

EDITORIAL

Emergency Response and Liability Laws

Nancy H. Nielsen, MD, PhD

In February, a Continental Express plane crashed in Buffalo, NY, killing all 49 people aboard as well as a man whose house was incinerated. First responders and physicians rushed to the scene, but there was no one to save in the wreckage.

Tragedies such as this have always brought out the best in physicians, who have been on the front lines of emergency response efforts time and again. Sometimes the simple act of helping those in need can get complicated, however.

Perhaps you are familiar with the case of Anna Maria Pou, MD, a cancer surgeon who treated patients at New Orleans' Memorial Medical Center during Hurricane Katrina and its aftermath. Instead of leaving the city before the storm hit, Dr Pou stayed behind to help as many patients as she could.

Fifteen feet of water and the well-documented poor response in evacuating those trapped in the city kept Dr Pou, nurses, and patients in the hospital for 4 days. Despite the deplorable, chaotic conditions in which Dr Pou and her staff worked—no electricity, 100° heat, limited food and water—they treated patients as best they could in what must have been an unbearable situation.

For her heroic efforts, Dr Pou was arrested in July 2006, accused of intentionally killing several patients by administering lethal amounts of pain medication to them.¹ Her arrest made national headlines. A year later, a grand jury decided against indicting Dr Pou on murder charges.²

Every physician's worst nightmare is civil liability; in this case, Dr Pou faced criminal liability as well. Her ordeal illustrates the apprehension about liability exposure and a lack of guidance on the scope of liability that medical emergency responders face. And these concerns may make physicians, nurses, and other health care professionals wary of responding during emergencies, according to a study published in the June issue of the American Medical Association (AMA)'s *Disaster Medicine and Public Health Preparedness*.

Sharona Hoffman's study finds that US liability law is a patchwork with many gaps and inconsistencies that do not always protect health care providers during emergencies.³ Hospitals or clinics that donate their time, space, supplies, and resources to emergency response efforts and individual responders who continue to receive salaries from their employers are at the greatest risk.

The absence of liability protection is of concern because these health care professionals are likely to be on the front lines as hundreds or thousands of patients rush to emergency departments, clinics, and physician offices. They could be sued and found liable for a variety of decisions and actions made during a public health emergency.

We need better state and federal laws to provide immunity to physicians in disaster situations, laws that will reassure physicians that they will not be unfairly punished for rushing to help or staying behind to do their jobs.

No single federal law gives physicians working in federally declared disasters or emergencies comprehensive protection from civil or criminal liability. Some civil liability protection exists, but it depends on the physician volunteer's status and, in some cases, where the physician is providing care.

And state laws do not go far enough. All 50 states have limited laws that provide some level of liability protection for volunteers responding to a public health emergency, but both studies note that more legislative clarification is needed.

This is a symptom of the nation's overall medical liability problem, which the AMA has been working aggressively to solve. Through a 2-pronged approach to reduce medical liability premiums, the AMA continues to advocate for federal reforms while working in concert with state medical associations to enact and defend strong medical liability reform laws.

As part of this approach, the AMA is researching and examining the need for medical liability reform from a number of different angles in the form of policy research perspectives, research papers written by AMA staff. The AMA recently released 2 new research perspectives, one focusing on premiums and another on indemnity and expense payments.

I urge you to learn more about what the AMA is doing to reform the nation's medical liability system. Through a collective effort to spur reform, we can ensure that other physicians do not face the same circumstances that Dr Pou did. We can help secure medical liability laws that promote access to quality care and do not obstruct doctors' ability to treat patients. And we can empower physicians to do what they have done through the ages, which is to help those in need.

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