Healthcare Law Alert: Governor Murphy Issues Executive Order Regarding Licensure, Scope of Practice and Liability Waivers For Healthcare Providers

On April 1, 2020, Governor Phil Murphy issued Executive Order No. 112 to address the shortage of healthcare workers in New Jersey required to respond to COVID-19. The Executive Order provides, for the duration of the State of Emergency or Public Health Emergency which were previously declared by the Governor on March 9, 2020, whichever is longer, for the temporary licensure of certain healthcare professionals, the expansion of scope of practice for advanced practice nurses and physician assistants, and the waiver of liability for healthcare professionals assisting with New Jersey's COVID-19 response. The waiver of liability provisions are of particular importance to healthcare professionals because they provide immunity from civil liabilities to healthcare professionals acting within good faith regardless of current liability insurance coverage. Key provisions of the Executive Order include the following:

- The Department of Law and Public Safety, Division of Consumer Affairs (DCA) is authorized to temporarily reactivate the license of any healthcare professional previously licensed to practice in New Jersey who retired from active practice within the last five years, provided that such healthcare professional submits an application on a form adopted by the DCA. To facilitate the temporary reactivation of such healthcare professionals' licenses, certain statutory requirements pertaining to liability insurance for physicians and physician assistants are being temporarily suspended and waived.
- The DCA is authorized to temporarily issue a license to practice medicine and/or surgery to any physician who is licensed, in good standing, in another country, provided that such physician submits an application on a form adopted by the DCA. At a minimum, the applicant must certify that the applicant has engaged in practice for at least five years and has engaged in clinical practice within the last five years. To facilitate the licensure of such physicians, certain statutory requirements pertaining to liability insurance for physicians are being temporarily suspended and waived.
- The following statutory provisions which limit the scope of practice of advanced practice nurses are suspended and waived for advanced practice nurses acting within the scope of their education, training, experience, and competence:
    - Enter into a joint protocol with an individual collaborating physician who is present or readily available through electronic communication;
    - Include the name, address, and telephone number of a collaborating physician on prescriptions or orders;
    - Review patient charts and records with the collaborating physician; and
    - Obtain the authorization or written approval from a collaborating physician in order to dispense narcotic drugs for maintenance treatment or detoxification treatment or to determine the medical necessity for services for treatment of substance-use disorder.
- The following statutory provisions which limit the scope of practice of physician assistants are suspended and waived for physician assistants acting within the scope of their education, training, experience, and competence:
    - Obtain physician supervision;
    - Enter into a signed delegation agreement limiting the scope of practice to procedures enumerated in the agreement and customary to the supervising physician's medical specialty;
    - Obtain authorization to order or prescribe a controlled dangerous substance; and
    - Limit the assistance provided in the operating room.
- Any requirement to hold a controlled dangerous substance registration as a precondition for registering with the Prescription Monitoring Program is suspended and waived for any healthcare professional with prescribing authority who

is granted an expedited temporary license by the DCA and who holds a current valid registration with the U.S. Drug Enforcement Administration.

- Any individual granted a temporary license, certificate, registration, or certification to practice a healthcare profession or occupation in connection with the State's COVID-19 response, including those granted pursuant to this Executive Order, will be immune from civil liability for any damages alleged to have been sustained as a result of the individual's acts or omissions undertaken in good faith, whether or not within the scope of the licensee's practice, in the course of providing healthcare services in support of the State's COVID-19 response, whether or not such immunity is otherwise available under current law.
- Any individual holding a license, certificate, registration or certification to practice a healthcare profession or occupation in New Jersey, including but not limited to any advanced practice nurse or physician assistant acting outside the scope of their ordinary practice pursuant to this Executive Order, will be immune from civil liability for any damages alleged to have been sustained as a result of the individual's acts or omissions undertaken in good faith in the course of providing healthcare services in support of the State's COVID-19 response, whether or not within the scope of their practice and whether or not such immunity is otherwise available under current law.
- Any healthcare facility, modular field treatment facility, and any other site designated by the Department of Health for temporary use for the purpose of providing essential services in support of New Jersey's COVID-19 response, including hotels and student dormitories, will be immune from civil liability for any damages alleged to have been sustained as a result of an act or omission undertaken in good faith in the course of providing services in support of the State's COVID-19 response by one of its agents, officers, employees, servants, representatives or volunteers, if, and to the extent, such agent, officer, employee, servant, representative or volunteer is immune from liability, whether or not such immunity is otherwise available under current law.

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