NEW YORK STATE SOCIETY OF
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April 22, 2020

The Honorable Andrew Cuomo
Governor, State of New York
State Capitol, Executive Chamber
Albany, NY 12224

Dear Governor Cuomo:

Thank you for your work and efforts during the COVID-19 pandemic. The healthcare industry and our patients look forward to allowing surgeries that have been withheld or delayed for many orthopaedic and musculoskeletal problems as testing and hospital capacity increases with less COVID-19 hospitalizations and deaths. Emergency and urgent surgeries have been proceeding at both hospitals and Ambulatory Surgery Centers (ASCs) but there are many patients with significant musculoskeletal problems that have received alternative conservative treatments that now require surgical intervention and appropriate time for recovery to get back into the workforce. These patients have been unable to work and awaiting surgery before the massive layoffs and COVID-19 restrictions.

Resumption of elective surgeries in less affected counties has only referenced hospital settings. So far, there has been no direction about how this applies to other care settings such as ASCs in counties that are allowed to re-open or ASCs in general. We request additional clarification in order to assemble an adequate healthy workforce and sufficient resources to protect and care for these patients.

Healthcare facilities in some areas are stretched to their limits of capacity, and surge areas have been needed to augment care for patients with COVID-19. To expand capacity to care for these patients and conserve adequate staff and supplies, especially personal protective equipment (PPE), on March 18 the Centers for Medicare & Medicaid Services (CMS) recommended limiting non-essential care and expanding surge capacity into ambulatory surgical centers and other areas.

This allowed some ASCs to be used in other capacities and in many areas, ASCs that were non-COVID-19 centers continue to allow for safer emergency / urgent surgeries with less risk to patients and staff. These new regulations have allowed hospital systems to use ASCs for procedures if in that community, the ASC was considered a safer environment with less risk of crossover from an area or facility with COVID-19 patients. ASCs provide essential safe, efficacious surgeries and procedures with less infection rates than hospitals for similar procedures, less cost and generally higher patient and surgeon satisfaction scores. For example, an ASC in Amherst, New York has performed over 900 outpatient total joints (prior to this crisis) with a 0.001% infection rate compared to a 1-1.5% infection rate at hospitals and is one example of the decreased infection rate in ASCs. The majority of orthopaedic and musculoskeletal procedures are outpatient and many have historically been performed in ASCs. Some ASCs have shut down during the pandemic, some hospital owned ASCs have been converted into overflow beds or COVID-19 hospitals, and some ASCs have stayed open performing emergency and urgent surgeries thus assisting in keeping patients out of the hospital.

The ASCA (Ambulatory Surgery Center Association) consensus position is that ASCs can continue to provide safe surgical care for patients whose condition cannot wait until hospitals return to normal

operations and many have functioned as such depending on the community and hospital load of COVID-19 patients. ASCs are a critical component of the healthcare system and should be included in discussions regarding gradual resumption of elective surgical procedures. It will be incumbent on the surgeon and providers to reassess and reprioritize previously scheduled and postponed surgeries based off the community ASC / hospital capabilities in eventual resumption of elective surgery. This will be based on current and projected COVID-19 cases in the facilities and the surrounding area. This prioritization includes determining if further delay in surgeries and procedures will result in significant medical deterioration or materially impact the patient's prognosis, morbidity or treatment plan. Acknowledging that every patient encounter is unique in postponement decisions must represent a joint decision between the treating clinician and the patient, and these decisions have to be made based off of availability of resources, staffing, PPE, rigorous screening for patients and staff, supply chain capacity and maintaining a safe environment with enhanced cleaning protocols.

ASCs need to be included with resumption of surgeries based off the community individual needs while collaborating with hospitals and health systems to coordinate care. Surgeons and providers should be the ultimate decision makers regarding the appropriate site of service for their patients keeping in mind quality, safety, and risks. With state guidance and coordination, hospitals and ambulatory surgical facilities should be given the data and guidance to allow the appropriate level of elective cases best indicated by their medical staff, administration and current needs of the community. ASCs have served admirably as alternative settings that provide surgical care for those patients who would suffer from a delay, while allowing our local hospital partners to create the incremental capacity needed during these dynamic times. As the pandemic eventually abates, we will continue to assess our approach, in coordination with experts throughout the healthcare system, to best serve the needs of patients and communities.

As this crisis slowly dials back, we will need a strong working force to pick up the pieces and forge forward with restarting our communities from medical practices to restaurants. Orthopaedic surgical procedures can conserve the working force by treating the issues that help our community stay productive while financially supporting healthcare from a broader perspective. Orthopaedic surgery and musculoskeletal problems cause significant impairment and disability and in many cases surgeries are needed in order to get people back to work and maintain or improve function.

Once the decision is made to resume elective surgery, other important issues that must be addressed include:

1. Velocity of return,

2. Location of return,

3. Prioritization of surgical cases, and

4. COVID-19 testing (for both patients and staff).

Again, decisions regarding these factors are best made on a local basis. For example, in areas of low disease burden, elective surgery may not need to be phased in and can start all at once. In other areas, where personnel and equipment have been repurposed, a more phased-in approach is necessary. The principles guiding velocity of return include:

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1. Resource availability (repurposed staff and equipment)

2. Utilization of "COVID-19 free" hospitals or ASCs when possible

3. Ambulatory cases first (to avoid hospitalization and COVID-19 exposure)

4. Inpatient cases (ASA I and II)

5. Inpatient cases (ASA III and IV), once COVID exposure as inpatient is minimized and COVID-19 testing is perfected

The orthopaedic community stands ready to work with federal officials, state and local governments, and all our colleagues. Currently emergent and urgent surgeries are being performed without Covid-19 testing. The requirement of a negative COVID-19 test prior to elective surgeries, during a time with limited testing availability, and concerns with sensitivity and specificity with these tests, will result in unintended challenges negatively impacting access to care. We support efforts to ensure patient and healthcare workforce safety, however caution that these unintended challenges may result in lack of availability of preoperative testing for private ASC patients and staff as well as the redirection of surgeries traditionally performed in ASCs to hospital settings.

Again, thank you for all you are doing, and we ask that you add ASCs to your discussions, regulations, and eventual reopening to be considered along with hospitals.

Sincerely,

James A. Slough, M.D.
NYSSOS President

cc: *Kathy Hochul, Lieutenant Governor of New York, Bob Duffy, Lieutenant Governor, Axel Bernabe, Assistant Counsel to the Governor; Paul Francis, Deputy Secretary for Health and Human Services; Megan Baldwin, Assistant Secretary for Health to the Governor; Honorable Howard A. Zucker, M.D., J.D., Commissioner of Health of the New York State Department of Health; Marcus Friedrich, MD, MBA, FACP, Chief Medical Officer, Office of Quality and Patient Safety of the New York State Department of Health; Honorable members of the New York State Senate; Honorable members of the New York State Assembly*