

to contract the virus in the United States.

On Oct. 14, 29-year-old Amber

Vinson, a nurse who also had treated Duncan, reported a fever and was isolated within 90 minutes of

reporting the fever. She tested positive for Ebola the next day. Both nurses recovered. ■

Ebola: What You Need to Know Now

- **Lawsuits stemming from the care of Ebola patients are possible, but the plaintiff's burden of proof would be daunting.**

Employees, patients, or others who contract Ebola can sue the hospital for not preventing transmission, but the plaintiff would have to prove that the provider failed to meet the standard of care. For Ebola, the standard of care is changing daily, and the hospital would have a reasonable defense in proving that it followed the infection control standard at the time of treatment. However, some plaintiffs' attorneys will be eager to take on even cases with little viability, just for the publicity.

- **If a staffer refuses to come to work or care for a potential Ebola patient, tread carefully.**

You probably can discipline the employee, but doing so might not be the best choice. Ebola is no different than other infectious diseases that pose a hazard to healthcare workers: If the employee refuses to report to work, then the standard attendance policies that typically include progressive discipline can be followed. However, you should use caution and avoid termination if the employee has a specific concern about the safety of a situation. The National Labor Relations Act protects employees who engage other employees about the terms and conditions of employment, which includes workplace safety.

- **Expect a workers' comp claim if an employee is infected with**

Ebola.

Most state workers' comp laws will apply to healthcare workers who contract the disease in the course of their jobs. If the infection occurs because the employee didn't follow the prescribed infection control protocol, the hospital could have grounds to deny the workers' comp claim. However, workers' comp laws require you prove willful misconduct to support disqualification. Even gross negligence isn't enough. You would have to prove that the employee knowingly and willfully did something egregious, which is not likely with Ebola.

- **Reinforce with employees the importance of complying with the Health Insurance Portability and Accountability Act (HIPAA).**

Even staff well trained in HIPAA compliance can let their guard down when a patient is the subject of sensational news coverage and reporters are pestering everyone for information. Remind staff that HIPAA applies.

- **Consider an all-volunteer Ebola strike team.**

Some hospitals use this strategy to avoid the concerns about employees who don't want to care for Ebola patients. The volunteers can undergo much more training than you are able to provide for all staff, and they can be compensated for serving on the strike team.

- **Some hospitals are limiting the type of care they will provide to suspected Ebola patients.**

To limit exposure of healthcare workers, particularly when their

efforts might be futile, several hospitals have stated that they won't perform CPR on patients suspected to have Ebola. Others have said they will restrict minimally invasive procedures on these patients because their hospitals aren't adequately equipped to provide that care with extreme isolation measures. The Centers for Disease Control and Prevention (CDC), as well as the American College of Surgeons, recommends that patients with suspected or confirmed Ebola not have elective surgical procedures.

- **Quarantines for people who might have been exposed to Ebola are the responsibility of government officials.**

A hospital is free to tell employees to take 21 days off work to ensure no Ebola infection, but enforcing any quarantine falls to the local health department and law enforcement.

- **Ebola might change the standard of care.**

A "crisis" standard of care applies during declared emergencies, which allows for legal adaptation to the changing circumstances and increased demands. Ebola can prompt a crisis standard of care.

Source: Mark W. Peters, JD, Waller Lansden Dortch & Davis, Nashville, TN; George B. Breen, JD, Epstein Becker Green, New York City; The Network for Public Health Law; CDC's Public Health Law Program; the American Health Lawyers Association. ■