EXECUTIVE ORDER NO. 20-05

By the authority vested in me by the Constitution and the laws of the State of Hawai‘i, I, David Y. Ige, Governor of the State of Hawai‘i, hereby order the following, effective on the date of this Executive Order to and including the date that the emergency ceases:

1. For the purposes of this Executive Order, the following terms are defined as set forth below:

a. “Health care facility” means any program, institution, place, building, or agency, or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The term includes but is not limited to facilities licensed or certified by DOH pursuant to section 321-11(10), Hawaii Revised Statutes (HRS), and others providing similarly organized services regardless of nomenclature, and any state government-operated site providing health care services established for the purpose of responding to the COVID-19 outbreak.

b. "Health care professional" means physicians and surgeons and others licensed pursuant to chapter 453, podiatrists licensed pursuant to chapter 463E, dentists licensed pursuant to chapter 448, psychologists licensed pursuant to chapter 465, nurses licensed pursuant to chapter 457, veterinarians licensed pursuant to chapter 471, acupuncturists licensed pursuant to chapter 436E, massage therapists licensed pursuant to chapter 452, naturopathic physicians licensed pursuant to chapter 455, chiropractors licensed pursuant to chapter 442, occupational therapists licensed pursuant to chapter 457G, physical therapists licensed pursuant to chapter 461J, respiratory therapists licensed pursuant to chapter 466D, speech pathologists or audiologists licensed pursuant to chapter 468E, and pharmacists licensed pursuant to chapter 461 who (i)

are providing health care services at a health care facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of the Hawai‘i Emergency Management Agency (HIEMA) or Hawai‘i Department of Health (HDOH) pursuant to my Proclamation issued on March 4, 2020, Supplementary Proclamation issued on March 16, 2020, Second Supplementary Proclamation issued on March 21, 2020, Third Supplementary Proclamation issued on March 23, 2020, or any Executive Order or Supplementary Proclamations related to the COVID-19 outbreak (hereinafter collectively referred to as Emergency Proclamations).

c. “Health care volunteer” means all volunteers or medical, nursing, social work, occupational, physical, or respiratory therapist students who do not have licensure who (i) are providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak and are authorized to do so; or (ii) are working under the direction of HIEMA or HDOH pursuant to my Emergency Proclamations.

2. Pursuant to sections 127A-12(a)(5) and 663-1.5, HRS, I direct all health care facilities, health care professionals, and health care volunteers, as defined in section 1 of this Executive Order, to render assistance in support of the State’s response to the disaster recognized by the Emergency Proclamations. For health care facilities, “rendering assistance” in support of the State’s response includes cancelling or postponing elective surgeries and procedures as each facility determines to be appropriate under the circumstances presented by the COVID-19 emergency if elective surgeries or procedures are performed at the health care facility. In addition, for health care facilities, “rendering assistance” in support of the State’s response must include measures such as increasing the number of beds, preserving personal protective equipment, or

taking necessary steps to prepare to treat patients with COVID-19. For health care professionals, “rendering assistance” in support of the State’s response means providing health care services at a health care facility in response to the COVID-19 outbreak, or working under the direction of HIEMA or HDOH pursuant to the Emergency Proclamations. For health care volunteers, “rendering assistance” in support of the State’s response means providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak, or working under the direction of HIEMA or HDOH pursuant to the Emergency Proclamations.

3. Pursuant to sections 127A-9 and 127A-12(a)(5), HRS, I direct that during the pendency of the Emergency Proclamations, health care facilities, as defined in section 1 of this Executive Order, that in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care facility, which death of or injury to persons, or property damage occurred at a time when the health care facility was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care facility.

4. Pursuant to sections 127A-9 and 127A-12(a)(5), HRS, I direct that during the pendency of the Emergency Proclamations, health care professionals, as defined in section 1 of this Executive Order, who in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health

care professional, which death of or injury to persons, or property damage occurred at a time when the health care professional was engaged in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care professional.

5. Pursuant to sections 127A-9 and 127A-12(a)(5), Hawaii Revised Statutes, I direct that during the pendency of the Emergency Proclamations, any health care volunteer, as defined in section 1 of this Executive Order, who in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death of or injury to persons, or property damage alleged to have been caused by any act or omission by the health care volunteer at a time when the health care volunteer was engaged in the course of rendering assistance to the State by providing services, assistance, or support in response to the COVID-19 outbreak, unless it is established that such death of or injury to persons, or property damage was caused by the wilful misconduct, gross negligence, or recklessness of the health care volunteer.

6. Nothing in this Executive Order shall be construed to preempt or limit any applicable immunity from civil liability available to any health care facility, health care professional, or health care volunteer.

7. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this

purpose, the provisions of this Executive order are declared to be severable.

This order is in accordance with and incorporates by reference my Proclamation issued on March 4, 2020; Supplementary Proclamation issued on March 16, 2020; Second Supplementary Proclamation issued on March 21, 2020, Third Supplementary Proclamation issued on March 23, 2020, Fourth Supplementary Proclamation issued on March 31, 2020, and Fifth Supplementary Proclamation issued on April 16, 2020.

The provisions of this order shall remain in effect for the emergency period, unless terminated by separate proclamation, whichever shall occur first.

Done at the State Capitol this
16th day of April, 2020

DAVID Y. IGE
Governor of Hawai'i

APPROVED:

CLARE E. CONNORS
Attorney General
State of Hawai'i