



How COVID-19 Will Affect Medical Malpractice and You

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✓ Fact Checked

STORY AT-A-GLANCE

- › A largely hidden issue of the COVID-19 pandemic is the risk of medical malpractice, and the consequences for you, health care workers and hospitals alike
- › New Jersey has granted civil and criminal immunity to health care providers battling COVID-19. Sweeping civil and criminal immunity has also been granted in New York, including for nursing home executives
- › Michigan, Massachusetts, Illinois and Connecticut have also issued immunity laws for malpractice related to COVID-19, and Iowa lawmakers introduced a bill to grant broad protections to health care providers, hospitals, nursing homes and a variety of other businesses in early June
- › The problem with handing out broad immunity to any and all health care providers and executives is that it may lower the quality of care. If you know you cannot be sued under any circumstance, you're less likely to take all the precautions necessary to avoid making a mistake
- › During the COVID-19 pandemic, many doctors have been asked to provide care outside their area of expertise, which increases the risk of errors occurring

A largely hidden issue of the COVID-19 pandemic is the risk of medical malpractice, and the consequences for patients, health care workers and hospitals alike. As noted by Epic Brokers:¹

“There is ... a risk of increased professional liability claims arising from COVID-19. Claims for alleged failures to properly test, treat, or diagnose are expected.

Negotiations are ongoing with state and federal governments to provide immunities to providers on the front lines of COVID-19 response. Some states have granted immunity to front line healthcare providers and healthcare organizations, as well as expanded ‘good Samaritan’ protections.”

Indeed, New Jersey² has granted full immunity – both civil and criminal – to health care providers battling COVID-19. Sweeping civil and criminal immunity has also been granted in New York. New York Governor Andrew Cuomo who, against federal guidelines, ordered ill equipped [nursing homes to accept COVID-19 patients](#), also granted immunity to nursing home executives.

The immunity rule was reportedly³ issued after the Greater New York Hospital Association donated more than \$1 million to the New York State Democratic Committee. Two New York legislators have since introduced a bill that would repeal Cuomo’s blanket immunity.⁴

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Medical Errors Are Third Leading Cause of Death in the US

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It is likely this immunity to prosecution led to the egregious ethical and medical breeches documented by the undercover nurse Erin Marie Olszewski at the epicenter of the pandemic, Elmhurst Hospital in New York, which you can see in the section below.

Even without the pandemic, **medical errors** are the third leading cause of death in the U.S., according to Johns Hopkins patient safety experts.⁷ According to their data, 9.5% of all annual deaths stem from medical errors, including misdiagnoses and treatment mistakes. The situation may be even worse than that, however.

According to the 2017 paper,⁸ "Your Health Care May Kill You: Medical Errors," more than 90% of medical errors go unreported. Even so, medical error rates in the U.S. are "significantly higher" than those in other developed countries, including Canada, Australia, New Zealand, Germany and the U.K., the paper notes.⁹

The 2017 Commonwealth Fund report,¹⁰ "Mirror, Mirror 2017: International

Comparison Reflects Flaws and Opportunities for Better U.S. Health Care” also points out that the U.S. health care system continually ranks LAST in patient outcomes when compared to other high-income nations. This, despite the fact that the U.S. health care system outspends all other countries.

Nurse on the Frontlines of COVID-19 Shares Her Experience

While it’s important to not hold health care workers to irrational standards in the midst of an outbreak of a novel, never-before-seen disease, giving everyone a free pass no matter how obviously egregious their negligence can also put patients at unnecessary risk.

A standout case in point is the Elmhurst Hospital Center, a public hospital in Queens, New York, which has been “the epicenter of the epicenter” of the COVID-19 pandemic in the U.S. In a heavily censored interview, nurse Erin [Olszewski addresses a number of problems at Elmhurst](#), including the hospital’s:

- Rule to not resuscitate COVID-19 patients
- Lax personal protective equipment (PPE) standards
- Failure to segregate COVID-positive and COVID-negative patients, thereby ensuring maximum spread of the disease among noninfected patients coming in with other health problems
- Listing COVID-19 negative tests as positive
- Routine use of mechanical ventilation of all COVID-19 patients

Of these, the seemingly systematic mislabeling of negative COVID-19 tests as

positive and the routine use of mechanical ventilation are perhaps the most abhorrent, as it has undoubtedly led to the unnecessary death of many.

In her undercover video, Olszewski talks about how a stroke patient ended up contracting the disease due to being placed in the same room as a COVID-positive patient. He ended up on mechanical ventilation, drastically increasing his chances of dying due to lung damage.

Part of why mechanical ventilation is so dangerous is because you are given sedatives and paralytics. You're essentially asleep for the duration, which could be up to a month. "There's no way you can recover from something like that," Olszewski says. What's worse, according to Olszewski, many patients are not even told that they will be put to sleep. They're merely told they will receive breathing assistance.

In a chilling conversation, a physician states that not a single patient has been successfully extubated and released since the pandemic began, and many of these weren't even COVID-19 positive to begin with. In a case like this, should hospital staff and administrators really get off scot-free?

July Is Medical Malpractice Awareness Month

A July 2, 2020, blog post¹¹ by the law firm Ashcraft & Gerel lists "10 surprising facts about medical negligence and error in the U.S." Among them:

- More than 92% of American and Canadian physicians report having been involved in a medical error and "near misses"
- 1 in 25 hospital patients develops a preventable infection during their stay
- 1 in 4 Medicare patients is injured or killed by medical negligence in the

hospital

- Human failures are responsible for 80% to 90% of all medical errors
- An estimated 1 in 3 seniors receiving care in skilled nursing facilities experience preventable adverse events

Despite the continuous rise in preventable medical errors, the rate of successful medical malpractice claims declined 55.7% between 1992 and 2014. Even when there's strong evidence of negligence, physicians are acquitted half of the time, and up to 90% of medical malpractice claims are dropped without payout.

Pandemic Accelerates Risk Management Changes

According to The Health Care Blog,¹² “the pandemic might ultimately ... accelerate changes in the way health care organizations think about risk management and their insurance coverage for it.”

In the video above, Margaret Nekić, CEO of Inspirien — a hospital-and-physician-owned medical malpractice and worker's comp insurance company — discusses how liability carriers are responding to the changes brought by COVID-19.

For example, during this pandemic, many doctors have been asked to provide care outside their area of expertise, which increases the risk of errors occurring. They're also using modified equipment. Of course, SARS-CoV-2, being a novel virus, did not, and still doesn't, have a clear-cut treatment strategy, and doctors have had to experiment and innovate.

Health care workers are also providing testing outside of medical facilities, and while doctors are typically covered by their malpractice insurance regardless of

where they work, most nurses are covered by the hospital in which they work, and may therefore not be covered if they're providing testing or care in other facilities.

The Problem With Standard of Care

Now, while Johns Hopkins researchers have identified “unwarranted variation in physician practice patterns that lack accountability” as one of the primary contributors to medical errors,¹³ one could just as easily argue that the requirement to adhere to “standard of care” protocols may actually be part of the problem.

Doctors are afraid to deviate from the standard of care, even when they disagree with it wholesale or believe it might not be in a specific patient's best interest, because this is the easiest way to get sued for malpractice.

It's “easier” to let someone die than risk losing their medical license by doing something differently. This includes prescribing dangerous medications based on generalized recommendations rather than following a more individualized system of care.

As it pertains to COVID-19, we've seen how Elmhurst hospital has continued using mechanical ventilation even though front-line workers and researchers have stepped forward, warning that [ventilation kills more COVID-19 patients than it saves](#) and doesn't appear to be an appropriate treatment for this disease.

We've also seen how early treatment with [hydroxychloroquine and zinc](#), despite getting high marks from critical care doctors around the world, has been suppressed in the U.S. — based on [fraudulent research](#), I might add — and both

doctors and pharmacists have been warned they risk losing their medical license if they prescribe it.¹⁴ This, despite the fact that there really is no other carefully vetted COVID-19 treatment available yet, as potential therapeutics are still under investigation.

'Pious' Patients Are Most Likely to Die

Back in 2012, I [interviewed Dr. Andrew Saul](#) about his book, "Hospitals and Health: Your Orthomolecular Guide to a Shorter Hospital Stay," in which he discusses the risks hospitalized patients face.

In it, he points out that knowing how to play "the hospital game" can help save your life. Importantly, so-called pious patients – those who keep quiet and question nothing – are the most likely to get killed.

One of the best ways to safeguard your health and life during a hospital stay is to bring a personal advocate, someone who can speak up for you and ensure you're given proper care – especially if you're so sick you cannot do so yourself.

Unfortunately, this pandemic has prevented family members from visiting those that are hospitalized to act as their advocates. Many times, this leaves them at the mercy of hospital staff and physicians that are immune from prosecution and negatively motivated to consider any natural therapy, even something as simple as [vitamin D](#), for fear of repercussions from violating the "standard of care."

This makes it even more important, if you are ever hospitalized now, to question everything. It's also important to remember you have the right to do so. As noted by Saul in that interview:

"The most important thing to remember is this: the hospital power structure. No matter what hospital you go into ... the most powerful person in the most entire hospital system is the patient ...

You might have set that up with a document. If you have a power of attorney, a living will, or other types of paperwork or someone is responsible, then we know who's responsible. But let's say that it's just an ordinary situation – the patient has the most power – [but] the system works on the assumption that the patient will not claim that power ...

A patient can say, 'No. Do not touch me.' And they can't. If they do, it's assault, and you can call the police. Now, they might say, 'Well, on your way in, you signed this form.' You can unsign it. You can revoke your permission.

Just because somebody has permission to do one thing, it doesn't mean that they have the permission to do everything. There's no such thing as a situation that you cannot reverse ... the patient has the potential to put a stop to anything; absolutely anything.

If the patient doesn't know that, if they're not conscious, or if they just don't have the moxie to do it, the next most powerful person is the spouse. The spouse has enormous influence and can do almost as much as the patient. If the patient is incapacitated, the spouse can probably do much more than the patient.

If there is no spouse present, the next most powerful people in the system are the children of the patient ... You'll notice that I haven't noticed doctors or hospital administrators once. That's because they

don't have the power. They really don't. They just want you to think that [they] do.

It is an illusion that they run the place. The answer is – you do. They're offering you products and services, and they're trying to get you to accept them without question ...

[W]hen you go to the hospital, bring along a black Sharpie pen, and cross out anything that you don't like in the contract. Put big giant X's through entire clauses and pages, and do not sign it. And when they say, 'We're not going to admit you,' you say, 'Please put it in writing that you refuse to admit me.'

What do you think your lawyers are going to do with that? They have to [admit you]. They absolutely have to ... It's a game, and you can win it. But you can't win it if you don't know the rules. And basically, they don't tell you the rules. In [the book] 'Hospitals and Health,' we do."

Surviving COVID-19

There are no easy answers when it comes to COVID-19, but considering you may not have the ability to sue for malpractice under any circumstance (depending on where you live), taking a keen interest in your treatment would be advisable.

I've written several articles over the past few months detailing some of the treatments that appear to be among the most effective, such as the [MATH+ Protocol](#) and early intervention with hydroxychloroquine and zinc.

For home use, at first sign of symptoms, you could try [quercetin in lieu of](#)

hydroxychloroquine, as the primary mechanism of action in COVID-19 is their ability to shuttle zinc into your cells, and it is the zinc that provides most of the benefits. **Ketone esters** may also be helpful for certain symptoms.

Importantly, rather than waiting for a likely harmful vaccine, get proactive and start optimizing your vitamin D level. You can learn more about this in “**The Most Important Paper Dr. Mercola Has Ever Written**” and “**How to Fix the COVID-19 Crisis in 30 Days.**”

As the old adage goes, an ounce of prevention is worth a pound of cure. Your safest bet to avoid becoming a medical error statistic is to stay out of the hospital, and to avoid hospitalization for COVID-19, you really need to focus on strengthening your immune function and reversing any underlying **comorbidities such as insulin resistance** and obesity.