



March 25, 2020

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

The Honorable Mark Ghaly, M.D.
Secretary, California Health and Human
Services Agency
1600 Ninth Street, Room 460
Sacramento, CA 95814

The Hon. Lourdes Castro Ramírez
Secretary of the Business, Consumer Services
and Housing Agency
915 Capitol Mall, Suite 350-A
Sacramento, CA 95814

The Honorable Sonia Angell, M.D., M.P.H.
State Public Health Officer and Director
California Department of Public Health
PO Box 997377
MS 0500
Sacramento, CA 95815

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The Honorable Kimberly Kirchmeyer
Director, Department of Consumer Affairs
1625 North Market Blvd., Suite N 112
Sacramento, CA 95834

The Honorable Denise Pines
President, Medical Board of California
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

The Honorable Jed Grant
President, Physician Assistants Board
2005 Evergreen Street, Suite 1100
Sacramento, CA 95815

RE: URGENT REQUEST FOR EMERGENCY ORDER FOLLOWING NEW YORK THAT PERMITS CALIFORNIA LICENSED PAs DURING THIS DECLARED EMERGENCY TO PRACTICE ACCORDING TO THEIR EXPERIENCE AND TRAINING

Dear Governor Newsom and Honorable State Officials:

On behalf of the over 13,000 physician assistants (PAs) licensed in California, the California Academy of PAs (CAPA), respectfully requests the suspension of state law requirements for PAs that are impeding the ability of PAs to meet the demand for patient care during this unprecedented public health crisis caused by COVID-19. To accomplish this, CAPA respectfully requests that California issue an executive order modeled after yesterday's Executive Order issued by New York Governor Andrew Cuomo that waives certain legal restrictions on PA practice for the duration of the declared emergency. Taking this action will allow PAs to effectively and

efficiently meet the demand for qualified health care providers to treat patients consistent with the PA's training, experience and competency.

Four State Law Impediments To California PAs Providing Care During The Emergency.

In California, there are four state law impediments that currently restrain the ability of PAs to provide care according to their plenary medical training and experience during the currently declared emergency:

1. The requirement that PAs must be supervised by a physician.¹
2. That such supervision must be reduced to and governed by a written practice agreement.²
3. That a physician can supervise only four PAs.³
4. That there is a lack of clarity around PA liability during the crisis.

Both PAs And Physicians Provide Medical Services And Have Plenary Licenses.

PAs, like physicians, do not, *per se*, have a bordered scope of practice. Like physicians, PA's scope of practice is both medical and plenary; that is, they are, by law, broadly permitted to provide medical services consistent with their training and experience.⁴ In this way, PAs are unique from other allied health professionals.

What New York State Has Done To Remove Legal Impediments To New York PAs Providing Care During The Emergency.

Yesterday, March 24th, New York Governor Andrew Cuomo issued Executive Order Number 202.10, titled "Continuing Temporary Suspension and Modification of Laws Related to the Disaster Emergency."⁵ It contained these following two relevant provisions that, if issued in California, would address all the impediments listed above:

- Paragraph 1 of Section 6542 of the Education Law and Subdivisions (a) and (b) of Section 942 of Title 10⁶ of the NYCRR to the extent necessary to permit a physician assistant to

¹ Business and Professions Code section 3502(a)(1).

² Business and Professions Code sections 3502(a)(2) and 3502.3

³ Business and Professions Code section 3516(b).

⁴ Business and Professions Code section 3502 in part provides: "(a) Notwithstanding any other law, a PA may perform medical services as authorized by this chapter if the following requirements are met: ... (3) The PA is competent to perform the services. (4) The PA's education, training, and experience have prepared the PA to render the services."

⁵ https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.10.pdf

⁶ The two New York authorities cited here in the Order are Education Law, paragraph 1, which reads:

"1. Notwithstanding any other provision of law, a physician assistant may perform medical services, but only when

provide medical services appropriate to their education, training and experience without oversight from supervising physician without civil or criminal penalty related to a lack of oversight by a supervising physician; ...

- Subdivision (2) of section 6527⁷, Section 6545⁸, and Subdivision (1) of Section 6909 of the Education Law, to the extent necessary to provide that all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses shall 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[.]

It is important to note that New York has the largest number of licensed PAs at almost 17,000

under the supervision of a physician and only when such acts and duties as are assigned to him or her are within the scope of practice of such supervising physician.” And, subdivisions (a) and (b) of Title 10, section 94.2, of the New York Code of Regulations, which read:“(a) A licensed physician assistant or a registered specialist assistant may perform medical services but only when under the supervision of a physician. Such supervision shall be continuous but shall not necessarily require the physical presence of the supervising physician at the time and place where the services are performed. The licensed physician assistant or registered specialist assistant shall retain records documenting the continuous supervision by the physician who is responsible for such supervision. (b) Medical acts, duties and responsibilities performed by a licensed physician assistant or registered specialist assistant must: (1) be assigned to him or her by the supervising physician; (2) be within the scope of practice of the supervising physician; and (3) be appropriate to the education, training and experience of the licensed physician assistant or registered specialist assistant.”

⁷ This New York law provides protection to physicians: “2. Notwithstanding any inconsistent provision of any general, special or local law, any licensed physician who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside a hospital, doctor's office or any other place having proper and necessary medical equipment, to a person who is unconscious, ill or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such physician. Nothing in this subdivision shall be deemed or construed to relieve a licensed physician from liability for damages for injuries or death caused by an act or omission on the part of a physician while rendering professional services in the normal and ordinary course of his practice.”

⁸ This New York law addresses PAs specifically and provides: “Notwithstanding any inconsistent provision of any general, special or local law, any physician assistant properly licensed in this state who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside a hospital, doctor's office or any other place having proper and necessary medical equipment, to a person who is unconscious, ill or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such physician assistant. Nothing in this section shall be deemed or construed to relieve a licensed physician assistant from liability for damages for injuries or death caused by an act or omission on the part of a physician assistant while rendering professional services in the normal and ordinary course of his or her practice.”

and California has the second largest number at over 13,000. New York state law currently does **not** require PAs to execute a practice agreement with a physician, hence there is no mention of the Governor suspending such a provision.

What Is Happening On The Ground: PAs' Capacity to Provide Care Limited By Confusion Regarding The Lawfulness Of Their Actions During This Crisis.

The CAPA offices have been flooded from calls and emails from PAs who want to help to the maximum extent possible without a second thought but who simply do not know and will not know what they are allowed to do as the virus spreads. Questions they are asking and issues they have identified include the following:

- A physician in a medical group practice supervising several PAs becomes infected with COVID-19 and must self-isolate. The PAs, without having to draft new practice agreements and get them signed, must be able to remain operational and care for the patients within the practice. Currently, they cannot.
- A PA practices in pain management pursuant to a written practice agreement with anesthesiologists. The anesthesiologists place their pain management practice “on hold” and devote their time urgently to respiratory management. The pain management PAs will either need to remain in the pain management practice caring for those patients in the interim or be assigned with the physicians to respiratory care. There is no time or opportunity to redraft and sign practice agreements memorializing this change.
- The Sheraton Fairplex hotel in Pomona is being readied to accept patients who have tested positive for the COVID-19. By definition it will be staffed by physicians and PAs who were not working there before and, hence, will not have practice agreements in place contemplating this assignment.
- In a Southern California city, two emergency room physicians have contracted COVID-19 and the facility is now short two physicians who are authorized to provide PA supervision. Under current law, without their supervision or a new written practice agreement, the PAs are sidelined; *they are, under current law, not authorized to provide care for patients in need.* As this example demonstrates, with physicians themselves becoming ill, the ratio of the number of PAs to physicians must be eliminated in time of crisis.

During this time of unprecedented crisis, PAs respectfully request that they be given no law-based cause to second-guess or hesitate when providing the critically important medical care they are trained and qualified to provide. PAs need immediate flexibility to care for patients limited only by their experience and training.

What New York Has Done By Executive Order, Thirteen Other States Have -- Long Before The Pandemic -- Enacted Into Law.

Reinforcing the prudence of New York's Executive Order, thirteen states prior to the COVID-19 pandemic enacted statutes that suspend physician supervision requirements of PAs during times of natural disaster or emergency.⁹ For example, Arizona's relevant statute (emphasis supplied) reads as follows:

A. Notwithstanding the requirements of this article, in response to a natural disaster, accident **or other emergency**, a physician assistant who is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer **may provide medical care at any location and with or without supervision.**

B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is **not required to comply with the requirements of this article relating to supervising physicians.**¹⁰

What New York Has Done Is Consistent With The Model Language Drafted By The American Academy Of PAs (AAPA).

The language adopted and issued by Governor Cuomo is consistent with the model language developed by AAPA:

Provision of medical care:

A physician assistant (PA) licensed in this state [U.S. territory or jurisdiction], or licensed or authorized to practice in any other U.S. jurisdiction, or who is credentialed as a PA by a federal employer, who is responding to a need for medical care created by a public health emergency (defined as an emergency need for medical services to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event), or a state or local disaster (defined as a sudden, calamitous event that seriously disrupts the functioning of a community or society and causes human, material, and economic

⁹ Alabama (Ala. Admin. Code. R. 540-X-7-.25(7)), Arizona (Ariz. Rev. Stat. Ann. section 32-2535), Delaware (Del. Code Ann. Tit. 24 section 1773A (a)), Hawaii (Haw. Rev. Stat. Ann. section 321-23.3 (e)), Idaho (Idaho Admin. Code R. section 22.01.03.031), Indiana (Ind. Code Ann. § 25-27.5-6), Iowa (Iowa Code Ann. Section 148C.4), Minnesota (Minn. Stat. section 147A.23), Montana (Mont. Code Ann. § 37-20-410), New Jersey (N.J. Stat. Ann. section 45:9-27.18A), Rhode Island (216 Code R.I. Reg. section 40-05-24.13), South Dakota (S.D. Codified Laws section 36-4A-26.2), Texas (Tex. Occ. Code section 204.2045), Wyoming (Wyo. Code R. § 052-0001-1 Section 7)

¹⁰ Ariz. Rev. Stat. Ann. sections 32-2535 and 32-1471, respectively.

or environmental losses), may render such care that they are able to provide without physician supervision or collaboration as it is defined in state statute governing PA practice, provided that the treatment is within the scope of the PA's education, training and experience. This waiver includes, but is not limited to, the ability of PAs to order, supervise and interpret all diagnostic tests and to provide medical services via telemedicine with PAs as the distant site consultant.¹¹

Why Expanding Access To PAs Is An Essential Part Of Addressing The Current Crisis.

The California Healthcare Foundation explains the importance of PAs:

Physician assistants (PAs) — state-licensed health professionals who practice medicine in collaboration with physicians and other providers — provide high-quality care, and are more likely to work in rural areas and with underserved populations than are physicians. Their training enables them to occupy a wide range of clinical areas, including family medicine, emergency care, and surgical and internal medicine subspecialties. Their training overlaps significantly with medical education, and is offered at the master's degree level.¹²

Even before the emergency, California suffered an uneven distribution of care across the state, according to a recent report by Healthforce Center at UCSF.

Against this backdrop, California has one of the lowest *per capita* rates of PAs of any state in the nation, meaning that each PA must be leveraged as widely as possible during the current emergency.¹³ By expanding the use of PAs in California during this crisis, California is maintaining and expanding its commitment to provide quality healthcare. As the California Healthcare Foundation has observed:

A number of studies have examined the quality of care provided by PAs in hospital settings. One reported that increasing the number of PAs on hospital[] care teams had no [harmful] effect on clinical outcomes and resulted in a lower cost of care; similarly, pediatric patients treated by PAs in emergency departments had similar rates of returning to the emergency department and readmissions as physicians did.¹⁴

Proposed Executive Order Language for California.

For all these reasons, CAPA respectfully requests Governor Newsom issue an Executive Order that contains language similar to the following:

¹² <https://www.chcf.org/publication/californias-physician-assistants/> 5

¹³ <https://www.chcf.org/publication/californias-physician-assistants/> at p. 7

¹⁴ Ibid at pp. 4-5.

IT IS HEREBY ORDERED THAT

In order to assist in the care or to protect the health of individuals,

1) Notwithstanding any other provision of law, including, but not limited to, Business and Professions Code sections 3502(a)(1), 3502(a)(2), 3502.3, and 3516(b), to the extent necessary to permit a physician assistant to provide medical services appropriate to their education, training and experience, a physician assistant licensed in the State of California may provide medical services without supervision from a physician and without a practice agreement, and the PA may do so without civil or criminal sanction or penalty.

2) Notwithstanding any other provision of law, physicians and physician assistants shall 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 them in the course of providing medical services pursuant to this Executive Order and 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.

Conclusion.

Please, Governor Newsom and Honorable State Officials, during this time of unprecedented crisis, allow us to do all we can and are trained to do to meet this moment.

Sincerely,

A handwritten signature in black ink that reads "Roy Guizado MS, PA-C". The signature is written in a cursive style.

Roy Guizado, MS, PA-C, DFAAPA
President

cc: Hon. Toni Atkins, Senate President pro Tempore
Hon. Anthony Rendon, Assembly Speaker
Hon. Steve Glazer, Chair, Senate Business & Professions Committee
Hon. Evan Low, Chair, Assembly Business & Professions Committee