



April 16, 2020

The Honorable John C. Carney
Governor
State of Delaware

****VIA ELECTRONIC TRANSMISSION****

Request for Immunity Order

Dear Governor Carney,

We appreciate your actions in confronting the COVID-19 pandemic. The extraordinary challenges presented by the current public health threat require an unprecedented level of coordination and joint action between our state's government and private health care providers. On behalf of the members of the Delaware Health Care Association, the Medical Society of Delaware, the Delaware Nurses Association and the Delaware Health Care Facilities Association, we want to express our appreciation for the partnership with your Administration that has existed throughout the current State of Emergency. Thank you for putting the lives and health of those we all serve first and foremost in your actions and orders.

Since your declaration of a State of Emergency on March 12, 2020, all Delaware hospitals and health care providers have been acting in coordination with, and often at the direct request of, Public Health authorities to support the State's response and preserve our health systems' capacity to deliver critically needed care amidst a global public health crisis. The surge of COVID-19 hospitalizations for which the State and all health care providers jointly prepared is now here – at least one of our health systems has already reached the ICU capacity at both its hospitals. As a state we owe a debt of gratitude to the doctors, nurses, and other frontline health care workers risking their own health, and the health of their loved ones, to provide care in these most extreme circumstances. And yet every health care provider working to support the State's COVID-19 response is doing so with less legal protection than their counterparts in many other states.

Over half of the states have given their health care providers – either through existing or new statutes or gubernatorial executive order – immunity for acts or omissions taken in good faith during the current public health emergency. Nearby states which have already extended immunity for acts or omissions include New

York, Connecticut and Illinois (on which we based our draft immunity executive order sent to you previously), New Jersey, and Maryland.

Similar immunity authority exists in Delaware law in the emergency management and public health emergency subchapters of Title 20. Specifically, Delaware law provides immunity to private individuals and entities, as well as their agents and employees, that render assistance to the State during a state of emergency. On behalf of all Delaware health care providers who are giving everything they have to support the State's pandemic response, we are asking you to issue an executive order confirming that the immunity provisions in Delaware law apply to all of their actions – both compensated and uncompensated - in rendering assistance to the State during the entire duration of the State of Emergency first declared on March 12, 2020.

Our draft immunity executive order sent to you previously is attached. The immunity provided by this executive order would not apply to acts of gross negligence, willful or wanton conduct, or intentional acts or omissions

We seek this grant of immunity in order to appropriately recognize the extraordinary actions that providers have taken, and will continue to take during the pandemic, with your support, at your urging and in some cases under your orders. These include,

- the intake and supervision of personnel whose ability to serve in a medical capacity has been broadened due to the relaxation or voidance of licensing and credentialing requirements. Each of these providers is granted immunity for their acts through joint DEMA/DPH orders, and yet the hospitals employing these individuals, and the licensed Delaware practitioners who will supervise them, will not, in the absence of the confirming order we are requesting, have declared immunity for the same acts;
- the delivery of care at auxiliary sites not under the full control of licensed facilities and/or at temporary sites stood up since the declaration of the emergency;
- the postponement of non-emergency / non-critical procedures in order to preserve capacity to treat the surge of Covid-19 patients;
- the delivery of care and transfer of patients amidst shortages of personal protective and other equipment;
- the potential delivery of care in a *Crisis Standards of Care(s)* environment.

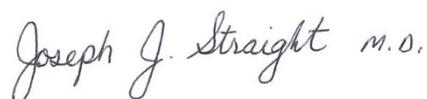
It has been suggested that immunity only be attached to providers as they receive permission to operate in a Crisis Standard of Care environment. This is insufficient for a number of reasons beyond ignoring the pre-Crisis Standard of Care environment in which care has been delivered under extraordinary circumstances as described in the preceding paragraph *and* under your declared *Public Health State of Emergency*. Specifically, limiting immunity only to operation under a Crisis Standard of Care environment diminishes liability protections that exist in Delaware law, would produce a lack of uniformity and timing variations as different providers received permission to invoke Crisis Standards of Care at different times, a lack of certainty as to the existence of immunity as patients are transferred between facilities where one has invoked their Crisis Standard of Care and another has not. Such a *piecemeal* approach involving individual grants of immunity at different points in time also ignores the fact that your *uniform* Public Health State of Emergency has existed since March 13, 2020.

We look forward to working with you to arrive at an immunity declaration that recognizes the extraordinary operating environment in which all health care providers have been engaged throughout the current State of Emergency.

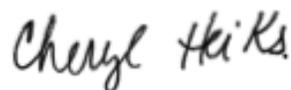
Sincerely,



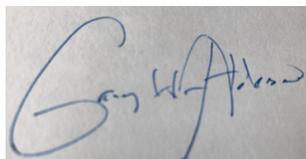
Wayne A. Smith, President & CEO, Delaware Healthcare Association



Dr. Joseph D. Straight, President, Medical Society of Delaware



Cheryl Heiks, Executive Director, Delaware Health Care Facilities Association



Gary W. Alderson, RN, Esq., President, Delaware Nurses Association

