

April 20, 2020

Mr. Bill McBride
Executive Director
National Governors Association
Hall of States
444 North Capitol Street NW, Suite 267
Washington, DC 20001

Re: State policies to preserve and expand the COVID-19 workforce by adopting civil immunity protections

Dear Mr. McBride:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I write to express our appreciation for the National Governors Association's (NGA) leadership in advancing solutions in response to COVID-19. Governors have played a critical role in the nation's response to this pandemic. In particular, Governors have protected the health care workforce by making sure front-line physicians and other health care professionals have access to personal protective equipment (PPE). Moreover, Governors have protected the public by taking action to reduce the spread of COVID-19 through stay-at-home orders and other community mitigation directives.

I also write to ask for NGA's support in encouraging Governors to further help preserve and expand the COVID-19 workforce throughout this pandemic by alleviating the strain on front-line physicians, removing obstacles for physicians seeking to fill workforce gaps, and safeguarding physicians adhering to federal, state or local directives necessary to protect valuable health care resources and mitigate the spread of COVID-19. **The AMA strongly encourages Governors to adopt health care emergency response protections for physicians providing COVID-19 related care and those following federal, state and local directives related to COVID-19.**

Preserving and expanding the health care workforce

Governors across the country have already taken steps to help protect frontline physicians, by securing PPE, testing supplies, ventilators and other scarce resources necessary to safeguard physicians and treat patients during this pandemic. It is no surprise that physicians and other health care professionals on the frontline of this pandemic have been working under extreme pressure and overwhelming circumstances often without optimal equipment, resources or supplies, and sometimes outside their own primary area of practice—all the while putting their own health and safety at risk. These physicians would not want to be anywhere else; caring for patients is their top priority, it is their passion and their calling. Yet, these extreme circumstances also make these physicians vulnerable to future liability claims adding stress to this already high-pressure situation. **To help alleviate this burden, we encourage Governors to take care of these frontline physicians and health care professionals by adopting health care emergency response protections so that they can continue providing care to patients without fear of what the future holds.**

Similarly, in cities and states experiencing a surge in patients with COVID-19, physicians have answered the call to help fill workforce gaps, whether it is physicians temporarily relocating across the country to provide on the ground support in “hot spots,” or retired physicians re-entering the workforce and helping triage symptomatic COVID-19 patients. These physicians are in great need as health care facilities and the existing workforce reach maximum capacity. While most states have already taken steps to modify licensure requirements allowing out-of-state physicians to practice across state lines, fear of future lawsuits remains an obstacle to physicians responding to a call to action to meet these workforce needs. As you know, many states have Good Samaritan statutes or similar civil immunity protections in place, however, physicians are concerned the limited nature of these statutes do not encompass the care provided by all physicians during this public health crisis. **The AMA urges Governors to adopt broader civil immunity and provide coverage to both volunteers and paid physicians, thereby removing barriers to physicians responding to the call to action in areas experiencing a surge in COVID-19 patients.**

Protecting physicians who are following federal, state and local directives

Even physicians who are not providing care directly to coronavirus patients fear potential liability for adhering to federal, state, local or facility directives related to COVID-19, such as directives to delay “elective” or non-urgent surgeries or procedures. Deciding which medically necessary surgeries and procedures can be temporarily delayed are complex multi-faceted determinations often made by the physician and panels of experts within a facility. Even with layers of protocols and processes, such decisions are not guaranteed. Such delays may initially cause additional pain, stress or concern for the patient and patient’s family and at the extreme, may result in unforeseeable negative outcomes.

Placing a temporary hold on these surgeries and procedures also impacts the sustainability and viability of physician practices and facilities. Yet, physicians and patients alike understand these decisions are necessary for the common good to mitigate the spread of the virus and preserve valuable resources and supplies—so that hospitals are fully prepared for an influx of COVID-19 patients. Yet the uncertainty of such decisions required by these directives, leave physicians vulnerable to future liability claims. **This is why the AMA strongly urges Governors to extend civil immunity for harm resulting from an act or omission related to a federal, state or local directive, including but not limited to those to cancel, delay or deny care as a result of the COVID-19 pandemic.**

New York and Connecticut: Two models for other states

Many states have already responded to these concerns, with at least eight taking action through Executive Order or state legislation to provide liability protections to physicians and other health care professionals and facilities for care provided in response to COVID-19. Perhaps the best example to date, is action taken in New York where Governor Andrew Cuomo issued an Executive Order providing civil immunity 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. In subsequent legislation (A.9506-B/S.7506-B), New York’s legislature provided additional protections for care provided pursuant to state or federal directives. Similarly, Connecticut’s Governor Ned Lamont extended immunity for civil liability for any injury or death alleged to have been sustained because of the individual or health care facility’s acts or omissions undertaken in good faith while providing health care services in support of the state’s COVID-19 response. **These actions can**

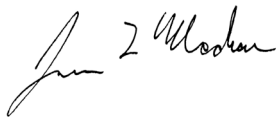
Mr. Bill McBride
April 20, 2020
Page 3

serve as models for other states, and the AMA encourages NGA and your Governor members to support and immediately issue similar efforts in other states as necessary measures to preserve and protect the health care workforce.

Physicians across this country are at the forefront caring for patients throughout this pandemic, despite risks to their own health and safety. To ensure they continue to be able to serve patients, the AMA asks Governors to stand by their side and immediately issue these health care emergency response protections.

Thank you in advance for your consideration. If you have any questions, please contact Kimberly Horvath, JD, Senior Legislative Attorney, AMA Advocacy Resource Center, at kimberly.horvath@ama-assn.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Madara". The signature is written in a cursive, flowing style.

James L. Madara, MD

cc: The Honorable Andrew M. Cuomo, Vice Chair
The Honorable Lawrence J. Hogan, Chair