AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, DISTRICT II
AMERICAN COLLEGE OF SURGEONS, NEW YORK CHAPTER
MEDICAL SOCIETY OF THE STATE OF NEW YORK
NEW YORK CHAPTER, AMERICAN COLLEGE OF PHYSICIANS
NEW YORK OCCUPATIONAL AND ENVIRONMENTAL MEDICAL ASSOCIATION
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS
NEW YORK AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
NEW YORK STATE AMERICAN ACADEMY OF PEDIATRICS – CHAPTERS 1, 2 & 3
NEW YORK STATE NEUROLOGICAL SOCIETY
NEW YORK STATE OPHTHALMOLOGICAL SOCIETY
NEW YORK STATE PSYCHIATRIC ASSOCIATION
NEW YORK STATE RADIOLOGICAL SOCIETY
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS
NEW YORK STATE SOCIETY OF DERMATOLOGY & DERMATOLOGIC SURGERY
NEW YORK STATE SOCIETY OF ORTHOPAEDIC SURGEONS
NEW YORK STATE SOCIETY OF OTOLARYNGOLOGY – HEAD & NECK SURGERY
NEW YORK STATE SOCIETY OF PLASTIC SURGEONS

The above-signed groups represent tens of thousands of physicians delivering patient care across New York State every day. We are writing to express our strong objections to an Executive Budget proposal (Part L of the Health/Mental Hygiene Art. 7 bill) that would allow the NYS Health Department to disregard essential due process protections when a complaint has been filed against a physician, and make information public about a physician under disciplinary investigation. While New York's physicians share the goal of assuring the State has ample power to protect the public when the conduct of a particular health care provider places patients at risk, the Commissioner already has authority to take summary action prior to the conclusion of a disciplinary hearing in the absence of a finding of misconduct. Therefore, our organizations respectfully urge that these provisions be rejected from the Budget.

We agree with the goal of expediting New York's disciplinary process when alleged professional misconduct involves circumstances which present a serious and imminent threat to the public. Indeed, one aberrant health care professional reflects poorly on the entire profession.

We have for many years worked proactively with the Administration and Legislature on laws to enhance the ability of the Office of Professional Medical Conduct (OPMC) to "summarily suspend" physicians in instances where available evidence of a threat to public safety was overwhelming. We also understand that circumstances do occur in which existing OPMC practices are insufficient to adequately protect the public.

However, our system of justice which provides the essential parameters for our professional misconduct statutes recognize the need for an appropriate balance between the public interest and the rights of the accused. There are enormous adverse professional implications when disciplinary action is taken against a physician, or even when there has been an accusation, including loss of reputation and the risk of being dropped by Medicaid and other insurers. With Google, Yahoo and other search functions, an unproven allegation released to the public could linger forever in cyberspace, and permanently and unfairly scar a reputation. Worse, we worry about the crippling impact that making accusations public would have on the trusted relationship physicians with their patients, creating mistrust and fear. Targeting physicians, when no other class of individuals accused of a crime or impropriety would face such exposure, would exacerbate the difficulty we already have in attracting new physicians to practice in NY.

It is important to remember that an accusation does not prove wrongdoing. In fact, most complaints to OPMC of alleged misconduct do not become actual findings of misconduct. Indeed, most complaints to OPMC do not even get so far as advancing to a formal Investigation Committee review. According to the 2018 OPMC Annual report, while over 9,000 complaints were received by OPMC, and 8,782 complaints closed, only 210 cases resulted in the filing of actual charges. **This is 2% of filed complaints that ended in actual charges.** Given the significant disparity between the number of complaints and the number of cases where there is ultimately some finding of misconduct, it is imperative we limit the bypassing of these important due process protections to circumstances when it is clear that the delay of going through these procedures threatens the safety of the public. A subjective assessment that a physician may be a "risk", as this legislation would propose, should not be enough to merit bypassing these long-standing due process protections.

Furthermore, Public Health Law Section 230 (12)(a) already grants power to the Department of Health to summarily suspend a physician from medical practice without an otherwise required hearing and pre-hearing where there is a "determination that a licensee is causing, engaging in or maintaining a condition or activity which in the commissioner's opinion constitutes an imminent danger to the health of the people. This power was then expanded through a 2018 law that authorizes the Commissioner to summarily suspend a physician's license if they have been accused (not convicted) of a felony charge and, in the commissioner's opinion, the physician's "alleged conduct constitutes an imminent danger to the health of the people".

With regard to making charges public, PHL Section 10 (a) (iv) provides for the ability of the Commissioner of Health to make charges against a physician public once it is determined that there is enough evidence to warrant a formal hearing. Since there are still a relatively small number of cases each year that get so far as having formal charges brought, it is completely unfair to enable the release of enormously prejudicial information with little if any review process to determine that even formal charges are warranted.

In conclusion, existing statute permits the Commissioner to act in the public interest where there is sufficient evidence to warrant such exceptional action to protect the public from aberrant health care practitioners. Furthermore, this proposal is prejudicial and excessive in that it abandons long-standing due process protections, and could unfairly destroy professional reputations and the patient-physician relationship so essential for providing high quality care. Therefore, we urge that this proposal be rejected.