

**AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, DISTRICT II
MEDICAL SOCIETY OF THE STATE OF NEW YORK
NEW YORK AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
NEW YORK CHAPTER AMERICAN COLLEGE OF PHYSICIANS
NEW YORK OCCUPATIONAL AND ENVIRONMENTAL MEDICAL ASSOCIATION
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS
NEW YORK STATE AMERICAN ACADEMY OF PEDIATRICS
NEW YORK STATE NEUROLOGICAL SOCIETY
NEW YORK STATE OSTEOPATHIC MEDICAL SOCIETY
NEW YORK STATE PSYCHIATRIC ASSOCIATION
NEW YORK STATE RADIOLOGICAL SOCIETY
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS, INC
NEW YORK STATE SOCIETY OF DERMATOLOGY AND DERMATOLOGIC SURGERY
NEW YORK STATE SOCIETY OF PHYSICIAN ASSISTANTS**

June 8, 2020

Honorable Ron Kim
NYS Assembly
136-20 38th Ave., S-10-A
Flushing, NY 11354

Honorable Alessandra Biaggi
NYS Senate
1250 Walters Pl., S1202
Bronx, New York 10461

Re: A10427 Rules (Kim)/S8491 (Biaggi)

Dear Assembly member Kim and Senator Biaggi:

We, the undersigned organizations representing tens of thousands of practicing physicians, residents, and students in medicine across the State are writing to express our strong opposition to your legislation A10427 Rules/S8497 Biaggi which repeals Article 30-d of the Public Health Law (Emergency Disaster Treatment Protection Act). With the unprecedented volume of patients flowing into hospitals and the lack of a clear protocol for treating these patients, Article 30-d was enacted as part of the 2020-21 State Budget to limit civil and criminal liability for health care professionals, health care facilities, and organizations that provide treatment and services related to the COVID-19 state of emergency.

We are extremely concerned that this legislation will not only prevent hospitals and other health care facilities from re-developing capacity in case of a second “surge”, but also would unfairly

retroactively remove the liability protection that healthcare professionals and facilities believed they had in responding to the crisis of patient load exceeding capacity.

As you know, the COVID-19 pandemic has been an unprecedented test of our health care system. It created a public health emergency which has and even now continues to threaten to overwhelm the capacity of our health care system. Physicians and other health care professionals found themselves making extraordinary medical decisions in confronting a new deadly disease with an unprecedented volume of patients. Moreover, given the surge in patients, many physicians and other health care professionals were asked to provide health care services that were not within their usual scope of services. Physicians, nurses and other front line workers were regularly lauded as “heroes” for their extraordinary efforts to treat an unending flow of patients, at time without adequate protective equipment, in the face of this threat to their own health and that of their families. Protection from liability was absolutely critical to develop the capacity of the health care workforce to provide patient care on the frontlines of the COVID-19 crisis, and continues to be the case as we seek to prevent a second “surge. The health care community came together to answer a unique situation to help patients across the continuum of care under challenging circumstances.

New York State is currently experiencing a decrease in new COVID-19 cases and hospitalizations. However, another surge in the virus is possible given the lack of effective treatments and a vaccine as the State reopens. If this occurs, physicians may again be asked to provide care outside their specialty, utilize equipment or supplies outside their normal use, and/or may need to restrict the use of supplies or equipment such as respirators.

Article 30-d provides important but limited immunity to frontline health care workers. The liability protections apply only to harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services pursuant to a COVID-19 emergency rule or applicable law. Physicians, hospitals and other health care facilities are still liable for harm caused by willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm. In addition, the liability protections expire when the COVID-19 Emergency Declaration expires.

In response to the COVID-19 pandemic, New York State has recognized the need for as many trained, experienced, and qualified health care providers as possible. To ensure that these health care professionals are fully able to provide critical care to patients during this time protections from liability must remain in place.

Thank you for your consideration of our concerns, and we respectfully ask you to withdraw this legislation.

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