Doctors and hospitals overwhelmed in the current coronavirus pandemic will have to make excruciating life-or-death decisions when treating Covid-19 patients. In response to this unprecedented event, Governor Cuomo issued an Executive Order “… to provide that all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses shall be immune from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State’s response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional”;

This is not an airtight immunity, but it would make it much more difficult to pursue a claim for medical malpractice after the crisis resolves. Please note that the immunity only appears to apply to care provided to Covid-19 patients, and does not appear to apply to all medical care rendered while the outbreak is taking place.

What can you do to protect yourself?

When making life and death decisions about treating Covid-19 patients, make sure to carefully document the thought process in making these difficult decisions.

Despite the “immunity,” medical professionals will still need written documentation of all decisions, including efforts to help those who are ultimately denied lifesaving care. Document all objective medical criteria used when deciding who gets put on a ventilator and who does not.

Institutions should have policies making clear that these difficult decisions are not being made on discriminatory criteria such as age, gender, race or any other unlawful, suspect criteria. As a physician, make sure you are aware of the policies being implemented by your institution, and follow them carefully. If you find yourself in a situation where you have a good faith basis for not following such a protocol, your documentation must carefully explain your decision.

Standard of Care

In dealing with the current crisis, hospitals should prepare protocols guiding healthcare professionals regarding how to make the difficult/impossible decisions. Those protocols must be carefully written and meticulously followed by health care providers.

If you are a non-critical care physician who is providing care to Covid-19 patients, we encourage you to educate yourself on how to best respond to this situation. The Society of Critical Care Medicine has excellent on-line training available for the non-ICU clinician treating Covid-19 patients at https://www.sccm.org/Disaster.

Conclusion

Litigation by families who lose family members due to Covid-19 is likely only a matter of time. During this crisis we recommend that you follow your instincts to provide the best care possible, and then document your decisions to the greatest extent practicable. Know that in the event that you are sued, Academic Group and our team of claims professionals and attorneys, will stand behind you and protect you.

For immediate legal advice, please call the Academic toll free Legal Advice Line (855) 444-0554.