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***Protection of Physicians and Other  
Health Care Professionals from  
Criminal Liability for  
Medical Care Provided***

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The American College of Emergency Physicians (ACEP) supports protection from inappropriate application of criminal liability for medical care provided by physicians and other health care professionals in good faith, absent of criminal intent. Certainly, there is precedent for potential civil liability in alleged substandard medical care events. However, the imposition of criminal liability for adverse outcomes related to medical care provided in good faith, absent of criminal intent, is without precedent until recently. We object to the disproportionate application of criminal law statutes and prosecutorial discretion that would adversely impact and influence the provision of medical care.

As with any potential medical misadventure, although there is often focus on individual performance, the system-based issues can have an even greater influence on patient care outcomes. Therefore, medical institutions and organized health systems bear responsibility, as well, for potential adverse patient care adverse events.

This responsibility should manifest as ensuring proper resources - specifically safe work conditions, adequate staffing, proper education with training, advanced technology, ability to report and analyze error without retribution, and flexible, scalable resource allotment. That adverse care events may be influenced by circumstances outside of individual control should be acknowledged, as part of the judicial process.

The legal system and legislatures should recognize that the introduction of inappropriate or disproportionate use of criminal law statutes as they apply to medical adverse events or errors has the potential to adversely impact future disclosure in the culture of safety, as well as other adverse impacts such as bias against caring for patients at any risk of complications or bad outcomes thus making it more likely that such patients will be sent more often to emergency departments, even when this is not necessary.

**Recommendations**

As a means of ensuring a safe and effective patient care process and proper accountability for potential error, ACEP believes:

Medical Issues

- An established culture of safety requires the ability to disclose, analyze and improve subsequent medical care if an adverse event or error is encountered, including error with harm resulting, harmless errors, and near miss events.
- Quality improvement efforts focus on peer protection and blame free disclosure to improve future processes, which would be hindered by the specter of criminal liability for routine patient care events.
- The interface between human intervention and automation advancement should be tailored to the individual institution, have the ability to adapt to unique patient care events, and utilize end-user feedback to improve the product or system.
- There should be a focus on certification, training, and continuing education when utilizing patient care assistive technology.
- Institution based physicians and other health care professionals should be able to rely on the integrity of institutional endorsed patient safeguards, automation, and alarm or warning systems.
- This system utilizing patient care technology should acknowledge the well validated adverse impact of “alarm fatigue” occurring in acute care settings, and develop a vendor partnered system to deliver only valid and appropriate warning alerts.
- Institutional based physicians and other health care professionals should trust that their institution supports and is committed to a safe working environment with adequate staffing, systems, technology, and flexibility to accomplish the patient care mission.

Legal Issues

- A basic premise of jurisprudence is the right to be judged by a group of one’s peers. Obviously, a criminal proceeding forgoes a peer review and expert panel medical standards evaluation. We endorse the latter as being necessary to a reliable professional liability analysis.
- Any health care professional should be able to rely on their medical institution to protect them from inappropriate or disproportionate criminal liability for good faith provision of patient care events absent of criminal intent.
- In general, a crime involves three crucial elements: act or conduct, mental state, and proximate causation to the defined event. Each specific defining element must be proven independently to be appropriately charged under a criminal statute.
- Historic descriptions of unlawful killing, such as criminal homicide, murder, manslaughter, and negligent homicide are not well adapted to medical situations.<sup>1</sup>
- Criminal negligence requires that one be aware of a substantial and justifiable risk and that such risk is ignored resulting in a gross deviation from the accepted standard of care.<sup>2</sup>
- Reckless homicide requires that the reckless conduct, defined as being aware of significant and unjustifiable risk, purposely disregarded that risk that resulted in patient death.<sup>3</sup>
- Every physician and health care professional should be able to rely on their institution to provide capable legal counsel, resources, and support when criminal negligence is alleged and for liability related to institutional responsibility.<sup>2</sup>

**References**

1. Model Penal Code § 210.1-4.
2. Tennessee Code Title 39-Criminal Offenses Chapter 13-Offenses Against Person § 39-11-106. Criminal Negligence.
3. Tennessee Code Title 39-Criminal Offenses Chapter 13-Offenses Against Person § 39-13-215. Reckless Homicide.