

# MEDICAL SOCIETY OF THE STATE OF NEW YORK



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GOVERNMENTAL AFFAIRS

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March 27, 2020

The Honorable Andrew Cuomo  
New York State Governor  
State Capitol, Executive Chamber  
Albany, NY 12224

Dear Governor Cuomo:

We commend you for your great leadership during this extraordinarily difficult time, and pledge to you our continued assistance in helping to protect New Yorkers, and to minimize the spread of the novel coronavirus. As we continue to confront this epidemic, we wanted to make three specific requests.

First, we reiterate the incredible need for Personal Protective Equipment (PPE) for physicians and other health care personnel, not only in hospitals, but in office settings as well. While many health care visits are occurring via telemedicine thanks to your efforts to expand its coverage, there are instances when it is still essential for a patient to be seen in-person. Often it is the patient's physician that is screening the patient to determine whether that patient should be tested for Covid-19. This places the physician and their office personnel at great risk of contracting the coronavirus if they do not have adequate PPE. While we greatly appreciate all you have been doing to ensure there are proper supplies being sent to hospitals across the State, we are concerned that this equipment is not being made available to specifically to physicians' office that have a high need for this equipment.

Second, we are in need of an interpretation of the component of your Executive Order 202.10 which provides that physicians and other health care practitioners will be "immune from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional". Given the extraordinary medical decision-making that will need to occur, this protection for health care practitioners dealing with a new deadly disease with unprecedented volume is tremendously important. Specifically, we query whether this civil immunity protection applies to not only treatment decisions made for treating patients tested and treated for coronavirus, but also decision-making with regard to delaying treatment for patients as a result of the Executive Order directive to postpone non-essential elective surgeries. The language of the Executive Order would suggest that it would cover decision to postpone non-essential surgery and other treatments, and we would argue that the gravity of this crisis warrants ensuring that these liability protections also extend to the consequences of delaying what are believed to be non-essential elective surgeries and other similar shifting in the timing of treatment.

Third, with so many health care procedures being postponed and patient health care visits being greatly reduced, we urge that the Department of Financial Services determine an actuarial appropriate amount to reduce physician medical liability premiums for the period of time this crisis lasts. As you know, because of our exorbitant awards in New York State, New York physicians and hospitals pay by far and away the highest liability costs in the country. Paying these premiums is challenging in any year, let alone at a time when so many physicians have seen a huge drop in patient volume. With so many physician practices seeing a greatly reduced number of patients, the above referenced short-term liability waiver, and the above-referenced required cancellation in non-essential elective surgeries, there is a good chance that insurance carriers will see a significant reduction in the number of medical liability lawsuits against its insureds during this policy year. For a litany of reasons, we believe it is essential that DFS set forth a meaningful reduction in physician malpractice premium payments or, at least, set forth a fair process where physicians have a reasonable chance to request and receive such reductions based upon their individual circumstances.

Thank you again for your outstanding leadership during this crisis facing our state and our country.

Sincerely,

A handwritten signature in black ink, reading "Morris M. Auster". The signature is fluid and cursive, with a long horizontal stroke at the end.

MORRIS M. AUSTER