



April 16, 2020

The Honorable Lawrence J. Hogan, Jr.
 Governor of Maryland
 100 State Circle
 Annapolis, Maryland 21401

Re: Legal Protections for Health Care Practitioners

Dear Governor Hogan,

We sincerely thank you for your unwavering support for our health care system and its physicians and other health care workers who are making tremendous sacrifices as part of the State's emergency response to the novel coronavirus (COVID-19) pandemic. The pandemic is certain to be a critical test of

all of us, and your additional support during this great time of need is especially appreciated. Accordingly, we are writing to request you issue an Order to further afford appropriate legal protections.

Under your leadership, the State of Maryland has made great strides in its emergency response to COVID-19, including an Executive Order dated March 16 providing interstate reciprocity of licenses, reinstating inactive practitioners, expanding scope of practice, and postponing elective procedures. Following these important steps, we see an additional opportunity to facilitate the expedient provision of health care in the State. This proposal builds on and clarifies current law, which provides that “[a] health care practitioner is immune from civil or criminal liability if the health care practitioner acts in good faith and under a catastrophic health emergency proclamation.”¹

Despite our collective good faith and exhaustive efforts to meet the needs of our state and community, facing environmental factors that are outside of our control, we have seen a marked increase among the legal community discussing and advertising the possibility of tort litigation to take advantage of the circumstances of a national COVID-19 pandemic crisis.

Accordingly, we propose that health care facilities, health carriers, health care professionals and physician group practices be immune from any liability or claim for any injury, death or loss alleged to have resulted from any acts or omission in providing, arranging, delaying or withholding care during and in the immediate aftermath of the current COVID-19 state of emergency, absent a compelling showing of wanton misconduct. We further propose that the applicable standard of care applied to determine the presence of wanton misconduct incorporates all the circumstances of the state of emergency in existence at the time the care in question was provided, arranged for, delayed or withheld.

While the State is creating a framework to guide difficult care decisions and increase the availability of medical resources, practitioners need assurance they will not later be judged or sued when abiding by this framework, or when making related care decisions based on their best judgment and determination in the face of then existing conditions. In this time of crisis, care practitioners must be able to observe, evaluate and respond to rapidly changing conditions and events; the long-term threat of lawsuits would burden and slow these decisions, threatening greater loss of life throughout the state.

Other states have expanded civil or criminal immunity through executive order. New Jersey has provided civil immunity for health care practitioners “as a result of the individual’s acts or omissions undertaken in good faith, whether or not within the scope of the licensee’s practice, in the course of providing healthcare services in support of the State’s COVID-19 response, whether or not such immunity is otherwise available under current law.”² In Michigan, the Governor issued an executive order that provides immunity to “any licensed health care professional or designated health care facility that provides medical services in support of...the COVID-19 pandemic...regardless of how or under what circumstances or by what cause those injuries are sustained, unless...caused by...gross negligence.”³ These grants of immunity recognize the strain on health care practitioner resources and protect them from the difficult decisions they will need to make.

¹ Section 14-3A-06 of the Public Safety Article, Annotated Code of Maryland (2020).

² State of New Jersey, Executive Order No. 112, available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-112.pdf>.

³ State of Michigan, Executive Order No. 2020-30, available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523481--,00.html.

For the foregoing reasons, we respectfully request your continued support of health care practitioners, carriers, and facilities by issuing an Order that will afford them with the legal protections necessary to fully focus on treating patients and containing this pandemic rather than focusing on lawsuit mitigation. We have proposed some language for an Order below.

Your leadership and service to our State during these difficult times are greatly appreciated.

Sincerely,

The Maryland State Medical Society (MedChi)
Kaiser Permanente
CareFirst
Maryland Hospital Association (MHA)
Maryland Academy of Family Physicians (MDAFP)
Maryland Chapter of the American Academy of Pediatrics (MDAAP)
Mid-Atlantic Association of Community Health Centers (MACHC)
Maryland/District of Columbia Society of Clinical Oncology (MDCSCO)
The League of Life and Health Insurers of Maryland
Maryland Society of Eye Physicians & Surgeons (MSEPS)
Maryland Chapter of the American College of Emergency Physicians (MDACEP)
Maryland Section of the American College of Obstetricians and Gynecologists (MDACOG)
Maryland Clinical Social Work Coalition (MdCSWC)
Mid-Atlantic Society for Post-Acute and Long-Term Care Medicine (MMDA)
Maryland Dermatologic Society (MDS)
US Acute Care Solutions
Arthritis and Rheumatism Associates, P.C.
Maryland Patient Care and Access Coalition (MPCAC)
MedNax Health Solutions Partner
US Anesthesia Partners – Maryland
Maryland Society of Anesthesiologists
Associates in Radiation Medicine, PC (ARM)
Maryland Radiological Society (MRS)
Maryland Orthopaedic Association (MOA)
Baltimore City Medical Society (BCMS)
Montgomery County Medical Society (MCMS)
Baltimore County Medical Association (BCMA)
Prince George’s County Medical Society (PGCMS)
Anne Arundel & Howard County Medical Society (AAHCMS)
Harford County Medical Association (HCMA)
Allegany County Medical Society
Garrett County Medical Society
Washington County Medical Society
Cecil County Medical Society
Caroline County Medical Society
Talbot County Medical Society
Queen Anne’s County Medical Society

Wicomico County Medical Society
Calvert County Medical Society
Charles County Medical Society
Frederick County Medical Society
St. Mary's County Medical Society
Kent County Medical Society
Dorchester County Medical Society
American Property Casualty Insurance Association

Proposed Language:

Health care facilities, health carriers, health care professionals, and physician group practices shall be immune from any administrative sanction or criminal or civil liability for any injury, death, or loss alleged to have resulted from any acts or omissions in providing, arranging, delaying, or withholding care during the current COVID-19 state of emergency, absent a compelling showing of wanton misconduct as measured by a standard of care that incorporates all of the circumstances of the emergency.