“Making a Case for Sanctuary Hospitals”

Last week, the American Medical Association (AMA) adopted a resolution in its House of Delegates, opposing the presence of federal Immigration & Customs Enforcement Agents (ICE) in hospitals, clinics, and outpatient centers. In a press statement, Andrew W. Gurman, MD, Immediate Past President of the AMA, said that “patients should not fear that entering a hospital will result in arrests or deportation. In medical facilities, patients and families should be focused on recovery and their health, not the ramifications of their immigration status.”

AMA’s resolution came several weeks after ICE agents in Texas arrested a 10-year-old girl with cerebral palsy shortly after her discharge from the hospital. While ICE has a discretionary policy to determine whether or not to take part in enforcement actions, including interviews, searches, or arrests in sensitive places such as hospitals and other medical facilities, “the federal immigration agency appears to be leaning to a ‘no limits’ immigration enforcement policy, where discretion in anything immigration is disappearing,” said Raymond Lahoud, Chair of the Immigration Practice Group at Norris McLaughlin & Marcus. “Hospitals, medical offices, courthouses—nothing is outside of ICE’s enforcement targets,” Lahoud added.

The AMA resolution has no real impact or binding effect. Individual hospitals, medical centers, doctors, physician groups, and other medical facilities are left on their own to determine what rights, if any, each would have when confronted by ICE agents at the hospital door. Some hospitals have taken a “sanctuary hospital” approach, adopting facility-wide standard operating procedures that require employees to deny ICE or any immigration-related agency, entry into a facility, for any reason.

In a recent article, Making a Case for Sanctuary Hospitals, three medical doctors made an argument in favor of “sanctuary hospitals.” They rely primarily on the emotional argument for adopting “sanctuary hospital” policies, citing several incidents that occurred between February and October of 2017, involving ICE agents at or near hospitals and other health care facilities. The doctors write about Sara Beltran-Hernandez, 26, an undocumented immigrant who in February 2017,

was bound by her hands and feet and removed by wheelchair from a Fort Worth, Texas, hospital by ICE agents while she was awaiting emergency brain surgery;

and about

Oscar Milan, a 37-year-old undocumented immigrant, who was arrested by ICE in June of 2017, on his way to pick up his newborn son who was recovering from surgery for pyloric stenosis at a Boston, Massachusetts, hospital.
Indeed, these stories sit close to one’s heart, and many hospitals have already responded by adopting “sanctuary hospital” policies.

Hospitals, doctors, hospital administrators, general counsels, and others, however, must step back and think years ahead, as the current administration’s immigration enforcement will only increase and become more aggressive in the years to come. “Any policy could have serious, negative implications, regardless of whether the policy permits or denies ICE and other federal agencies to investigate immigration-related violations,” said Norris McLaughlin & Marcus Chairman and Healthcare Attorney Matthew S. Sorrentino. “This is no simple task,” noted Sorrentino, “Before adopting any policy, it is important that medical providers consider the many relevant issues such as non-profit status, federal funding for every hospital department, Medicare and Medicaid, licensing, accreditations, and other private or public grants.”

Healthcare facilities must understand their rights and those of their patients before implementing any policy.

This Immigration Law Alert was written by Raymond G. Lahoud, Chair of the NMM Immigration Practice Group and Matthew R. Sorrentino, Chairman of the firm and Healthcare Attorney. If you have further questions or concerns in regards to this topic or any other immigration law issues, e-mail rglahoud@nmmlaw.com. For further questions in regards to this topic or other healthcare-related issues, e-mail msorrentino@nmmlaw.com.