

# Understanding the Medical Malpractice Claims Landscape Post-Covid-19

By: Curi

The COVID-19 pandemic severely affected physicians and their practices across virtually every specialty and geographic region; and as we begin to emerge from the height of the crisis, understanding what lies ahead from a potential claims perspective is key to a successful future.

In the wake of the pandemic, medical practices closed, providers' offices reduced their staff, physicians took an income hit, and many practices struggled to stay in business. On top of all of these challenges, lawsuits involving pandemic-era care are starting to get filed, further exacerbating stress and anxiety among physicians and practice leaders.

One way to combat the fear associated with potential liability claims is to remain informed and prepared, understanding what the future of medical malpractice trials will hold.

## Medical Malpractice Claims, Verdicts, and Liability Immunity

In March 2020, medical malpractice trials across the country screeched to a halt. As the country opens back up, a significant number of trials that were put on hold have resumed, and the industry is starting to see some trends take shape.

For the time being, practices should expect that trials may continue in part via videoconference technology to allow remote participation of jurors and/or witnesses.

Though it's unlikely that medical malpractice trials will be conducted completely virtually, many courts are experimenting with hybrid models that incorporate both teleconference technology and socially distanced in-person proceedings.

Despite the pause and back-log in trials, we have already seen some pandemic-era claims get filed. The initial wave of claims focused on long-term care facilities, but claims against physicians are starting to trickle in. The result of these claims—particularly those related to COVID-19-specific issues—may be significantly influenced by federal and state law designed to provide some level of immunity for physicians.

Available immunity varies significantly depending on each state, from none to comprehensive. If immunity is in place, plaintiffs are likely to have to prove gross negligence to circumvent it; therefore, plaintiffs' lawyers likely will get "creative" with their claims. As a result, pandemic-era claims are likely to become increasingly complex and more expensive than traditional medical malpractice cases.

The lack of precedent for the application of potential federal and state immunity also leads to many questions. What types of claims will be brought against physicians? Will jurors of the future recall the battlefield environment doctors faced when trying to administer care in 2020? How expansive will federal or state immunity be? Will immunity survive challenges by the plaintiffs' bar?

The answers to many of these questions are still unknown. However, Curi will continue to remain vigilant on these issues to provide the best protection for our members as they face various liability claims in the future.

## **Litigation Finance**

Early in the pandemic, industry experts speculated about whether the difficulty of holding trials and the inevitability of delays would cause plaintiffs to be more interested in negotiating discounted settlements as an alternative. However, historically, plaintiffs' lawyers are accustomed to weathering "dry spells," and the pandemic did not seem much different.

Widespread bargains have not been reported. It's my opinion that the pre-pandemic trend of severe verdicts will not go away, and they have only paused because trials were suspended en masse.

In fact, as plaintiffs' law firms attempted to survive 2020's dry spell, many turned to third-party litigation funding to help keep them and their clients afloat. This uptick may hinder defendants' ability to settle outside of court.

Litigation funding companies provide cash advances to plaintiffs and only require payback if the plaintiffs receive a recovery in their lawsuits. If plaintiffs are receiving financial assistance, they may be less likely to agree to a reasonable dollar amount to settle the case and may be more willing to "take their chances" at trial. Furthermore, the funding company, not just the plaintiff, may also have a say in whether the case is settled or tried against the physician.

Some litigation funders tout "networks" of healthcare providers that will treat the plaintiff at no cost to the patient, billing only the funding company directly at negotiated rates. It's easy to see that this model fosters increased scope and duration of treatment, which in turn, drives up the dollar amount of a plaintiff's damages claim in the lawsuit.

Given these circumstances, it's imperative that lawyers defending medical malpractice cases to root out this information in discovery.

At Curi, our claims experts work closely alongside external counsel to remain educated on the factors driving these types of trends. This awareness provides us with the ability to better successfully defend physicians and mitigate the chances of unnecessarily high verdicts when possible.

If you have any questions about the current malpractice claims landscape, please check Curi's News & Knowledge content for updates at [curi.com/news](https://curi.com/news), or call 800-662-7917 to speak with an expert.

For more information and resources on COVID-19, please visit [Curi's Practice Command Center](#).