



MEDICAL PROFESSIONAL  
LIABILITY ASSOCIATION

NEWSBRIEFS



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## NATIONAL NEWS

### COVID-19 Updates from the MPL Association

The MPL Association continues to consult with stakeholders in the healthcare and medical liability insurance industry and engage government officials and the medical community to track pertinent information related to novel coronavirus 2019 (COVID-19). **The Association has updated its summary of activities undertaken or announced by the federal government that may be of special interest to members and their insureds.**

After passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) last week, work on a fourth stimulus bill began almost immediately. While the initial indication is that it will focus on public infrastructure, more is likely to be added to the bill before it is enacted. The MPL Association will continue to monitor activities on Capitol Hill for provisions that may be included in the coming efforts.

Also in Washington, D.C., HHS Secretary Azar issued guidance to states on dealing with the COVID-19 outbreak, including recommendations that insurance departments work with MPL insurers to relax any policy provisions that would prevent a healthcare professional from working in another state.

Several states are seeking Executive Orders providing immunity from liability (absent gross negligence) during the COVID-19 outbreak. Along with New York, Illinois, Michigan, and Wisconsin are among the other states that have issued such orders.

The Association is posting updated COVID-19-related materials on our website in the Advocacy News section. (MPL Association, 4/3)

### U.S. Doctors on Coronavirus Front Line Seek Protection from MPL Suits

U.S. medical professionals on the front line of the coronavirus pandemic are lobbying policymakers for protection from potential medical liability lawsuits as hospitals triage care and physicians take on roles outside their specialties. State chapters of the American Medical Association and other organizations representing healthcare providers, including MPL Association member companies, 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. "We need better protection, if only to guard against unreasonable claims."

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 MPL 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.

The MPL Association has developed model state legislation to protect health professionals from unwarranted negligence claims and is working with other medical community stakeholders to create guidance for executive orders for states where governors are authorized to waive certain liability laws. (MPL Association and Reuters, 4/3)

### **Top Physician Concerns Beyond COVID-19**

The most concerning thing on physicians' minds right now is the coronavirus pandemic. Unfortunately, worrying about this new and deadly virus doesn't eliminate doctors' other major concerns. Those problems—from prior authorizations and certification requirements to declining reimbursements and increasing workloads—haven't gone anywhere.

Prior to the COVID-19 outbreak, MDLinx surveyed readers to find out what concerns them the most this year. The biggest issue occupying the minds of many doctors this year: healthcare legislation. Two-thirds (66%) of physicians are concerned about legislation that affects medicine. This includes more than 26% who describe themselves as "moderately concerned" and about 40% who say they are "very concerned." A lot of physicians over age 65 years—nearly three-quarters (73%) of them—report having these concerns.

About half of all physicians in the survey report that they are either moderately concerned (29%) or very concerned (20%) about patient satisfaction scores. By age group, the greatest number of physicians concerned about patient satisfaction scores are those under age 45 years (59%). The age group with the fewest concerned physicians are those age 65 years and older (25%).

Nearly 37% of physicians are moderately concerned (19%) or very concerned (18%) about medical liability. The physicians with the greatest concern are those aged 46-54. Among specialties, hospitalists and internal medicine physicians are some of the most concerned about MPL, according to the survey. "This concern requires me to excessively document patient encounters and over-order clinical tests in order to be in a position to properly defend my clinical judgment, if it is questioned," said an internist in solo practice. (MDLinx, 3/31)

## **INDUSTRY NEWS**

### **Data Snapshot 2016-2018: MPL Indemnity Payments Reported by the Data Sharing Project**

The MPL Association's Data Sharing Project recently reported 28% of claims closed between 2016-2018 resulted in an indemnity payment to the claimant for a total of \$1.9 billion, an average of \$374,774. The average cost to defend these claims was \$80,841. Eighty-seven percent were settled as a claim or before a jury verdict, 7% were closed by an alternative dispute resolution, 3% ended with an early offer, and another 3% were decided by a jury verdict. (MPL Association, 4/3)

## **Microsoft Warns Hospitals Vulnerable to Ransomware Attacks**

Microsoft Corp. said this week that it had warned dozens of hospitals that it believes are particularly vulnerable to being held hostage by ransomware attackers during the COVID-19 crisis. In a blog post, the tech giant said it had alerted "several dozens" of hospitals with vulnerabilities in their infrastructure, including in the virtual private networks, or VPNs, that remote workers are increasingly using to connect to shared networks amid the coronavirus outbreak. "To help these hospitals, many already inundated with patients, we sent out a first-of-its-kind targeted notification with important information about the vulnerabilities, how attackers can take advantage of them, and a strong recommendation to apply security updates that will protect them from exploits of these particular vulnerabilities and others," Microsoft's Threat Protection Intelligence Team said in the blog post.

The company said it had seen evidence that the healthcare industry is "particularly exposed" to ransomware and other forms of cyberattacks during the virus response, as attackers exploit understandable fears for their own ends. "We haven't seen technical innovations in these new attacks, only social engineering tactics tailored to prey on people's fears and urgent need for information," Microsoft stated. The company's threat monitoring team said it has seen a rise in sophisticated "human-level" ransomware attacks, which are more complex and hands-on than "run-of-the-mill" ransomware campaigns that in the past have spread with little to no effort on the part of the attackers. (Law 360, 4/1)

## **Hackers Target Healthcare AI Amid Coronavirus Pandemic**

The healthcare sector has increasingly turned to artificial intelligence (AI) to aid in everything from performing surgeries to helping diagnose and predict outcomes of patient illnesses. But as the coronavirus crisis ramps up, and hackers turn their eyes toward the health sector, experts warn these systems and the patients they support are increasingly at risk. "Obviously any disruption or denial of service of any type of medical health technology which interrupts patient care is definitely a significant issue," said John Riggi of the American Hospital Association. "Worst-case scenario, life-saving medical devices may be rendered inoperable." Hospitals have long been a tempting target for hackers, particularly for ransomware attacks, in which a system is locked out and hackers ask for money to unlock it. Hospitals and healthcare centers, where access to networks can mean the difference between life and death for patients, are seen as more likely to pay those ransoms. There have already been worrying signs of malicious actors stepping up their game against hospitals and healthcare organizations during the coronavirus pandemic. (The Hill, 3/31)

## **ECRI Launches COVID-19 Resource Center**

ECRI has developed a free and open COVID-19 online resource center to help hospitals, ambulatory care, and aging care facilities protect healthcare workers, residents, and patients. Resources include emergency preparedness and infection control guidelines, checklists, and tools, as well as supply chain resources and guidance for aging care facilities. Most recent updates address personal protective equipment and safe respirator usage. (ECRI, 3/31)

## **NAIC Coronavirus Resource Center Offers State-by-State Information**

The National Association of Insurance Commissioners (NAIC) has established a Coronavirus Resource Center to support the public, business community, and insurance professionals to understand and manage the risks of the current outbreak of COVID-19. Resources include links to the states' COVID-19 information pages and state executive and/or department of insurance announcements and actions. (NAIC, 3/31)

### **New York Moves to Shield Doctors from Lawsuits While Fighting Coronavirus**

New York lawmakers have approved a bill that would grant sweeping civil- and criminal-liability protections to hospitals and healthcare workers treating the surge of patients infected with the coronavirus. The legislation largely lifts the threat of medical liability lawsuits at a time when New York hospitals are reeling from ventilator and protective-gear shortages and overcrowding that could force them to make wrenching choices about allocating lifesaving care. The bill, while differing in its exact language, reflects the intent of model legislation developed by the MPL Association to provide full immunity from liability for health professionals and facilities.

The legislation, "The Emergency Disaster Treatment Protection Act," is tucked inside the budget bill approved by the state Senate and the Assembly. Democratic Governor Andrew Cuomo is expected to sign the measure. The state has asked retired physicians and other healthcare workers to come back into medicine. Current state MPL laws aren't flexible enough for the crisis presented by coronavirus, officials said.

The state needed a law that stands behind physicians and systems. "There is no applicable standard of care when you are dealing with a pandemic crisis," said one official. The state's hospital industry described it as a fair accommodation to extraordinary circumstances.

Such protections from lawsuits aren't unprecedented. Virginia has a law that extends similar protections to healthcare providers responding to declared disasters.

The New York bill doesn't just protect physicians and nurses but the boards and administrators running the institutions. It also covers nursing homes and a number of other healthcare workers. It protects them not only from tort claims but the less likely possibility of criminal prosecutions stemming from loss of life. The immunity would also expire whenever the state of emergency Cuomo declared in March is lifted. (The Wall Street Journal and MPL Association, 4/3)

### **Because of Age, One-third of U.S. Doctors Prone to Adverse Outcomes from COVID-19**

Nearly one in three licensed doctors in the United States is older than 60 years, an age-group particularly vulnerable to adverse outcomes from COVID-19, according to a study published on medRxiv. The study noted that New York and California, two hard-hit states, have the most older physicians. "The physician workforce is not only at risk of losing time spent in clinical care due to these exposures, but at a personal risk from severe disease that requires hospitalization and is associated with high morbidity and mortality," the authors said, noting that 80% of deaths in China were in people 60 and older and that, in the United States, nearly half of hospitalizations and intensive care admissions and up to 80% of deaths have been in that age-group.

Because excluding doctors older than 60 from patient care would severely strain the medical workforce, the authors suggest limiting their direct patient care and expanding their telehealth capabilities.

North Dakota (1,180) and Vermont (1,215) had the fewest doctors 60 and older, while California (50,786) and New York (31,582) had the most. The median proportion of doctors in this age-group across states was 28.9%, ranging from 25.9% in Nebraska to 32.6% in New Mexico.

"We do not have information on the specialty expertise of physicians, as some physicians may be more prone to encountering patients with COVID-19," the authors wrote. "However, as many individuals in the community may be asymptomatic carriers, physicians across specialties are at risk of acquiring the disease as a part of the patient contact during care delivery." They also noted that doctors may be licensed in more than one state and that the absence of data on their health status could change their risk levels. (CIDRAP, 3/31)

## INTERNATIONAL NEWS

### Dubai Prosecution Requests Harsher Penalties in MPL Case

In Dubai, the public prosecution has appealed a judgement issued recently in a medical liability case. As per instructions from the Attorney General, the public prosecution has sought stiffer penalties against the three doctors accused of medical malpractice and negligence in a surgery that left a woman permanently disabled. The case dates back to April 2019 when the patient visited the medical center because of breathing difficulty. She was then advised to undergo a surgery to fix a bone in her nose. The operation was scheduled at the one-day-surgery, which is not suitable for that kind of surgeries, according to the investigation report. That report revealed that there were critical errors during that surgery.

On March 18, 2020, the doctors were sentenced to one year each in jail by the Dubai Court of Misdemeanours. The three doctors, including a 59-year-old surgeon, a 65-year-old anesthetist, and a 69-year-old anesthetic technician, have all been found guilty of malpractice and negligence during the surgery of 25-year-old Rowda Al Maeeni. According to court documents, Al Maeeni fell into a coma after the surgery, suffering “a 100% disability.” The court ordered that each of the three doctors be deported after completing their jail term and jointly paying Dh51,000 in temporary compensation. As per the court ruling, the medical center where the procedure took place must pay a Dh300,000 fine. (Khaleej Times, 4/1)

### Coronavirus Might Cause a Shortage in Expert Witnesses and Delays in MPL Cases, Plaintiffs' Lawyers Contend

Civil court shutdowns are already slamming lawyers and the justice system with painful delays, according to a recent article in *Canadian Lawyer*. Clients are irritated, offices are stalled, the gears of justice, already slow, feel like they've stopped turning. Medical malpractice lawyers, though, might face longer delays than their other colleagues, the article stated. One leading medical malpractice lawyer told *Canadian Lawyer* that his practice area faces a new challenge emerging from the coronavirus pandemic: a lack of expert testimony. Neil Sacks, founding partner at Howie, Sacks, & Henry LLP, said the expert testimony needed in medical liability cases won't be easy to find as the healthcare system struggles with the coronavirus. He's already had physician experts cancel on him and tell him they've got no time to talk with lawyers.

“I've had neurologists, experts in the field of neurology and neurosurgery, tell me they can't devote any time at this point to either speaking with me or to reviewing a new file,” Sacks said explaining just how far-reaching the expert shortage might become. He said specialists in fields like neurology, that seem wholly unrelated to ICU care and respiratory illness, will still be hard to pin down. Even if Canada can get the outbreak under control relatively quickly and civil courts can reopen, Sacks said, the healthcare system will be so stretched that expert witnesses will be hard to find. He cited the example of Italy where the lines of specialization have blurred amid a brutal outbreak. Orthopedic surgeons have worked 12-hour shifts in the ICU understanding that they're all “just doctors now.” (*Canadian Lawyer*, 3/31)

## MEMBER NEWS

### AM Best Innovation: Scoring and Assessing—What It Means for MPL Companies

#### Free webinar for MPL Association members and affiliate partners

The MPL Association will host a free webinar for members and affiliate partners, "AM Best Innovation: Scoring and Assessing—What It Means for MPL Companies," on April 15 at 2:00 p.m. (ET).

In an effort to assess insurers' ability to innovate as a component of their financial strength, AM Best recently issued new criteria, "Scoring and Assessing Innovation." This component of the business profile building block is designed to determine if a specific company's innovation enhances or detracts from their long-term financial

strength. Hear from AM Best about this new criteria procedure and from MPL companies that are preparing for this assessment. (MPL Association, 4/3)

### **Special Update! Government Response to COVID-19: What MPL Stakeholders Need to Know**

This week, Mike Stinson, the MPL Association's vice president of Government Relations & Public Policy, presented a webinar on the legal ramifications of the COVID-19 outbreak and the latest updates on legislative and regulatory activity on the state and federal levels most pertinent to MPL industry stakeholders. **The webinar is FREE for MPL Association members and affiliate partners and is available on-demand.** (MPL Association, 4/3)

### **Mark Lewington Named New General Counsel of Physicians Insurance**

Physicians Insurance A Mutual Company announced this week that Mark Lewington has been named general counsel of the company and its affiliates. He starts at the company on April 1. Mr. Lewington began his legal career in New Zealand as an academic in the law faculty at the University of Canterbury. He has extensive and varied experience in business and regulatory matters, including mergers and acquisitions, regulatory compliance, corporate governance, and new products, and is well-versed in working with outside counsel on a full range of legal matters. "Mark's skillsets combined with those of our Deputy General Counsel Mellissa Cunningham equip Physicians Insurance with strong and comprehensive legal guidance as we work to fulfill our strategies and goals," said Physicians Insurance President and CEO Bill Cotter. (Physicians Insurance, 4/2)

### **MagMutual Foundation Donates \$1 Million to Policy Owners on the Front Lines of the Coronavirus Outbreak; Company Announces MPL Policyholders Can Defer Premium Payments for Nine Months**

In response to MagMutual's policyholders who are on the front lines of dealing with the COVID-19 pandemic and staying in hotels and other temporary accommodation, the MagMutual Foundation announced that it has set aside \$1 million to help any of the company's policyholders by reimbursing the cost of hotel stays and temporary housing during this period. "Many physicians are making tremendous personal sacrifices in fighting this outbreak on the front lines," said Joe Wilson, MD, executive chairman of MagMutual. "As a company, we are committed to putting our policyholders' best interests first, and that includes finding new ways to support them in this critical time."

The company also announced that its MPL policyholders can defer their premium payments for nine months. The premium deferment option is available to existing, new, and prospective policyholders. At the completion of the nine-month period, policyholders will then have the option to spread out their outstanding balance over their subsequent renewed policy period. "We understand that our policy owners are likely to be experiencing more stress, anxiety, and financial burden than usual," Wilson said. "We want to do what we can to alleviate one of the concerns they may have and help in our small way." (Yahoo Finance, 4/2 and 3/26)

### **MLMIC Offers MPL Coverage for Physicians Returning as Volunteers During the COVID-19 Pandemic**

As part of ongoing efforts to support physicians throughout New York, MLMIC Insurance Company is extending medical professional liability coverage—without requiring any new premium—to retired physicians who were last insured with MLMIC and are coming back as volunteers to provide care during the COVID-19 pandemic. MLMIC defines "volunteer," in this case, as a retired physician providing professional services for no fee, salary, or other compensation with the exception of reimbursement for expenses incurred delivering those services. The coverage limits of the medical professional liability offered to these volunteers will be the same as what

they held when actively practicing prior to retirement and when last insured by MLMIC. Coverage also includes defense costs if a claim is filed against them while volunteering. There is no new premium for this coverage, which is included through physicians' expired policies without impact upon any presently existing tail policies. (Business Wire, 4/2)

### **PRI Offers Weekly Virtual Peer Support to Sustain Medical Professionals During Pandemic Response**

Physicians' Reciprocal Insurers (PRI) recently announced the expansion of its peer support program for the medical professionals on the front lines of the coronavirus pandemic. PRI is hosting weekly virtual group sessions with a focus on self-care and stress management during the current crisis. Physicians who are not currently PRI insureds are welcome and encouraged to participate, and all participation is anonymous. "The coronavirus pandemic is causing unforeseen pressure on our healthcare system's greatest assets, its medical professionals," said Sanford Goldberg, MD, medical director at PRI. "PRI is dedicated to supporting those risking their own wellbeing, and often that of their families, to fight this disease. By providing a forum for these professionals to concentrate on self-care and healing, we hope they will be better able to face this great challenge." (PRI, 3/30)

### **Telehealth Best Practices Webinar Series**

The Doctors Company is working to enable practices to implement telemedicine services, especially those practices and providers who are finding their patient volume has fallen due to COVID-19. Medical Advantage Group, a wholly owned subsidiary of The Doctors Company, is offering a series of webinars that will share lessons learned from helping many practices implement virtual visits with the onset of COVID-19. Topics include a brief background on telehealth, 2020 lessons learned relating to telehealth technology selection, HIPAA compliance considerations, practice workflow and operations, and billing and coding to drive reimbursements. The series is offered at various dates and times throughout the next week. (The Doctors Company, 3/30)