

AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS (ACOG), 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 CHAPTER AMERICAN COLLEGE OF SURGEONS  
NEW YORK OCCUPATIONAL AND ENVIRONMENTAL MEDICAL ASSOCIATION  
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS  
NYS AMERICAN ACADEMY OF PEDIATRICS, CHAPTERS 1, 2 & 3  
NEW YORK STATE PSYCHIATRIC ASSOCIATION  
NEW YORK STATE RADIOLOGICAL SOCIETY  
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS  
NEW YORK STATE SOCIETY OF ORTHOPEDIC SURGEONS, INC.  
NEW YORK STATE SOCIETY OF PLASTIC SURGEONS, INC.  
THE NEW YORK STATE NEUROLOGICAL SOCIETY

**July 21, 2020**

**To: Members of the New York State Senate and the New York State Assembly**

We, the above listed organizations, representing tens of thousands of practicing physicians, residents, and students in medicine across the State are writing to express our **strong opposition to A.10840/S.8835** which rolls back COVID-19 related liability protections for physicians under the Emergency Disaster Treatment Protection Act (EDTPA). The EDTPA was an absolutely essential law enacted during the State Budget that offers limited immunity from civil and criminal liability to health care facilities and their workers for acts or omissions occurring in connection with providing or arranging for health care services during the COVID-19 emergency under certain circumstances.

While these changes would not apply retroactively, as previous versions had sought to do, we remain extremely concerned about the consequences of this legislation, particularly if we experience a second surge in our state, as many have predicted.

As you know, the COVID-19 pandemic has been an unprecedented test of our health care system, and our physicians worked tirelessly to manage patient care throughout. 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 extraordinarily challenging 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, without adequate protective equipment, which threatened 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 and prepare for the possibility of a second “surge”.

This legislation removes important protections for the care of non-COVID-19 patients, even if their care was impacted by the healthcare system’s response to the pandemic including if there is a future requirement to postpone so-called “elective” surgeries. Actions such as state directives

to discharge patients to prepare for a surge, to delay surgeries, to redeploy staff from other departments to emergency rooms, were all necessary to respond to the pandemic and should be protected.

It is important to recognize that the current 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 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.

Despite having worked through the initial COVID-19 surge this spring, which provided valuable insight into how to manage potential future strains on resources, there is still much for which we cannot fully prepare. While our state is now thankfully realizing declining infection and hospitalization rates, physicians and many others in our health care system are still preparing for a potential second surge.

We respectfully request that the legislature stand with physicians and providers during this uncertain time. Thank you for your consideration of our concerns, and we respectfully ask you to oppose this legislation.