

**PHIL WEISER**  
Attorney General

**NATALIE HANLON LEH**  
Chief Deputy Attorney General

**ERIC R. OLSON**  
Solicitor General

**ERIC T. MEYER**  
Chief Operating Officer



**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

Office of the Attorney General

March 26, 2020

Dr. Rick A. Kushner, D.D.S.  
President, Founder, CEO & CFO  
Comfort Dental Group, Inc.  
2540 Kipling Street  
Lakewood, Colorado 80215

RE: Executive Order D 2020 009 of the Governor of the State of Colorado

Dear Dr. Kushner:

It has come to the attention of the Colorado Department of Regulatory Agencies through credible and significantly alarming reports that several, and perhaps many, Comfort Dental franchises in Colorado have this week been treating patients by providing voluntary or elective surgeries or procedures, in direct violation of Executive Order D 2020 009, issued by Gov. Jared Polis on March 19, 2020. From these reports, it is apparent that various Comfort Dental franchises have been failing to restrict their practice to emergency or life-saving needs but instead are continuing to engage in elective dental procedures, as well as not ensuring proper social distancing.

Pursuant to C.R.S. § 24-33.5-704(2), Executive Order D 2020 009 has the full "force and effect of law." The order mandates the temporary cessation of all elective and non-essential surgeries and procedures at any dental practice in Colorado, and further directs the preservation of personal protective equipment for use in connection with the COVID-19 pandemic. Specifically, Section II.A. provides that "as of 12:01 A.M. on March 23, 2020, all voluntary or elective surgeries or procedures, whether medical, **dental**, or veterinary [were] suspended in the State of Colorado until April 14, 2020 **at the earliest**." (Emphasis added.) You are reminded that the only surgeries or procedures that may take place at Comfort Dental franchises in Colorado are those where:

- (1) there is a threat to the patient's life if the surgery or procedure is not performed;

- (2) there is a threat of permanent dysfunction of an extremity or organ system if the surgery or procedure is not performed;
- (3) there is a risk of metastasis or progression of staging of a disease or condition if the surgery or procedure is not performed; or
- (4) there is a risk that the patient's condition will rapidly deteriorate if the surgery or procedure is not performed and threat to life, or to an extremity or organ system, or of permanent dysfunction or disability."

Executive Order D 2020 009, § II.B.

The restrictions in Executive Order D 2020 009 remain in full force and effect under the Governor's new Executive Order D 2020 017, the state's "Stay-At-Home" order issued last night, March 25, 2020, as made clear by the FAQ published by the Governor's Office concerning the stay-at-home restrictions: "All medical, dental and veterinary care provided pursuant to this Order must comply with the directives set forth in Executive Order D 2020 009." See <https://drive.google.com/file/d/16nO05S6q0AGBew32r0NYelifwk11uDMO/view>.

The list of surgeries or procedures that may take place in compliance with Executive Order D 2020 009 does not include standard dental prophylaxes, or any other elective procedures. The information we have received to date indicates that various Comfort Dental franchisees have been continuing to perform just such elective procedures, and indeed are continuing to make appointments for initial exams for new patients. To the extent the Comfort Dental website is indicating that the company's franchisees are authorized to perform "essential" services, this contention is misleading and legally inaccurate. The only dental surgeries or procedures that are permissible are those identified in Executive Order D 2020 009. This order in no way authorizes the delivery of an elective procedure that a client may imagine is "essential" but in fact fails to fit within the narrow provisions of Section II.B. of the order.

In addition, we direct your attention to the various guidelines from the CDC and CDPHE concerning social distancing and the requirement that members of the public maintain a distance of at least six feet from each other. Among the reports we have received are indications that your franchisees have been failing to maintain proper social distancing between clients in the franchises' waiting areas, sometimes as a result of your franchisees apparently

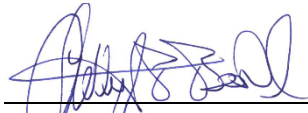
scheduling multiple concurrent appointments and thus leading to crowded waiting areas.

You are directed to immediately notify all of your franchises of the requirements of Executive Order D 2020 009, and to ensure strict compliance with all of its provisions in your continuing provision of dental care in the state of Colorado. Immediate compliance by your franchises is compulsory, and any further continuing non-compliance will be subject to the full force and effect of injunctive relief to enforce Executive Order D 2020 009, and may subject your franchisees to cease and desist orders mandating the cessation of all unlawful acts, pursuant to C.R.S. § 12-20-405(1)(a), due to the imminent threat to the health and safety of the public.

This matter is serious and requires your immediate attention.

Sincerely,

FOR THE ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read "Chris Beall", is written over a horizontal line.

Christopher P. Beall

Deputy Attorney General

Email: [Christopher.Beall@CoAG.gov](mailto:Christopher.Beall@CoAG.gov)

Enclosure: Copy of Executive Order D 2020 009



## **D 2020 009**

### **EXECUTIVE ORDER**

#### **Ordering the Temporary Cessation of All Elective and Non-Essential Surgeries and Procedures and Preserving Personal Protective Equipment and Ventilators in Colorado Due to the Presence of COVID-19**

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, *et seq.* (Act), I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order declaring that, due to the presence of coronavirus disease 2019 (COVID-19) in Colorado, all hospitals, outpatient surgeries and procedure providers are directed to cease all elective and non-essential surgeries and procedures and to preserve personal protective equipment and ventilators and respirators from March 23, 2020 to April 14, 2020, with the exception of rural and critical access hospitals. Rural and critical access hospitals are strongly advised to follow this guidance but are not mandated to do so under this order.

#### **I. Background and Purpose**

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result from Colorado. Since then, CDPHE confirmed more than two hundred and sixteen (216) presumptive positive cases and two (2) deaths, and concluded that the State is now experiencing community spread of the virus. I declared a disaster emergency on March 10, 2020, and issued the corresponding Executive Order D 2020 003 on March 11, 2020.

As the number of cases of COVID-19 continues to rise nationally, internationally, and statewide, it is clear that Colorado is facing a historic public health challenge. The State is making every effort to ensure that all Coloradans are safe and receive the best possible care over the next weeks and months, which requires prioritizing essential health care services while this pandemic emergency remains in effect. Our health care personnel have limited access to necessary equipment and supplies, particularly personal protective equipment (PPE), and our hospitals must reserve beds, respirators and ventilators to manage and assist patients that become critically ill.

The American College of Surgeons, the Colorado Emergency Operations Center, the Colorado Hospital Association as well as medical professionals and epidemiological



experts agree that adequate PPE and medical equipment, including respirators and ventilators, are critical to protecting patients and medical staff to prevent the spread of COVID-19. We must take every step possible to preserve Colorado's available PPE to protect health care personnel while they treat individuals with COVID-19 and others receiving critical care.

It is also clear that while we cannot anticipate how many Coloradans will need hospital care in the coming weeks, we must ensure that the State has enough capacity to treat patients who require hospital-level care both as a result of COVID-19 as well as accidents, illnesses, disease or other conditions.

Therefore, I am issuing this Executive Order because it is critical that Colorado take a uniform approach to maximizing its resources with respect to the preservation of PPE, respirators, ventilators and anesthesia machines ensure the availability of sufficient inpatient hospital capacity and equipment for critically ill patients.

## **II. Directives**

- A. As of 12:01 A.M. on March 23, 2020, all voluntary or elective surgeries or procedures, whether medical, dental, or veterinary, are suspended in the State of Colorado until April 14, 2020 at the earliest. A voluntary or elective surgery or procedure means that the surgery can be delayed for a minimum of three months without undue risk to the current or future health of the patient as determined by the guidelines developed by the hospital, surgical center or other treating medical facility.
- B. Surgeries or procedures, whether medical, dental, or veterinary, may proceed if: (1) there is a threat to the patient's life if the surgery or procedure is not performed; (2) there is a threat of permanent dysfunction of an extremity or organ system if the surgery or procedure is not performed; (3) there is a risk of metastasis or progression of staging of a disease or condition if the surgery or procedure is not performed; or (4) there is a risk that the patient's condition will rapidly deteriorate if the surgery or procedure is not performed and there is a threat to life, or to an extremity or organ system, or of permanent dysfunction or disability.
- C. To preserve PPE, only individuals essential to conducting a surgery or procedure shall be in the surgery or procedure suite or other patient care areas where PPE is required.
- D. Each hospital and outpatient surgery or procedure provider shall establish guidelines to ensure adherence to the principles outlined in Sections II.A-II.C., above. In establishing such guidelines, the hospital, surgical center or procedure provider shall include a process for consultation with the treating provider about a designation that the procedure is elective or non-essential under the guidelines.



- E. I request that any Colorado business or non-hospital health care facility, whether veterinary, dental, construction, research, institution of higher learning, or other, in possession of PPE, ventilators, respirators and anesthesia machines that are not required for the provision of critical health care services undertake an inventory of such supplies by no later than March 26th, 2020 and prepare to send it to the State of Colorado. I direct the Emergency Operations Center (EOC) to allocate any supplies received pursuant to this order to support activities related to the COVID-19 response.
- F. Rural and critical access hospitals are exempt from this Order, but are strongly advised to comply on a voluntary basis. Rural and critical access hospitals are, however, directed to comply with CDC guidelines for PPE preservation. Rural hospital is defined by the Health Resource Services Administration (HRSA) Federal Office of Rural Health Policy as a hospital that is located in a non-metropolitan county or a hospital within a metropolitan county that is far away from the urban center, as defined by a rural urban community area code of four or above (HRSA 2017). Critical Access Hospital is a designation given to eligible rural hospitals by the Centers for Medicare and Medicaid Services (CMS) under the provisions of the Balanced Budget Act of 1997.

### **III. Duration**

This Executive Order shall expire on April 14, 2020 unless extended further by Executive Order.



GIVEN under my hand and the  
Executive Seal of the State of  
Colorado, this nineteenth  
Day of March, 2020.

A handwritten signature in blue ink, which appears to read "Jared Polis".

Jared Polis  
Governor

