EXECUTIVE ORDER NO. 145

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119 and 138 (2020), issued on April 7, 2020, and May 6, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as of May 14, 2020, according to the Centers for Disease Control and Prevention (CDC), there were more than 4,248,000 confirmed cases of COVID-19 worldwide, with over 292,000 of those cases having resulted in death; and

WHEREAS, as of May 14, 2020, there were more than 1,384,000 confirmed cases of COVID-19 in the United States, with over 83,000 of those cases having resulted in death; and

WHEREAS, as of May 14, 2020, there were over 142,000 positive cases of COVID-19 in New Jersey, with at least 9,946 of those cases having resulted in death; and

WHEREAS, on March 23, 2020, I issued Executive Order No. 109 (2020) which ordered that as of 5:00 p.m. on Friday, March 27, 2020, all "elective" surgeries performed on adults, whether medical or dental, and all "elective" invasive procedures

performed on adults, whether medical or dental, would be suspended in New Jersey; and

WHEREAS, an "elective" surgery or invasive procedure was defined as any surgery or invasive procedure that can be delayed without undue risk to the current or future health of the patient as determined by the patient's treating physician or dentist; and

WHEREAS, this step was necessary at the time because hospitalizations, intensive care unit admissions, and ventilator usage were rapidly spiking, and these surgeries and procedures, whether undertaken in a hospital, ambulatory surgery center or provider office, necessarily draw upon the skill and time of critical health care professionals and involve the use of equipment and supplies that may be needed to treat those who are critically ill; and

WHEREAS, the suspension of these surgeries and procedures preserved the capacity of our health care system to deal with the surge of COVID-19 cases, which reached its maximum impact on the health care system in the middle of April; and

WHEREAS, over the last month, because of the social distancing measures that have been put in place, the rates of confirmed COVID-19 spread have decreased drastically; and

WHEREAS, on April 4, the three-day average of new confirmed positive COVID-19 cases peaked at 4,064 cases, while by May 11, this three-day average had fallen to 1,572 new cases – a 61 percent decrease; and

WHEREAS, the decreased rates of confirmed spread of COVID-19 resulted in fewer individuals seeking COVID-19-related emergency medical care; and

WHEREAS, on April 10, the three-day average of new COVID-19 hospitalizations peaked at 869 new patient hospitalizations, while by May 11, this three-day average had fallen to 250 new patient hospitalizations – a 71 percent decrease; and

WHEREAS, the decrease in new admissions to hospitals and the number of patients who have recoveries enabling them to leave the hospital has resulted in an overall decrease in the number of COVID-19 patients in hospitals; and

WHEREAS, on April 15, the three-day average of patients in hospitals confirmed or suspected to have COVID-19 peaked at 8,226 patients, while by May 11, this three-day average had fallen to 4,277 patients – a 48 percent decrease; and

WHEREAS, on April 15, the three-day average of patients confirmed or suspected to have COVID-19 receiving intensive or critical care peaked at 2,015 patients, while by May 11, this three-day average had fallen to 1,300 patients – a 36 percent decrease; and

WHEREAS, on April 15, the three-day average of patients confirmed or suspected to have COVID-19 on a ventilator peaked at 1,659 patients, while by May 11, this three-day average had fallen to 982 patients – a 41 percent decrease; and

WHEREAS, elective surgeries or invasive procedures, which by definition do not have to happen immediately, may still be necessary for patients' health; and

WHEREAS, the decreasing burden on our health care system from COVID-19 means that elective surgeries or invasive procedures can be reasonably resumed, subject to limitations and precautions that would not be necessary but for the continued effects of the COVID-19 pandemic; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Beginning at 5:00 a.m. on Tuesday, May 26, 2020, the suspension on elective surgeries and invasive procedures instituted in Executive Order No. 109 (2020) is rescinded.

2. Elective surgeries and invasive procedures, as defined by Executive Order No. 109 (2020), may proceed at health care facilities, subject to limitations and precautions set forth in policies, which may include but are not limited to Executive Directives, to be issued by the Department of Health, in consultation with the Division of Consumer Affairs, by Monday, May 18, 2020. The policies to be issued by the Department of Health will address relevant considerations, such as the following:

a. Which types of facilities can resume these procedures;

b. Which specific facilities are eligible to resume these procedures, based upon their current or potential capacity;

c. Whether facilities will be required to prioritize certain procedures, and if so, what considerations should guide these decisions;

d. Personal Protective Equipment requirements for facilities that resume these procedures;

e. Staffing requirements for facilities that resume these procedures;

f. Whether facilities should cohort COVID-19 and non-COVID-19 patients;

g. Requirements for patients seeking these procedures to undergo testing, self-quarantine, or other preventive measures, as applicable;

h. Policies surrounding visitors;

i. Policies surrounding discharge of patients after the procedures are completed; and

j. Reporting metrics regarding the resumption of these procedures.

3. Elective surgeries and invasive procedures, as defined by Executive Order No. 109 (2020), performed by licensed health care providers practicing in outpatient settings not licensed by the Department of Health (e.g., health care professional offices, clinics, and urgent care centers) may proceed, subject to limitations and precautions set forth in policies, which may include but are not limited to rules and administrative orders, to be issued by the Division of Consumer Affairs, in consultation with the Department of Health, by Monday, May 18, 2020. The policies to be issued by the Division of Consumer Affairs will address relevant considerations, such as the following:

a. The categories of licensed health care providers who may resume these procedures;

b. Whether licensed health care providers in outpatient settings will be required to prioritize certain procedures, and if so, what considerations should guide these decisions;

c. Personal Protective Equipment requirements for outpatient settings where such procedures are resumed;

d. Staffing requirements for outpatient settings where such procedures are resumed;

e. How licensed health care providers and outpatient settings can minimize person-to-person contact and facilitate social distancing;

f. Requirements for patients seeking these procedures to undergo testing, self-quarantine, or other preventive measures, as applicable;

g. Policies surrounding companions;

h. Policies surrounding patient follow-up after the procedures are completed; and

i. Recordkeeping and reporting requirements.

4. The Department of Health and/or the Division of Consumer Affairs may issue supplemental or amended policies concerning elective surgeries and elective invasive procedures on or after Monday, May 18, 2020, which shall be similarly enforceable, or rescind such policies at a later date.

5. Any actions taken by the Commissioner of the Department of Health and/or the Director of the Division of Consumer Affairs pursuant to this Order shall not be subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

6. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

7. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

8. This Order shall take effect immediately.

GIVEN, under my hand and seal this 15th day of May, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor