What legal challenges will affect patients and physicians in 2020?

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The AMA and the Litigation Center of the American Medical Association and State Medical Societies are poised for another busy year of being the voice of America’s medical profession in state and federal courts.

Through lawsuits, amicus briefs and other efforts, the AMA and the AMA Litigation Center pursue cases that are important to physicians and their patients. Brian D. Vandenberg, senior vice president and general counsel at the AMA, recently talked about what’s ahead in the legal arena this year.

Tanya Albert Henry: As we head into 2020, what do you see as the biggest medicolegal trends that physicians should keep their eyes on?

Brian Vandenberg: Physicians are increasingly burdened by third-party interference with the practice of medicine and patient care—by the government and by insurance companies. Government efforts to use physicians as mouthpieces to advance political agendas—under the guise of informed consent—will continue to be challenged in the courts as violations of physician-patient free speech.

And, I believe, interference in the form of prior authorization, step therapy and coverage denial will face increasing legal scrutiny. I also expect that issues impacting access to care will trend in 2020.

Henry: Are these a continuation of what physicians have seen in 2019, or new things on the horizon in 2020?

Vandenberg: These issues aren’t new, but I expect intensified focus in 2020 as existing cases make their way through the courts, as new challenges are brought and as health care is a key issue in 2020 elections.
Henry: The AMA has been fighting against “hybrid” medical liability lawsuits. Why do you think these are on the rise, and how’s the AMA working to combat the trend?

Vandenberg: Hybrid liability suits attempt to disregard medical malpractice liability caps by conflating distinct legal theories—an end-run around legislative tort reform. On the one hand, they are inevitable, as tort-reform opponents seek new ways to overcome caps on noneconomic damages in medical malpractice lawsuits.

On the other hand, they are disingenuous—a dangerous invitation for courts to trample on legislative authority. We’ll continue to advocate for meaningful tort reform, and will continue to challenge and file amicus briefs in abusive hybrid lawsuits.

Henry: The AMA has been active in the courts to protect the sanctity of the patient-doctor relationship and the importance of open, honest discussion in the exam room. Are there other trends you see in this space where the AMA might be getting involved?

Vandenberg: Yes. One can imagine any number of contexts in which government intrusion on the patient-physician relationship jeopardizes patient privacy, trust and care. The government doesn’t belong in the exam room, period, whether in the context of family planning or any other context. Patients need to able to trust their physicians, and we need to always make sure that doctors are working for their patients and not for the government. We’ll always fight to ensure that patients are not robbed of this trust.

Henry: What do you see as the biggest cases for physicians to follow in 2020?

Vandenberg: The biggest case to follow is clearly Texas v. United States (aka Texas v. Azar), which challenges the constitutionality of the Affordable Care Act and impacts access to care for tens of millions of Americans. We’ll remain active in arguing for the continued viability of the ACA.

Also, our challenge to the federal Title X “gag rule” in AMA v. Azar is important to follow. Its importance is not only in challenging a new rule that guts one of the most successful federal health programs in history, but also because the new Title X rule invites the government into the exam room, an unacceptable intrusion on the patient-physician relationship.

Henry: What is the potential impact of each case to physicians and to the practice of medicine?

Vandenberg: Access and trust. It’s really that simple.

Henry: What do you think is most commonly misunderstood by physicians about the work of the AMA Litigation Center?

Vandenberg: What’s most misunderstood is likely the volume and scope of cases in which the AMA
is engaged, advocating for physicians and patients in courts on issues that are essential to patient care. We’re currently involved in more than 60 lawsuits across the country, on issues ranging from health economics to health equity.