

May 29, 2020

The Honorable Nancy Pelosi, Speaker
United States House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kevin McCarthy, Leader
United States House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mitch McConnell, Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Schumer, Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Re: Liability Protections for Physicians, Nurses, and Other Clinicians Providing Care During the COVID-19 Pandemic

Dear Speaker Pelosi and Leaders McConnell, McCarthy, and Schumer:

As the specialty organizations representing rehabilitation physicians and nurses, we sincerely appreciate the actions taken by Congress to help physicians, nurses, and other health care clinicians providing care on the frontlines of the COVID-19 pandemic. As Congress considers future legislative action in response to the public health emergency, particularly as it considers liability protections for businesses and employers, we urge Congress to provide greater liability protection to preserve and protect the health care workforce of physicians, nurses, and other clinicians providing care during the COVID-19 pandemic.

The American Academy of Physical Medicine and Rehabilitation (AAPM&R) is the national medical specialty organization representing more than 9,000 physicians who are specialists in physical medicine and rehabilitation (PM&R). PM&R physicians, also known as physiatrists, treat a wide variety of medical conditions affecting the brain, spinal cord, nerves, bones, joints, ligaments, muscles, and tendons. PM&R physicians evaluate and treat injuries, illnesses, and disability, and are experts in designing comprehensive, patient-centered treatment plans. Physiatrists utilize cutting-edge as well as time-tested treatments to maximize function and quality of life.

The Association of Rehabilitation Nurses (ARN) is a professional nursing organization representing approximately 4,800 rehabilitation nurses, across specialty roles, acute and post acute settings of care, and more than 14,000 Certified Rehabilitation Registered and Advanced Practice Nurses. ARN supports efforts to ensure people with physical disability, and chronic illness have access to comprehensive, quality care in whichever care setting is most appropriate for them. Rehabilitation nurses take a holistic approach to meeting patients' nursing and medical, vocational, educational, environmental, and spiritual needs. Rehabilitation nurses begin to work with individuals and their families soon after the onset of a disabling injury or chronic illness. We continue to provide support and care, including patient and family education, which empowers these individuals when they return home, to work, or to school.

Due to the ongoing burden of suspected and confirmed cases of COVID-19, health care providers, including rehabilitation physicians and nurses, continue to heed calls to expand their day-to-day patient care responsibilities and join the frontlines in providing critical care to patients with COVID-19. Rehabilitation physicians and nurses, like all physicians and clinicians, are currently under tremendous burdens as they work to help COVID-19 patients survive this pandemic, in addition to fulfilling their more traditional rehabilitation roles, such as restoring pulmonary function and addressing muscle weakness and debility. The current state of health care in many areas of the country has driven rehabilitation physicians and nurses to treat acute care overflow patients in inpatient rehabilitation facilities (IRFs), including make-shift hospital units in

rehabilitation gyms, and work with fewer staff as frontline workers contract the virus and must be quarantined. These circumstances raise concerns regarding the threat of medical liability lawsuits for rehabilitation health care providers, due to circumstances that are beyond their control.

We appreciate Congress' acknowledgement that liability is a significant obstacle to health care providers and their efforts to expand liability protections in the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), particularly to provide civil immunity to physicians and clinicians who volunteer to provide care during this public health emergency. However, we strongly urge Congress to consider broader liability protections for all physicians, nurses, and other clinicians as they continue their efforts to care for patients under these uncertain conditions. Congress should provide additional protection by extending broad civil immunity to physicians and other clinicians for any injury or death alleged to have been sustained directly as a result of an act or omission in the course of providing medical services in response to the COVID-19 pandemic, with exceptions for gross negligence or willful misconduct. This protection should also explicitly limit provider liability for harm resulting from government directives to cancel, delay, modify (e.g., treatment via telehealth) or deny care as a result of the COVID-19 pandemic.

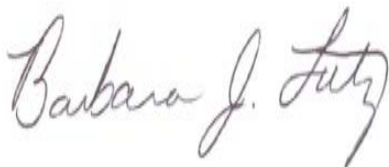
During this trying time and in future public health emergencies, health care providers should not be deterred from providing necessary and potentially lifesaving care, due to the threat of medical liability lawsuits, especially when providing care in unprecedented circumstances beyond their control. Healthcare professionals are already risking their lives in treating COVID-19 patients; they should not have to risk their livelihoods.

We thank you and your colleagues for your continued leadership during this time of crisis. If you have any questions or if we can be of further assistance to you, please contact Reva Singh, AAPM&R Director of Advocacy and Government Affairs, at rsingh@aapmr.org and Jeremy Scott, ARN Health Policy Associate, at jeremy.scott@PowersLaw.com for further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle S. Gittler". The signature is fluid and cursive.

Michelle S. Gittler, MD, FAAPMR
President, AAPM&R

A handwritten signature in black ink, appearing to read "Barbara J. Lutz". The signature is fluid and cursive.

Barbara J. Lutz, PhD RN CRRN PHNA-BC FAHA FNAP FAAN
President, ARN