EXECUTIVE ORDER NO. 109

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by 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, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved 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 March 21, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 292,000 confirmed cases of COVID-19 worldwide, with over 12,000 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 23, 2020, there were at least 1,914 positive cases of COVID-19 in New Jersey, with at least 20 of those cases having resulted in death; and

WHEREAS, in recognition that the CDC has advised that social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease and that COVID-19 spreads most frequently through person-to-person contact

when individuals are within six feet or less of one another, I issued Executive Order No. 107 (2020) on March 21, 2020, the facts and circumstances of which are adopted by reference herein, which ordered steps to mitigate community spread of COVID-19 limiting the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance and requiring all businesses or non-profits, wherever practicable, to accommodate their workforce for telework or work-from-home arrangements and reduce staff on site to the minimal number necessary to ensure that essential operations can continue; and

WHEREAS, Executive Order No. 107 (2020) required the closure of facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, tattoo parlors, and public and private social clubs, whether or not they serve alcohol; and

WHEREAS, Executive Order No. 107 (2020) did not limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public, and allowed to remain open health facilities that provide medically necessary or therapeutic services; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, and, consequently, requires the State to

take additional steps to preserve our health care system's capacity to treat those who require emergency or intensive care; and

WHEREAS, limiting exposure of healthcare providers, patients, and staff to COVID-19 and conserving critical resources such as ventilators, respirators, anesthesia machines, and Personal Protective Equipment ("PPE") are essential to combatting the spread of the virus; and

WHEREAS, the Centers for Medicare and Medicaid Services have issued guidance to limit non-essential adult elective surgery and medical and surgical procedures, including all dental procedures, to assist in the management of vital healthcare resources (including PPE) during this public health emergency and to limit potential exposure of healthcare providers, patients, and staff to the virus; and

WHEREAS, the United States Surgeon General has encouraged hospitals and healthcare systems to consider stopping elective procedures; and

WHEREAS, limiting non-essential adult elective surgery and invasive procedures, whether medical or dental, will assist in the management of vital healthcare resources during this public health emergency; and

WHEREAS, while certain surgeries and invasive procedures are medically appropriate, they are not time-sensitive and a postponement will not endanger the health of the patient, and at the same time, these 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 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 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, are suspended in the State. An "elective" surgery or invasive procedure, for purposes of this Order, is 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. An "elective" surgery or invasive procedure does not include the administration of vaccines.

2. Providers planning or determining whether to perform surgery and invasive procedures in their offices must also consider any possible post-operation complications that may place additional stress on local hospitals that do not have the capacity to accept transfers and need to coordinate any possible post-operation admissions with local hospitals prior to performing surgeries or invasive procedures. Ambulatory surgery centers are to coordinate any possible post-surgery admissions with local hospitals prior to performing any surgery or invasive procedure.

3. Each hospital or ambulatory surgery center shall establish written guidelines to ensure adherence to the provisions of this Order, a copy of which shall be provided to DOH. In establishing such guidelines, the hospital or ambulatory surgery center shall include a process for consultation with the treating provider about a designation that the surgery or invasive procedure is elective under the terms of this Order.

4. Nothing in this Order shall be construed to limit access to the full range of family planning services and procedures, including terminations of pregnancies, whether in a hospital, ambulatory surgery center, physician office, or other location.

5. The Commissioner of DOH shall have the authority to issue binding guidance, in consultation with the Director of the Division of Consumer Affairs, on any of the provisions contained in Paragraphs 1 through 4.

6. All elective surgeries or invasive procedures, whether medical or dental, already scheduled for after 5:00 p.m. on Friday, March 27, 2020, are to be cancelled or postponed indefinitely. Facilities are to immediately notify all patients and providers that have scheduled elective surgeries or invasive procedures that these operations cannot proceed as scheduled under the terms of this Order.

7. Any business or non-hospital health care facility, including but not limited to dental facilities, construction facilities, research facilities, office-based healthcare or veterinary practices, and institutions of higher learning, in possession of PPE, ventilators, respirators, or anesthesia machines that are not required for the provision of critical health care services should undertake an inventory of such supplies and send that information to the State by no later than 5:00 p.m. on

Friday, March 27, 2020. The Office of Emergency Management shall establish a process by which entities subject to this provision can submit this information.

8. The Director of the Division of Consumer Affairs, which houses over fifty professional licensure bodies, is authorized and empowered in his or her sole discretion, but in consultation with the Commissioner of DOH, to issue orders restricting or expanding the scope of practice for any category of healthcare professional or veterinarian licensed by a board in the Division of Consumer Affairs, including but not limited to, orders restricting elective surgeries, procedures, and examinations, or for further limiting the scope of practice, or the location for the delivery of service of other licensees subject to regulation by any licensing board or committee within the Division of Consumer Affairs. The Director of the Division of Consumer Affairs is also authorized and empowered in his or her sole discretion, but in consultation with the Commissioner of DOH, to waive any restriction on the entry or reentry into practice (or any restriction on the prescription of controlled dangerous substances or on access to the prescription monitoring program) of any person who has received training for employment in a healthcare profession or who has retired from practice.

9. Any actions taken by the Commissioner of DOH 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.

10. Paragraph 17 of Executive Order No. 107 (2020) is hereby superseded to the extent it is inconsistent with this Order.

11. 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 Executive Order.

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

13. This Order shall take effect immediately.

GIVEN, under my hand and seal this 23rd day of March, 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