



Physicians Caring for Texans

April 13, 2020

Honorable Greg Abbott  
Governor of Texas

Dear Governor Abbott:

On behalf of the Texas Medical Association (TMA) and our more than 53,000 physician and medical student members, thank you for your leadership during these unprecedented times. As you consider the extension of your Executive Order GA09 relating to hospital capacity and elective surgeries during the coronavirus disease 2019 (COVID-19) disaster declaration, TMA proposes additional language, included below, that we developed to address concerns from physicians and facilities asking for guidance to determine which surgical and procedural services can be safely postponed and those that should proceed to prevent harm to patients.

There are a number of factors that physicians may generally consider when evaluating whether the risk of harm associated with delaying a surgery or procedure warrants a justifiable reason to proceed. These factors include the patient's current condition and medical history, as well as the physician's judgment based on his or her experience. Now, of course, judgment to proceed is also tempered with other unique and unprecedented factors that may constantly evolve – where on the expected surge curve for COVID-19 a community may stand, availability of surgical facility resources, status of needed PPE, etc.

Given these novel conditions affecting a physician or facility's decision to proceed with a surgery or procedure, one particularly helpful factor to curb confusion is for physicians and facilities to consult applicable guidelines and literature from nationally-recognized medical entities who have prepared pandemic/disaster guidance. For example, the American College of Surgeons released guidance on March 13, 2020 specifically tailored to management of elective surgeries during COVID-19. And certain specialty members of the American Board of Medical Specialties also released similar guidance tailored for the additional unique challenges posed to their specific specialties. While each situation and each patient presents his or her own special set of facts that must be taken into account, referring to relevant guidance specific to the challenges presented by COVID-19 may assist a physician or facility in making the best decision for the patient while also preserving essential resources to fight the pandemic.

To that end, as you consider the extension of your [EXECUTIVE ORDER GAO9](#), which expires on April 21, TMA asks that you include specific guidance for physicians and facilities. That addition is bolded below.

The language of your original order:

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order that, beginning now and continuing until 11:59 p.m. on April 21, 2020, all licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician;

PROVIDED, however, that this prohibition shall not apply to any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID- 19 disaster.

**TMA suggested addendum:**

**To assist licensed health care professionals in determining what surgeries or procedures must be postponed in accordance with this order, such individuals may refer to relevant information such as guidelines or literature from the Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, or other nationally-recognized medical or specialty entities, including information from the American College of Surgeons or a specialty member board of the American Board of Medical Specialties, American Board of Oral and Maxillofacial Surgery, or the Association Bureau of Osteopathic Specialists. Nothing in this order may be construed to authorize an expansion or modification of a licensed health care professional's respective scope of practice as defined by Texas statutory law.**

TMA's goal simply is to provide Texas' patients with the very best care in a constantly evolving situation. Decisions that are reasonable and prudent today may not be so in a week or two weeks. At the same time, not every community will face the same challenges of a surge at the same time. By pointing physicians to trusted sources for guidance in exercising their professional judgment, we believe physicians and facilities can provide for patient needs and be good stewards of preserving local system capacity. The two are not mutually exclusive.

TMA also asks that, as you consider this addendum, you also consider removing the criminal sanctions' provision of this order. The relevant provision states:

WHEREAS, under Section 4 18.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.

Unlike the individuals encompassed by your other orders, physicians, other licensed health care professionals, and licensed health care facilities are unique in that they are regulated by their respective licensing agency. So while criminal sanctions may be needed as a deterrence measure for some individuals to enforce other orders, to enforce this order, the Texas Medical Board, as just an example, may revoke a physician's license to practice medicine if he or she violates the order. This power, and the enforcement power other relative agencies have, serves as an adequate deterrence measure.

TMA is concerned that the additional threat of criminal sanctions may have a chilling effect on patient care, risking serious harm by potentially deterring their physicians from providing critical care. Thus, we respectfully ask you to remove that provision from your order and rely on the deterrence effect of the respective licensing agency's enforcement powers.

Again, TMA thanks you for your leadership. If you or your staff have questions, please contact TMA General Counsel, Rocky Wilcox, available by phone at 512-370-1366 or email at [rocky.wilcox@texmed.org](mailto:rocky.wilcox@texmed.org); or TMA Deputy General Counsel, Kelly Walla, available by phone at 512-370-1348 or email at [kelly.walla@texmed.org](mailto:kelly.walla@texmed.org).

Sincerely,

A handwritten signature in black ink, appearing to read "David Fleeger". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Fleeger".

David C. Fleeger MD  
President

Cc: Luis Saenz, Chief of Staff  
Jeff Oldham, General Counsel  
Heather Fleming, Health Policy Advisor