



**NEW YORK CHAPTER
AMERICAN COLLEGE OF SURGEONS**

*Inspiring Quality:
Highest Standards, Better Outcomes*

NEW YORK CHAPTER AMERICAN COLLEGE OF SURGEONS, INC.
150 STATE STREET, FLOOR 4, ALBANY, NY 12207
(TEL) 518-598-7755
(FAX) 518-514-1424
(WEB) [HTTP://WWW.NYSURGEON.ORG](http://www.nysurgeon.org)

March 28, 2020

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

Dear Governor Cuomo:

The American College of Surgeons (ACS), representing more than 5,700 members in New York, thanks you for your leadership during these unprecedented times. The New York Chapter of the American College of Surgeons continues to mobilize efforts to assist in caring for New Yorkers and reduce the spread of the Coronavirus. As we continue to confront this epidemic, we would like to make you aware of several issues and request the following:

Personal Protective Equipment

There is still a 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, there are still instances when it is still essential for a patient to be seen in-person. As we prepare for the spread of the disease across the state this need will be even greater.

We ask for clarification on the protocols for requests and distribution of supplies. With rationed supplies or lack of supplies being available to practices, physicians and their office personnel are at great risk of contracting the coronavirus. We appreciate the state's efforts and the community at large to ensure there are proper supplies being sent to hospitals across the State. However, we also need you to ensure that equipment is made readily available to physicians' office that have a need.

Interpretation of Immunity

Please provide an interpretation of the component of your Executive Order 202.10 which states 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 is occurring and the deploying of physicians into different areas of practice, this protection for health care practitioners dealing with a new deadly disease with unprecedented volume is tremendously important.

Specifically, we need coverage and clarification on whether this civil immunity protection applies to not only treatment decisions made for 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. There are circumstances in which surgeries may be defined by current guidelines as non-essential, but with the uncertainty of how long this will last, the surgery could be deemed otherwise.

The language of the Executive Order would suggest that it would cover decision to postpone non-essential surgery and other treatments. However, we would argue that the gravity of this crisis warrants ensuring that these liability protections also extend to the consequences of delaying what are categorized to be non-essential elective surgeries and other similar shifting in the timing of treatment.

Crisis Standards

Additionally, as the spread of the virus continues to escalate, a new issue is emerging. When the need for allocation of ventilators results in difficult decisions about access, physicians will face ethical challenges that may be compounded by professional or criminal liability exposure as they try to navigate current practice standards. Please avoid this threat by working with the American College of Surgeons and critical care medicine societies in establishing crisis standards of care.

We also ask that you issue an Executive Order extending immunity from liability for physicians who follow the NYS guidelines you promulgate for the allocation of ventilators and other components of critical care. These steps are crucial for effective triage efforts and will be necessary to secure healthcare professional manpower and maintain their professionalism and morale. Protecting physicians from liability challenges is an important component of the success of COVID-19 initiatives.



NEW YORK CHAPTER AMERICAN COLLEGE OF SURGEONS

*Inspiring Quality:
Highest Standards, Better Outcomes*

NEW YORK CHAPTER AMERICAN COLLEGE OF SURGEONS, INC.
150 STATE STREET, FLOOR 4, ALBANY, NY 12207
(TEL) 518-598-7755
(FAX) 518-514-1424
(WEB) [HTTP://WWW.NYSURGEON.ORG](http://www.nysurgeon.org)

Maintenance of Emergency Access to Critical Medical and Surgical Care as Essential Public Health Services

Together with emergency medicine physicians and critical care medicine physicians, trauma and critical care surgeons are the primary care physicians of individuals with life threatening injuries. Emergency medical and surgical treatment are essential to their survival, as is also true of medical patients suffering from heart attacks and strokes, and surgical patients requiring emergency treatment for general surgical diagnoses such as appendicitis and similarly life threatening general surgical conditions. While critical care resources must continue to be provided to those whose COVID-19 disease manifestations are especially serious, patients with injuries, heart attacks, strokes, and general surgical emergencies are no less in need of, or deserving of, life sustaining care. As such, we ask that emergency and critical care resources for these patients be recognized as essential public health services and not be neglected despite the overwhelming need of patients infected with the COVID-19 virus.

Liability Relief

With health care procedures being postponed and patient health care visits being greatly reduced, we ask that the Department of Financial Services determine an actuarially appropriate amount to reduce physician medical liability premiums for the period of time related to outbreak. Because New York ranks the highest in liability premiums across the nation, paying these premiums is challenging in any year, let alone at a time when so many physicians have reduced their patient volume.

With physician practices abiding by the state-mandated reduction and cancellation in visits and surgery, we believe it is essential that DFS set forth a meaningful reduction in medical liability 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.

Volunteer Immunity

As you work with the Federal government, we encourage you to promote legislation that would ensure access to medically necessary care in a federally declared emergency.

Rapid medical response in a disaster can greatly decrease loss of life and improve outcomes for patients who desperately need assistance. We appreciate your Executive Orders 202.5 and 202.10 that allows physicians, physician assistants, and nurses licensed anywhere in the U.S. to practice medicine in New York State and provides for their immunity. Surgeons with training in trauma and critical care play a major role in the health care community's response to most disaster situations. Due to inconsistent state laws and lack of federal policy, it is often unclear whether protections against unnecessary lawsuits exist for medical volunteers who cross state lines. Unfortunately, this uncertainty disincentives physicians from volunteering and in some cases, trained and qualified professionals have been turned away.

The American College of Surgeons supports H.R. 6283 which would provide volunteer health professionals with the same level of civil immunity they receive in their home state when providing care in a federally declared emergency. Removing barriers that prohibit licensed surgeons and other qualified physicians from voluntarily administering medically necessary care during disasters will ensure access to high-quality surgical services in the event of this crisis and crisis going forward.

Thank you again for your leadership during this crisis facing our state and our country. We are available to provide you and your team with real-time experience and expertise in addressing the spread of the virus across the state.

Respectfully,

Marina Kurian, MD FACS
New York Chapter ACS President

cc: Axel Bernabe, Assistant Counsel to the Governor; Paul Francis, Deputy Secretary for Health and Human Services; Megan Baldwin, Assistant Secretary for Health to the Governor; Honorable Howard A. Zucker, M.D., J.D., Commissioner of Health of the New York State Department of Health; Marcus Friedrich, MD, MBA, FACP, Chief Medical Officer, Office of Quality and Patient Safety of the New York State Department of Health; Honorable Linda A. Lacewell, Superintendent of the New York State Department of Financial Services; Gareth Rhodes, Deputy Superintendent and Special Counsel of the New York State Department of Financial Services; Honorable members of the New York State Senate; Honorable members of the New York State Assembly