

Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

# New York State Legislative Update



# Who am I

- A Partner at Harter Secrest & Emery
- I am a Government Affairs Attorney
- I've been working with NYSCLA for 20 years now
- What I do for the Association



# Presentation Overview

- Provide overview of Albany and the legislative process
- Discuss major legislative and regulatory efforts



# Albany Overview



- Two main players:
  - The Legislature
  - The Governor

# Albany Overview



- The Legislature:
- The Assembly
  - The Senate

# Albany Overview

## ■ New York State Assembly



### — 150 Members

- 105 Democrats (with 1 Independent), 42 Republicans (1 Conservative) and 3 vacancies
  - Speaker of the Assembly is head of the house
- Assemblymember Carl Heastie is the Speaker
  - Speaker appoints the Majority Leader
  - Assemblymember Crystal Peoples-Stokes is the Majority Leader



# Albany Overview

## ■ New York State Senate



- 63 Members
  - 42 Democrats, 20 Republicans, 1 vacancy
- The Senate Majority Leader is the leader of the Senate
  - Senator Andrea Stewart-Cousins is the Senate Majority Leader
- Majority Leader picks the Deputy Majority Leader
  - Senator Michael Gianaris is the Senate Deputy Majority Leader

# Albany Overview

## ■ Veto Proof

- Both the Assembly and Senate are veto proof
- This means that if the Governor were to veto a bill that was passed by both houses, then there are enough votes to override the veto
- Has not yet been used
- November elections will determine if this remains



# Albany Overview

## ■ Governor Kathy Hochul

- Sworn in as 57<sup>th</sup> Governor on August 24, 2021
- First female Governor in New York history
- First Governor from Western New York since the early 20<sup>th</sup> century



# Albany Overview

- The 2022 legislative session started virtual and ended as in-person
- All committee meetings were still conducted remotely
- Budget deadline was April 1 and the budget was mostly on time
- Last day of session was June 2



# NYSED vs. NYSDOH

- Two agencies that oversee issues related to laboratories in New York State
- NYSED
  - Oversees the licensed laboratory professionals
  - Charged with overseeing and regulating the education and licensing of the provider
- NYSDOH
  - Oversees the licensed laboratory facilities
  - Charged with overseeing and regulating the running and operation of the facility itself



# NYSCLA 2022 Legislative Priorities

## **Clinical Laboratory Clean Up Bill**

- The main legislative priority for the Association was to address the staffing issues in the industry and try to make changes to New York's licensing laws
- There were ongoing conversations about the need for more flexibility in New York's current rules and regulations



# NYSCLA 2022 Legislative Priorities

## **Clinical Laboratory Clean Up Bill**

- For the duration of the pandemic, there was an executive order in place waiving many of the licensing requirements
- We knew that once the EO expired, there would be exacerbated problems on the staffing front
- We were in touch with SED and with the legislature and Governor's office to talk about impacts and changes that were needed



# NYSCLA 2022 Legislative Priorities

## **Clinical Laboratory Clean Up Bill**

- SED, under the direction of then Acting Board Secretary Nancy Wiley, understood the issues and worked with us to address them
- Clin Lab State Board Education Subcommittee began to look at regulation changes
  - Through this process, we were able to identify the accompanying legislative changes that were also needed



## Clinical Laboratory Clean Up Bill

- S7020 (Senator Rivera)-B/A10162-A (Gottfried)
- This was the number one legislative priority for the Association
- We have been working on this issue for many years
- This was the year that we finally got all stakeholders and the legislature on the same page



## Clinical Laboratory Clean Up Bill

- This bill was signed into law on July 21, 2022 as Chapter 446!
- There were on-going conversations between stakeholders and SED through-out the legislative session
- A last round of amendments was negotiated at the end of May just before the end of the legislative session

## Clinical Laboratory Clean Up Bill

- This bill:
  - Created the title of histotechnologist
  - Changed the title of Histological Technician to histotechnician
  - Allows for national or state licensing and certification to fulfill the education requirements for all Clinical Laboratory titles in New York
  - Creates a pathway for a clinical laboratory technicians to become a clinical laboratory technologists
  - Corrects the fee that is paid for a provisional permit (technical issue) and changes the duration of the permit from 1 year to 2 years



## Clinical Laboratory Clean Up Bill

- Effective dates:
  - Most of the provisions of this bill take effect by December 21, 2022
  - The provisions related to the creation of the histotechnologist position take effect in December 2023

## Clinical Laboratory Clean Up Bill

- Shout to our partners
  - SEIU 1199
  - GNYHA
  - HANYS
  - Many Individual Hospital Labs
- This was truly a group effort to get this legislation passed

# Other Issues

- EO's
- DOH Regulations

# Executive Orders

- As noted, in 2020, there were a series of executive orders that waived certain New York laws and regulations
- Many of these orders waived professional practice requirements to allow for more healthcare providers to practice in New York
- This included practice waivers and changes for clinical laboratories and clinical laboratory practitioners
- Key components waived – New York licensing requirements and supervisor regulations



# Executive Orders

- These EO's expired in June 2021, without notice, when then Gov Cuomo declared an end to the Covid State of Emergency
- At the end of September 2021, Governor Hochul issued EO 4, which was a state of emergency declared due to the shortage of healthcare workers in New York based on various conversations and challenges that faced a broad cross section of those covered by the previous EO that ended so abruptly
- This EO included many of the same waivers that were included in the original EO
- The EO has been extended every 30 days and is currently in place through September 28, 2022



# Supervisor Regulations

- As noted, EO 4 waives the current supervisor regulations
- While the EO is in place, we have been continuing to work with the Governor's office and DOH to get a final, updated version of the supervisor regulations in place
- On March 23, 2022, the new updated regulations were published for a 60 day public review and comment period



# Supervisor Regulations

- We submitted comments during this period strongly supporting the proposed changes
- We are now awaiting notice of the final adoption of the proposed amendments or another comment period depending on the comments received
- Regardless, we are hoping to be near the end of this process and hope to see needed changes soon



# NYSCLA 2022 Legislative Priorities

## Other issues of note

- S8286-A (Senator Skoufis)/A9413 (Assemblymember Griffin) Requires a written notice on the occurrence of a false-positive result for any condition tested during a prenatal test
- We issued a memo of opposition on the legislation
- While NYSCLA has no objection to the intent of the bill – providing prospective parents with as much information as possible interpreting and acting on prenatal test results, the language of the bill is problematic
- The bill is vague and does not distinguish between screening tests and diagnostic tests
- Additionally, the bill calls for the onus for providing the information for prenatal testing on the labs that perform the testing rather than by the healthcare provider recommending the test



# NYSCLA 2022 Legislative Priorities

## Other issues of note

- Healthcare worker bonus program
  - Included in the final 2022 – 2023 proposed budget
  - Clinical laboratory personnel were covered employees for this program
  - Working with DOH now to seek clarification on this program
  - In addition to the employee title being covered, the employer has to also be covered
  - The initial program did not list Article 5 facilities as a covered employer



# NYSCLA 2022 Legislative Priorities

## Other issues of note

### ■ Limited Lab Issues

- There have been a variety of proposals to allow additional providers and/or entities to run limited labs (e.g., pharmacists)
- We are carefully monitoring all of these various proposals and responding accordingly based on the details of each specific proposal
- Overall, we would not support something that would allow other entities to function as a Clinical Laboratory without having to meet the same regulatory oversight



# Election Year

- In case you aren't paying attention, 2022 is an election year in New York
- All 213 members of the Senate and Assembly are up for reelection
- All 4 statewide offices – Governor, Lieutenant Governor, Attorney General and Comptroller are up for election as well
- All 26 Congressional seats are up for election as is the seat of Senator Chuck Schumer



# Election Year

- 2022 was also a redistricting year
- This added another layer of confusion to the elections this year
- This is why we had two primary elections in New York
- The general election will be held on Tuesday, November 8

# Election Year

- Regardless of the outcome of the elections, we already know that we will see a lot of new faces in Albany next year
- There will be many new faces and significantly many new committee chairs for committees that had long time chairs



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# Harter Secrest & Emery LLP

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