



CALIFORNIA MEDICAL ASSOCIATION



March 28, 2020

The Honorable Gavin Newsom
Governor
State of California
State Capitol Building
Sacramento, CA 95814

Dear Governor Newsom:

As California prepares to address a significant surge in the number of COVID-19 cases that would necessitate deployment of the state's full healthcare workforce, we are prepared to meet the needs of the declared emergency and proposes strategies to:

- Quickly expand the size of the healthcare workforce available to provide patient care;
- Relax scope of practice limitations for certain healthcare professionals that might limit delivery of care to COVID-19 patients in inpatient facilities and health centers;
- Remove barriers that prevent healthcare professionals from providing care outside of their traditional services and settings to maximize system flexibility and patient access to care; and
- Enact broad and comprehensive liability immunity and professional liability coverage for any healthcare professional treating COVID-19 patients regardless of whether the professional is practicing within their statutory scope of practice.

To meet this moment, we worked with other healthcare professional associations to develop recommendations that focus on ensuring that California is prepared to handle the surge of COVID-19 patients that will require care in inpatient and health center facilities.

I. **Expand the number of available healthcare professionals to treat COVID-19 patients**

Reinstatement of active license status for all inactive, retired and volunteer healthcare professional licensees who will treat COVID-19 patients. Direct all healing arts boards to contact inactive, retired and volunteer licensees, who were in good standing with their respective boards prior to converting their licenses to inactive status, to request that they temporarily rejoin the healthcare workforce for the purposes of caring for COVID-19 patients and that boards shall be directed to immediately suspend administrative requirements related to continuing medical/professional education requirements, renewal fees, and any other barriers that would normally be required to reinstate the license.

Remove physician supervision ratios that limit the number of allied health professionals who may be supervised by a physician. Waive Business & Professions Code Sections 2725, 2746.51, 2836.1, 3502.3, and 3516 in order to remove the physician supervision ratios for allied health professionals [Nurse Practitioners (NP), Physician Assistants (PA) and Certified Nurse Midwives (CNM)] for facilities providing inpatient COVID-19 services. Such facilities should include, but are not limited to, hospitals and facilities procured to address the anticipated COVID-19 patient surge. A waiver of these code sections will also waive the requirement that written standardized procedures and protocols, or practice agreements, must be updated to reflect physician-approved changes to an allied health professional's scope.

Currently, as specified in the Business and Professions code, a physician may supervise up to four of each NPs, PAs, and CNMs if they are prescribing medications to patients. The anticipated COVID-19 surge has created a unique circumstance in which the State of California must squarely focus on ensuring that medical facilities providing inpatient COVID services be able to operate beyond their normal capacity. Removing the physician supervision ratio cap would immediately allow hospitals and health centers impacted by COVID-19 to increase their capacity, without jeopardizing quality or increasing the administrative burden, beyond hiring. This approach allows for flexibility where it is most needed, while allowing for more allied health professionals to be utilized in these integrated settings where there are physicians and surgeons available to provide guidance and assistance.

Allow unlicensed medical school graduates to provide care for COVID-19 patients in a supervised setting. Allow for unlicensed medical school graduates to provide medical services under the supervision of a licensed physician. Waive Subdivision (e) of Business and Professions Code 2064.5, and Subdivisions 3 and 4 of Section (a) of Business and Professions Codes 2065, to allow medical school graduates that failed to match to an accredited Residency Program to provide medical services under a Post-Graduate Training License (PTL) and physician supervision for the duration of the declared state of emergency and for one year after the declaration is lifted in the settings authorized in Subdivision (b) of Business and Professions Code 2064.5.

To address physician workforce issues in California during this unprecedented COVID-19 pandemic, put forth an Executive Order to allow unmatched medical school graduates to practice under a Post-Graduate Training License (PTL) and physician supervision for the duration of the declared state of emergency and for one year after the declaration is lifted in medical settings most familiar with supervising residents. These medical school graduates have passed portions of the United States Medical Licensing Examination (USMLE) or the National Board of Osteopathic Medical Examiners Comprehensive Osteopathic Medical Licensing Examination of the United States (COMLEX-USA), which means that they have equivalent to or greater education and training than other licensed healthcare professionals.

II. Remove scope of practice barriers in inpatient and health center facilities

Allow doctors of podiatric medicine to provide care to COVID-19 patients that is not limited to podiatric medicine in inpatient settings. Consistent with Allopathic and Osteopathic Physicians, Doctors of Podiatric Medicine are required to complete a residency program, which ensures they are competent to independently provide medical services. While the core of a podiatrist's residency is focused on foot and ankle procedures, they do complete rotations in other medical services including, but not limited to, internal medicine,

emergency medicine, anesthesia, and infectious disease. A waiver of Business & Professions Code Section 2472, which provides the statutory foot and ankle restriction on podiatrists, would allow them to provide any medical service a medical staff authorizes an individual podiatrist to provide based on their education and training at facilities providing inpatient COVID 19 services.

Recruit dentists to provide medical care and treat COVID-19 patients in hospitals. Dentists have extensive education and training that, while usually applied in an in-office dental setting, in an emergency could be applied in a hospital inpatient setting for COVID-19. For example, dentists can:

- Taking vital signs.
- COVID-19 testing.
- Triage.
- Treating emergencies, including providing local anesthesia and suturing.
- Administering oxygen.
- Administering injectables, including vaccinations.
- Writing prescriptions.
- Oral surgeons and dentist anesthesiologists have additional training and can intubate and provide deep sedation/general anesthesia services. Create additional facility capacity for non-COVID-19 care by utilizing dental office and clinic space.

Pursuant to Business and Professions Code Section 1627.5, dentists are already authorized and granted liability immunity to provide emergency medical care during a state of emergency. The state should be working with the Dental Board of California and the California Dental Association to recruit dentists to be part of the healthcare workforce addressing COVID-19. Further, dental office and dental clinic space may also be useful site for non-COVID-19 patient care, as they are mini-surgical suites with patient treatment bays containing treatment chairs, intensive light source, air & water irrigation syringe, x-rays units, and oxygen and nitrous oxide tanks. The surgical nature of dental care also requires high level infection control protocols and instrument cleaning and sterilization equipment.

III. Shift healthcare professionals to provide care outside of their traditional services and settings

Deploy and allow pharmacists to administer novel IgG/IGM COVID-19 tests that do not require the use of laboratory facilities and can provide same-day results for antibodies in one's blood. Use of these tests will afford California the ability to reach a far greater portion of our population, increasing our ability to identify and quarantine individuals with COVID-19 who are showing no symptoms. In addition, increasing the availability of testing will allow for the routine testing of healthcare providers and first responders, which is the first step to maintaining the state's healthcare workforce. Pharmacists are currently positioned throughout California to lead the deployment of this testing. we believe that it is reasonable to waive any statutory and regulatory requirements, including scope of practice, during the declared emergency, so that pharmacists can carry out this charge.

Expand pharmacist practice settings. Allow for an immediate mobile response such that pharmacists can practice pharmacy outside the premises of licensed facilities, as already authorized per Business and

Professions Code § 4036, but also allow for the possibility of mobile storage of prescription drugs. This will allow pharmacists to carry prescription drugs on their person to be furnished or dispensed to clinicians and patients at their locations where licensure to receive and store prescription drugs may not exist. We ask the Board to allow this in order to allow Californians to adhere to social distancing recommendations made by the CDC.

Expedite pharmacist medication substitution without prescriber authorization. Waive Business and Professions Code §§ 4052.5(b), 4073(b) and 4073.5(e) through (e)(2) to allow pharmacists to perform substitution of medications within the same therapeutic class, without prescriber preauthorization, during shortages of the originally prescribed prescription drugs.

Increased patient access to out-of-state licensed pharmacies. Allow non-California pharmacies, that are only licensed in their respective home states and not as nonresident pharmacies in California, to furnish unavailable medications to California pharmacies during the unavailability.

Temporary independent practice for pharmacists for COVID-19 testing and treatment. Allow pharmacists to directly work with the California Department of Health Care Services, the Department of Public Health, the Office of Emergency Services, and any other relevant California state department and agency to provide COVID-19 testing, screening, or prescribing, even in the absence of a standing order or collaborative practice agreement with a prescriber. Allow pharmacists to act in accordance with the United States Food and Drug Administration (FDA) and other federal agency directives and recommendations regarding any aspect of COVID-19 testing, screening, or prescribing, including waiving licensing requirements to compound hand sanitizer, to allow for consistent state/federal protocols during the stated emergency.

Mail order and/or home delivery of medications. Allow pharmacists, regardless of practice setting, to engage in mail order and/or home delivery of prescription medications. Currently, some pharmacists are contractually prohibited by health plans and PBMs from engaging in home delivery or mail order of medications. Given the Governor's "stay at home" order and in order to promote social distancing requirements, pharmacists should be allowed to engage in mail order and/or home delivery during the stated emergency. Additionally, pharmacists shall not be subject to any sort of current or future professional discipline, financial or otherwise, sanctions, penalties, loss of membership, or other liability or action as a result of engaging in this activity during the declared emergency.

IV. Enact broad and comprehensive liability immunity and professional liability coverage

Healthcare providers will volunteer in this environment of expanded scopes of practice only if they will not be required to bear the professional, legal and financial risk of practicing medicine in this new and untested environment in new relationships with other healthcare professionals. This section outlines the protections that will need to be in place for all healthcare professionals if the above expansions are enacted.

Liability Protection for Licensed Health Care Providers and Other Health Care Volunteers. Declare that any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, respiratory care

practitioner, nurse, dentist, or other licensed health care provider ("Licensed Health Care Provider") who renders services, including, but not limited to, any and all acts or omissions to act, regardless of whether compensated or uncompensated, voluntary, or pursuant to any working or contractual arrangement, during or in relation to or as a result of any state of war emergency, a state of emergency, or a local emergency or the condition(s) or circumstance(s) underlying the state of emergency even if an official declaration thereof has not yet been declared or has since expired ("Services"), is deemed to be rendering said Services at the express or implied request of a responsible state or local official or agency and the Licensed Health Care Provider shall not be subject to civil or criminal liability, claim, cause of action, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, penalty, censure, discipline, suspension, loss of license, loss of privileges, loss of membership, other penalty, or other liability or action, and no claim or cause of action shall exist or be brought, filed, or otherwise asserted, for any injury or damages sustained by any person by reason of those Services, regardless of how or under what circumstances or by what cause those injuries or damages are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful malicious intent to cause harm.

Declare State of Emergency Immunity Laws to Encompass All COVID-19 Related Activities by Licensed Health Care Providers (Government Code Section 8659(a); Business & Professions Code Section 900(e).) Declare that all acts and omissions to act by all licensed health care providers in relation to or as a result of COVID-19 constitute services rendered during a state of emergency to which California Government Code Section 8659 immunity applies.

Under California Government Code section 8659(a), any physician and surgeon licensed in this state or any other state, hospital, pharmacist, respiratory care practitioner, nurse, or dentist who renders services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for any injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission.

In order to empower all licensed health care providers to respond to the emergent call-to-action issued in the State of California and across the United States in relation to the COVID-19 crisis, issue an executive order declaring that the Governor does hereby expressly request that all licensed health care providers render services in relation thereto, and that any licensed health care provider who performs or fails to perform such services in relation to or as a result of the COVID-19 crisis shall not be subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability and no cause of action shall exist or be brought against such licensed health care provider in relation thereto.

Create an Insured Healthcare Volunteer program to provide professional liability coverage to volunteer healthcare professionals providing uncompensated care during a declared state of emergency. This would include insurance coverage for premiums, defense, and indemnity costs for any claims arising from voluntary and uncompensated care provided during a declared state of emergency. Licensed health care providers who wish to volunteer during a declared state of emergency face a significant roadblock before they may begin providing medical care to patients: medical malpractice coverage. It is not enough to be immune from

liability during a declared state of emergency. Lawsuits continue to be brought by plaintiffs and attorneys after the emergency has ended, claiming medical malpractice. For example, a healthcare professional, volunteering to provide medical care, must respond to this lawsuit, retain representation, and make an argument in court that they should be immune from liability because it was a declared state of emergency and certain immunity statutes apply.

To help the health care workforce grow in response to the surge of patients we expect due to COVID-19, California should ease licensed health care providers' concerns over the medical malpractice issue and institute a program by which licensed health care providers may receive protection from such lawsuits. Establishing an Insured Healthcare Volunteer program, which would provide medical malpractice coverage to volunteering physicians, would make it easier for physicians who wish to volunteer begin providing urgent care to patients affected by COVID-19 without having to worry about being sued for their efforts.

We will continue to work with you and your Administration as California navigates the COVID-19 pandemic. Thank you for your consideration.

Sincerely,

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