



Virginia Cardiovascular Specialists  
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September 22, 2020

Jay Withrow, Director  
Division of Legal Support, ORA, OPPPI, and OWP  
Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, VA 23219

RE: Comments on 16 VAC 25-220, Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

Dear Mr. Withrow:

On behalf of the Virginia Cardiovascular Specialists (VCS), I am providing the following comments on 16 VAC 25- 220, the permanent standard for COVID-19 prevention and mitigation in the workplace. VCS is a private cardiology and our physicians and staff have been on the front lines fighting the spread of COVID-19 in Virginia for more than six months. We have implemented extensive measures and follow detailed requirements and guidelines set forth by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), Virginia Department of Health (VDH), and the Virginia Department of Labor and Industry (DOLI) to prevent, mitigate, and control the spread of COVID-19 in communities across the Commonwealth. We are grateful for the work put in by the Safety and Health Codes Board on the Emergency Temporary Standard, but we have significant concerns with the draft permanent standard as written and the potential burden it could put on our practice, our staff and our ability to provide care to our patients beyond the emergency period.

Accordingly, as it considers the implementation of a permanent standard, we respectfully request that the Safety and Health Codes Board: 1) Eliminate the requirement for employers to report positive SARS CoV-2 test results to VDH; 2) Clarify the return to work requirements regarding the test-based strategy; 3) Clarify the applicability of the permanent standard so that it is only in effect during a declared public health emergency related to COVID-19.

First, under the CARES Act, all clinical laboratories and testing providers in Virginia, many of which are physician practices, are required to report the results of any test to detect SARS-CoV-2 to VDH. As such, all positive tests are already being reported to VDH by the testing provider. Requiring an employer to report the test result to VDH in addition to that is duplicative and unnecessarily burdensome. We respectfully request this requirement be removed from the permanent standard.

Second, the draft permanent standard's test-based strategy for "Return to Work" is in conflict with recommendations from VDH and CDC. The draft permanent standard requires employers to select either a test-based strategy or a non-test-based strategy for determining whether employees known to be infected with SARS-CoV-2 can return to work. The test-based strategy would require the employee to have obtained two negative test results more than 24 hours apart. The problem is that a person may test positive for the virus for up to 120 days after being infected, even though the person is no longer infectious and the virus contagious after 10-20 days, depending on the severity.<sup>1</sup>

<sup>1</sup> Duration of Isolation and Precautions for Adults with COVID-19, Centers for Disease Control and Prevention

**BELL CREEK MEDICAL PARK**  
7505 Right Flank Road, Suite 700  
Mechanicsville, Virginia 23116  
(804) 559-0405 | (804) 559-0409 FAX  
Dean E. Caven, MD, FACC  
Timothy W. Hagemann, MD, FACC  
Brian K. Holdaway, MD, FACC  
George H. Mueller, III, DO, FACC  
Sameer Rohatgi, MD, FACC  
Daniel A. Schneider, MD

**BOULDERS VI**  
7401 Beaufont Springs Drive, Suite 100  
Richmond, Virginia 23225  
(804) 323-5011 | (804) 323-5120 FAX  
William L. Coble, Jr., MD, FACC  
John M. DiGrazia, MD, FACC  
Charles G. Evans, Jr., MD, FACC  
James B. Garnett, MD, FACC  
David M. Gilligan, MD, FACC, FHRS  
Jiho J. Han, MD, FACC  
C. Foster Jennings, Jr., MD, FACC  
Charles A. Joyner, MD, FACC  
Bradford J. Matthews, MD, FACC

**FOREST MEDICAL PLAZA**  
7611 Forest Avenue, Suite 100  
Richmond, Virginia 23229  
(804) 288-4827 | (804) 288-4494 FAX  
Darryn L. Appleton, MD, FACC  
Carolyn A. Burns, MD, FACC  
Michael B. Erwin, MD, FACC  
Ashwani Kumar, MD, FACC  
Charles W. Phillips, MD, FACC  
Peter S. Ro, MD, FACC  
Saumil R. Shah, MD  
Robert E. Sperry, MD, FACC  
Shelton W. Thomas, MD, FACC  
S. Craig Vranian, MD, FACC  
Charles M. Zacharias, Jr., MD, FACC

**HARBOURSIDE MEDICAL CENTER**  
6120 Harbourside Centre Loop  
Midlothian, Virginia 23112  
(804) 915-1400 | (804) 608-3502 FAX  
William L. Coble, Jr., MD, FACC  
Ramesh N. Kundur, MD, FACC  
Ryan D. Melchior, DO  
Guru P. Mohanty, MD  
C. Mark Newton, MD, FACC

**ST. MARY'S**  
5875 Bremono Road, Suite 505  
Richmond, Virginia 23226  
(804) 282-2685 | (804) 282-0780 FAX  
Stephen N. Abramson, MD, FACC  
Darryn L. Appleton, MD, FACC  
Carolyn A. Burns, MD, FACC  
Martin D. Caplan, MD, FACC  
Aaiya H. Crowl, MD, FACC  
Christopher S. Thomas, MD

**WATERSIDE MEDICAL CENTER**  
4700 Puddledock Road, Suite 400  
Prince George, Virginia 23875  
(804) 458-1740 | (804) 541-1846 FAX  
Michael J. Bunda, MD, FACC  
Jiho J. Han, MD, FACC  
Ashwani Kumar, MD, FACC  
Guru P. Mohanty, MD  
Reza K. Omarzai, MD, FACC

**INTECARDIA**  
at **FOREST MEDICAL PLAZA**  
7611 Forest Avenue, Suite 100  
Richmond, Virginia 23229  
(804) 285-7226 | (804) 285-2580 FAX

**TAPPAHANNOCK**  
658 Hospital Road, Suite 302  
Tappahannock, Virginia 22560  
(804) 443-6235 | (804) 443-6239 FAX  
Stephen N. Abramson, MD, FACC  
Robert M. Bennett, MD, FACC  
Brian K. Holdaway, MD, FACC

**ADMINISTRATION**  
8001 Franklin Farms Drive, Suite 130  
Richmond, Virginia 23229  
(804) 521-5800 | (804) 545-4340 FAX  
Ann E. Honeycutt, Executive Director

Therefore, VDH and CDC recommend that a person who tests positive for SARS-CoV-2 not be tested again within three months. However, if an employer chooses to use the test-based strategy to determine whether employees can return to work, those employees could be absent from work unnecessarily for up to three months. In such a case, the employee would be forced to take unpaid leave if they do not have enough paid time off to cover the period beyond that which is required under the Families First Coronavirus Response Act and the Family and Medical Leave Act. Although the draft permanent standard would allow employers to select the non-test-based strategy for compliance, the option for a test-based strategy creates confusion for health care providers and employers already under a significant amount of pressure complying with other laws, regulations, and guidelines. Accordingly, we respectfully request the test-based strategy for known SARS-CoV-2 cases be eliminated or clarified in the permanent standard.


Lastly but most importantly, the permanent standard, as currently written, will apply to Virginia businesses indefinitely, including at such a foreseeable time at which COVID-19 is no longer a critical public health emergency. Consequently, health care providers will still be required to comply with the strict requirements in this standard three years from now when most people have been immunized and effective treatments have been developed. The current standards as written would limit patient access to providers by requiring minimal number of patients in the lobby at one time; spacing requirements for staff will be a large burdens on physician offices with limited space and importance of staff team work, and continued cost to ensure all staff remain in PPE

Most public health experts agree that the SARS-CoV-2 virus will never fully disappear. Over time, however, more effective treatments and vaccines will be developed to eliminate effectively the emergent public health threat. Accordingly, it is foreseeable that current prevention measures like those contained in this draft permanent standard will no longer be necessary in that instance.

We understand that such a time might not occur for another year and therefore appreciate the need for the possible extension of the temporary standard to be in place but not a permanent standard. Many business continue to struggle to keep their doors open and imposing stringent standards outside of a declared public health emergency could impose significant hardships. We request that language be included to the effect that specifically limits application of these measures to a period of declared public health emergency due to COVID-19; in this way businesses can operate without the burden of complying with regulations that are no longer necessary to protect public health once the public health emergency is over. And if there is a future outbreak of COVID-19 in Virginia that necessitates a declaration of public health emergency, this regulation could then become effective again.

We respectfully request the above changes to the draft permanent standard to provide clarity and certainty for health care providers and employers in the Commonwealth.

Sincerely,



Dean E. Caven, M.D.  
President