

## AUA Inside Tract Podcast Transcript

### Episode 99

#### *COVID-19 and Your Practice: What to Know about Liability*

**Host:** As COVID-19 continues to spread across the United States, doctors and other healthcare providers are stepping up to assist in the effort. Some of these volunteers are relicensed or recently licensed providers, some have retired from practice and are coming back to work and some are even coming from out of state or working with an expanded scope of practice. Today, on the "Inside Tract," we're talking to Mr. Mike Stinson, he's the Vice President of Government Relations and Public Policy at the Medical Professional Liability Association, MPLA and we're going to better understand what urologists need to consider in terms of liability protections during this COVID-19 pandemic. Tell us about the Medical Professional Liability Association.

**Mike Stinson:** The Medical Professional Liability Association is a trade association representing the Medical Professional Liability community. We used to be known as medical malpractice insurance companies, but that terminology has changed over the years to medical professional liability. And the way insurance has provided this has also changed over that time. While it used to be a lot of single-state insurance companies that were owned and operated by the physicians that they provided the insurance to, it's really expanded in recent years so that we are all different types of insurance providers, including self-insurance entities and captives, which are other entities that provide their own insurance for themselves rather than going through a third-party. We do make up about 60% of the insured healthcare providers in the U.S. through our member companies. So, we are representing the vast majority of companies providing coverage throughout the country.

**Host:** Can you tell us about what you're seeing right now on a national level and in the state level as well in terms of medical liability protections for physicians? Also, if you don't mind touching on how these protections differ from good Samaritan laws, I'd be curious to hear that too.

**Mike Stinson:** Sure. Let me start off at the national level. Ever since the outbreak of the Coronavirus, we've been looking for ways that we can try to help protect the people that are on the front lines of the battle against the pandemic. And one of the approaches we've taken is we reached out to leaders on Capitol Hill and we're able to work with them to include some protections for volunteer healthcare providers in the third stimulus package that was passed. These protections specifically apply to those who are not being compensated for the care they're providing and applies for the duration of the national

pandemic declaration. We would like to have seen a little bit more, but the circumstances only allowed us to go that far at the time. What we're seeing now at the state level is much more comprehensive efforts to provide protections to all types of different healthcare providers and facilities.

We've had several states that had governors issue executive orders, which either waive provisions of law or clarify provisions of law regarding liability protections to the point where, in many of these states, I believe it's seven or eight now that have had these executive orders produced. Healthcare professionals and facilities are given full immunity, absent gross negligence or willful misconduct from any actions that they take throughout the duration of the state declared emergencies or disaster declarations. And the benefit of this is that it goes beyond just those who are providing care to COVID-19 patients or those who are suspected of having the illness to cover all levels of healthcare that are being provided, which was a really good acknowledgment that even healthcare professionals who weren't treating victims of the outbreak right now are still being affected in the way that they provide care.

Now, we are continuing our efforts at the national level, even though we got those volunteer protections included in and are reaching out to leaders on Capitol Hill to try to encourage them to adopt the same kind of protections that these states have put in place. And so, we are pushing for full liability for healthcare professionals and facilities throughout the public emergency declaration that currently exists in the United States, and we're getting some positive response to that right now. It's too soon to tell if that will be accepted into a future stimulus package but we are continuing to promote that along with our allies in the medical community.

Then you asked how they're different from good Samaritan protections. Good Samaritan protections are kind of limited in many ways and it varies from state to state depending on exactly how their laws are written. But in general, good Samaritan protections are intended to apply to a healthcare provider who comes upon an emergency situation and responds to it then. It's a little different from the protections we put into the previous stimulus package because that applies to situations where people are coming to the healthcare professionals or the professionals are coming to a disaster site but not just happening upon it, they're coming to it with the intention of providing care. And in some states, that wouldn't actually fall under a good Samaritan definition, so that it wouldn't apply.

**Host:** In terms of medical liability protections for physicians fulfilling different roles during this pandemic, you know, what proactive measures has the MPLA

taken with specialties in the AMA to raise lawmakers' awareness of the unique medical liability issues that are in play right now?

**Mike Stinson:** Well, we've done a lot of outreach. As I mentioned earlier, in the early days of the association, most of our members were made up of companies that were actually owned and operated by the insurance themselves. And even though that's changed a little bit over the years, we still feel like we have a very direct and close connection to the medical community. We're not just the people providing their insurance, we're the ones who are kind of with them on the frontlines of all the situations they're facing. And so, as this has developed, we work not just with the American Medical Association, but with numerous specialty and subspecialty organizations to try to coordinate all our advocacy efforts, especially at the federal level but even in some of the states throughout the U.S. as well.

And we've done that by mostly working through a coalition we have called the Health Coalition on Liability and Access. And this gives us a format where we can all come together, discuss strategies, discuss different advocacy approaches and try to determine the best messages to get across, the best way to deliver our messages and more importantly than anything else, making sure that the messages we're transmitting are unified, that we're all talking from the same page and all coordinating our efforts. Because in the end, we're all focused on the same goals, making sure that healthcare providers are protected from unwarranted lawsuits so that they can focus their talents and their time and their efforts on providing the highest level of care possible. And especially at this time when healthcare professionals and the facilities are being so taxed and facing such trying circumstances, it's really important to make sure that they're given as much flexibility to do that as possible without having to worry that that flexibility, which is really, you know, to the patient's advantage isn't going to be used against them by personal injury worries down the road.

**Host:** In some cases, we're seeing urologists being called upon to volunteer to take care of COVID-19 patients, which of our members, our AUA members understand about malpractice and liability in these unique situations and what questions should they be asking their carrier?

**Mike Stinson:** We think one of the most important things to remind folks is that it's critical that they maintain communications with their insurance company. I've received a lot of questions over the last few weeks about, well, what's the average medical liability policy look like? Or what are the carriers doing in this one? And it really varies a lot from state to state and even sometimes from company to company. So, we encourage folks, if you're going to have any deviation from your normal practice, if you're heeding the call to go

out of state to help in a state where maybe there's more of a crisis situation than what you're currently facing in your state, or if you're being asked to perform outside the normal scope of your activities, get in touch with your insurer, tell them what's going on.

In many cases, under the policies, that our companies write, they're going to tell you you're already covered regardless of which state you're in and as long as you're not doing a dramatic change and practicing something you've never attempted before that's well outside the scope of your usual practice, they're going to tell you you're covered. In cases especially where urologists and other specialists are being asked to do things a little more basic, you know, triage of patients, diagnosis of patients and things like that, again, in the overwhelming number of cases, your policies are going to cover that. But it's always a good idea just to touch base with the insurer and let them know so that if for any reason you've got a policy that's more restrictive than the ones I've just described, they can make sure to make adjustments to that to allow you to do whatever it is you need to do.

**Host:** What are some of the policy actions that states have taken in terms of protections for physicians and providers right now?

**Mike Stinson:** Sure. There's really two major things that are going on at this point. As I mentioned earlier, in several states, governors have taken the initiative and put in place executive orders which are providing liability protections for all levels of healthcare providers and facilities as well in many cases. In many of these circumstances, that's because the state laws had already given the governor the authority to waive provisions of state law, which interfered with an emergency response to a situation like this. We've seen New York was very proactive in doing this, Illinois, Connecticut, just to name a few where they've taken quick steps through executive action to put these in place. We've also found that there are a number of states that were in some ways even more proactive because they already had laws on the books that said in the event of a state disaster declaration or state public health emergency, liability would be waived for healthcare providers who are responding to the emergency or who are supporting the state's efforts.

And obviously, with the COVID virus being so widespread, really any activity performed to improve the healthcare situation right now is really in support of the state's efforts, at least in our interpretation of this. Now, we have been informed that there were some states where the governors don't necessarily have the authority to grant these liability protections and in some of those cases, states are actually already looking at legislation that they could put forward in the short-run in order to provide these liability protections. In fact, the MPL

Association has produced several model bills that we've been sharing with other organizations around the country and encouraging them that if they don't have the ability to get an immediate executive order, they should consider requesting an emergency session of their legislatures to take action to provide these kinds of protections because it really is necessary to ensure that our healthcare professionals are getting as extensive protection from unwarranted lawsuits as possible at this time.

**Host:** Do you have maybe a top takeaway for our audience today about what you would want them to come away from this discussion with knowing and maybe the most important thing to keep in mind?

**Mike Stinson:** Three things come to mind. One is just be cautious, don't assume that you have protections or that you will be protected simply because you're doing the right thing. Unfortunately, in our litigious environment, that's not always the case. And so, I would definitely recommend that look at the situation, figure out what else you need to do, and as I mentioned before, contact your medical liability insurer to make sure that if liability protections aren't in place in your state, that your coverage is going to be adequate to address the circumstances you may be facing. The last thing I would say is while we have some states that have taken action, others haven't yet, but that doesn't mean they necessarily won't do that and they need to hear from not just my members, the medical liability insurers, but also from the folks who are on the frontlines. So, if you haven't seen any action taken in your state yet to put liability protections in place for those who are responding to this public health emergency, I would definitely encourage folks to contact their governors, contact their state legislators and ask them to take swift action to get those protections in place as soon as possible.

**Host:** Mike Stinson has been our guest today on the "AUA Inside Tract" podcast. He is the Vice President of Government Relations and Public Policy at the Medical Professional Liability Association. Thank you so much for joining us, Mike.

**Mike Stinson:** Thank you, and the AUA for the opportunity to appear today.