

ARIZONA DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEASURE 2021-01
(Rescinding Emergency Measure 2020-02)

WHEREAS, the World Health Organization officially declared a pandemic due to COVID-19 on March 11, 2020; and

WHEREAS, the Governor of the State of Arizona, in response to the COVID-19 pandemic, issued a Declaration of Public Health Emergency on March 11, 2020, authorizing the Director of the Arizona Department of Health Services (the "Director") to coordinate all matters pertaining to the public health emergency response of the State in accordance with Arizona Revised Statutes ("A.R.S.") Title 36, Chapter 6, Article 9; and

WHEREAS, on June 29, 2020, the Governor of the State of Arizona issued Executive Order 2020-43, pursuant to which indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars were required to pause operations (*i.e.*, close) effective at 8:00 p.m. on Monday June 29, 2020, and remain closed until at least July 27, 2020; and

WHEREAS, on July 23, 2020, the Governor of the State of Arizona issued Executive Order 2020-52, pursuant to which the pause in operations for indoor gyms and fitness clubs or centers, indoor movie theatres, water parks and tubing operators, and bars required under Executive Order 2020-43 was ordered to be extended, remain in place, and continue to be reviewed for repeal or revision every two (2) weeks; and

WHEREAS, on August 4, 2020, the Honorable Timothy J. Thomason, in Maricopa County Superior Court Case No. CV2020-093916, ruled that indoor gyms and fitness clubs or centers must be provided an opportunity to apply to the Arizona Department of Health Services ("ADHS") for reopening and the process for reopening must be implemented no later than August 11, 2020 (the "Ruling"); and

WHEREAS, in the Ruling, the Honorable Timothy J. Thomason, held: "[i]t is not the Court's function to dictate how this process will be structured or implemented;" "[t]he process that the Court is ruling must be provided during the shutdown period certainly does not have to result in automatic reopening;" "[i]t would be appropriate for the Governor or ADHS to have some discretion in dealing with applications to reopen;" "[t]he Court is not in a position to dictate how quickly the process moves along;" and "ADHS certainly has the discretion to deny individual applications;" and

WHEREAS, the Governor and the Director determined that the process ordered in the Ruling also should be applied to the paused operations of indoor movie theaters, waters parks and tubing operators, and bars; and

WHEREAS, the Director, pursuant to the Declaration of Emergency and as authorized by A.R.S. §§ 26-307(A) and 36-787(A), may make, amend, and rescind orders, rules, and regulations necessary for emergency functions and shall coordinate all matters pertaining to the public health emergency response of the State; and

WHEREAS, pursuant to A.R.S. § 36-787(A)(1) and (2), ADHS has primary jurisdiction, responsibility, and authority for planning and executing public health emergency mitigation response for the State and coordinating public health emergency response among State, local and tribal authorities; and

WHEREAS, the Director, pursuant to A.R.S. § 36-136(H), may define and prescribe emergency measures for detecting, reporting, preventing or controlling communicable or infectious diseases or conditions if the Director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen (18) months. The authority to define and prescribe such emergency measures is independent of and different from any rulemaking authority and exempt from following any requirements related to the exercise of any rulemaking authority. See A.R.S. § 36-136(H); and

WHEREAS, to attempt to both continue to prevent and control the continued spread of COVID-19, which still poses a serious threat to public health and welfare, *and* comply with the Ruling, the Director, on August 10, 2020, issued Emergency Measure 2020-02, *Slowing the Spread of COVID-19: Phased Reopening*, which established the process for phased reopening under conditions most likely to protect public health and welfare; and

WHEREAS, on March 5, 2021, the Governor of the State of Arizona issued Executive Order 2021-05, pursuant to which “[c]apacity limits for businesses, implemented and outlined by Executive Order 2020-47, *Reducing the Risk, Slowing the Spread*, ADHS Emergency Measure 2020-02, *Slowing the Spread of COVID-19: Phased Reopening*, the ADHS COVID-19 Guidance for Businesses and related requirement documents from ADHS, are rescinded;” and

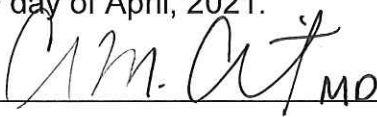
WHEREAS, on March 25, 2021, the Governor of the State of Arizona issued Executive Order 2021-06, pursuant to which “Executive Orders 2020-09, *Limiting the Operations of Certain Businesses to Slow the Spread of COVID-19*; 2020-36, *Stay Healthy, Return Smarter, Return Stronger*; 2020-40, *Containing the Spread of COVID-19*; 2020-43, *Pausing of Arizona’s Reopening*; 2020-47, *Reducing the Risk, Slowing the Spread*; 2020-

52, Continuation of Executive Order 2020-43; 2020-59, Further Mitigation Requirements for Events are rescinded; and

NOW, THEREFORE, I, Cara Christ, M.D., M.S., based on the foregoing and by virtue of the authority vested in me as the Director of the Arizona Department of Health Services, hereby prescribe:

1. Emergency Measure 2020-02, *Slowing the Spread of COVID-19: Phased Reopening*, is rescinded.
2. In accordance with Executive Order 2021-06:
 - a. Businesses, whether for-profit or non-profit, institutions, professions or entities that physically operate in this state and serve the public, or are employers, are encouraged to continue to take actions recommended by the CDC, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), and ADHS to limit and mitigate the spread of COVID-19.
 - b. These entities still maintain the right to institute and enforce policies to mitigate against COVID-19 spread including the use of face coverings and physical distancing, and retain the right to refuse service to those who do not comply with the policies.

Having authority to do so under Arizona law, I have executed this Emergency Measure on this 2nd day of April, 2021.

 MO 4/2/2021

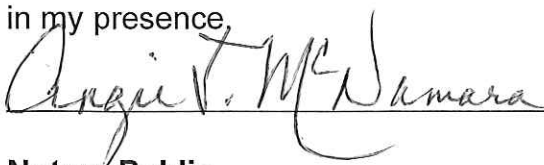
Cara Christ, M.D., M.S., Director, Arizona Department of Health Services

ON this 2nd day of April, 2021,

Cara Christ, M.D., M.S., Director of the Arizona Department of

Health Services, signed and acknowledged this document

in my presence,

 4/02/2021

Notary Public

