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## **SUMMARY OF IMMUNITY PROVISIONS**

### **NEW YORK STATE EXECUTIVE ORDER No. 202.10:**

### **IMMUNITIES GRANTED TO LICENSED HEALTHCARE INDIVIDUALS**

(EFFECTIVE MARCH 23, 2020 THROUGH APRIL 22, 2020)

On March 23, 2020, the New York State Governor issued directives and suspended and modified state laws and regulations in an Executive Order pursuant to Executive Law §§ 29-a, 29-b. These directives and modified laws and regulations are effective from March 23, 2020 through April 22, 2020. The focus of the Executive Order was to ensure that New York State has adequate hospital bed capacity, supplies, and providers to treat patients affected with COVID-19, as well as patients afflicted with other maladies. To assist in this goal, the Governor has provided immunities to licensed healthcare individuals, who: (1) provide medical services in support of the State's response to COVID-19; (2) act reasonably and with good faith in recordkeeping; (3) may come out of retirement without current registrations to provide medical care; (4) may travel to New York from another state to assist in the COVID-19 efforts; among other immunities.

#### **IMMUNITY FROM CIVIL LIABILITY FOR INJURY OR DEATH**

##### WHO IS IMMUNE?

- All physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses, who provide medical services in support of the State's response to the COVID-19 outbreak.

##### WHAT DOES THE IMMUNITY COVER?

- 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.

##### WHAT IS NOT COVERED BY THIS IMMUNITY?

- There is NO immunity if it is established that such injury or death was caused by the gross negligence of the medical professional.
- There is not immunity from being sued, meaning there is a potential to incur costs of defending a lawsuit where there is immunity from liability.

#### **IMMUNITY FROM RECORDKEEPING LIABILITY**

##### WHO IS IMMUNE?

- Any person acting reasonably and in good faith.

#### WHAT DOES THE IMMUNITY COVER?

- Liability for any failure to comply with any recordkeeping requirement to the extent necessary to perform tasks as may be necessary to respond to the COVID-19 outbreak.
- Including, but not limited to, requirements to maintain medical records that accurately reflect the evaluation and treatment of patients, or requirement to assign diagnostic codes, or to create or maintain other records for billing purposes.
- **Caution:** Public Health Law § 18 (2), requiring patient access to their health information has not been modified. Also, HIPAA generally requires covered entities to provide individuals, upon request, access to their protected health information.

#### **IMMUNITY FROM CIVIL AND CRIMINAL PENALTIES FOR LACK OF PHYSICIAN SUPERVISION**

##### WHO IS IMMUNE?

- Physician assistants, specialist assistants, and nurse practitioners.

##### WHAT DOES THE IMMUNITY COVER?

- Physician assistants and specialist assistants may provide medical services appropriate to their education, training, and experience without oversight from a supervising physician, without civil or criminal penalties related to lack of oversight by a supervising physician.
- Nurse practitioners may provide medical services appropriate to their education, training, and experience, without a written practice agreement or collaborative relationship with a physician, without civil or criminal penalties related to the lack of written agreement or collaborative relationship.

#### **IMMUNITY FROM CIVIL AND CRIMINAL PENALTIES FOR PRACTICING IN NEW YORK STATE WITHOUT A NEW YORK STATE LICENSE**

##### WHO IS IMMUNE?

- Physicians (prior Executive Order No. 202.5<sup>1</sup>), physician assistants (prior Executive Order No. 202.5<sup>2</sup>), nurse practitioners, registered nurses, and licensed practical nurses (prior Executive Order 202.5<sup>3</sup>), radiologic technologists, and respiratory therapists, who are licensed and in current good standing in any state in the United States.

##### WHAT DOES THE IMMUNITY COVER?

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<sup>1</sup> Executive Order 202.05 was issued on March 18, 2020. The suspension and modification of the statutes therein is effective March 18, 2020 through April 17, 2020.

<sup>2</sup> See *id.*

<sup>3</sup> See *id.*

- Civil and criminal penalties related to lack of licensure for any of these professional medical individuals who practice in New York State during the effective periods of the Executive Orders.

#### **IMMUNITY FROM CIVIL AND CRIMINAL PENALTIES FOR PRACTICING IN NEW YORK STATE WITHOUT CURRENT REGISTRATION**

##### WHO IS IMMUNE?

- Physicians (prior Executive Order No. 202.5<sup>4</sup>), physician assistants, nurse practitioners, professional nurses, and licensed practical nurses, and radiologic technologists, who are licensed and in current good standing in New York but are not currently registered.

##### WHAT DOES THE IMMUNITY COVER?

- Civil and criminal penalties related to lack of registration for any of these professional medical individuals who practice in New York State during the effective periods of the Executive Orders.

Any questions regarding these Executive Orders or the immunities provided therein, may be directed to Mia VanAuken at Fager, Amsler, Keller & Schoppmann, LLP, at 518-786-2880 or [mvanauken@fakslaw.com](mailto:mvanauken@fakslaw.com). The Executive Orders can be accessed at these sites:

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202\\_5.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202_5.pdf) and

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.10.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.10.pdf)

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<sup>4</sup> See *id.*