



2924 Emerywood Parkway
Suite 300
Richmond, VA 23294

TF 800|746-6768
FX 804|355-6189

www.msv.org

July 30, 2021

Email to: jay.withrow@doli.virginia.gov, princy.doss@doli.virginia.gov

Chairwoman Milagro Rodriguez
Virginia Safety and Health Codes Board
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219

RE: Comment on Proposed Amendments to 16 VAC 25-220, Final Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

Dear Chairwoman Rodriguez:

I am writing as Assistant Vice President of Government Affairs and Public Policy for the Medical Society of Virginia (MSV) to respectfully comment on the Final Permanent Standard (FPS) and to request a repeal of the standard. If the Board is unable to support a full repeal of the FPS, the Board should, at a minimum, adopt Governor Northam's substitute language for 16VAC25-220-10(E) to allow more flexibility for compliance with the FPS.

MSV is grateful for the many hours of work the Safety and Health Codes Board has devoted to this issue over last year. This is a complicated virus, and the Board's work has been admirable.

Since the beginning of the outbreak, physicians have served on the front lines of the pandemic. MSV members and their staffs have answered the call to provide for testing, diagnosis, and treatment of COVID-19. We have also led the charge on vaccinations, leading to a significant curb in the infection rate.

Even though cases and community spread are down significantly right now, the health care community remains vigilant as new variants enter the community. As such, CDC guidelines and the OSHA ETS mandate continued distancing, capacity, and PPE guidelines for health care settings.

Unfortunately, the FPS is unable to account for the changing dynamic of the virus and the changing recommendations from the CDC. For example, language in the FPS that deems compliance with the FPS if the employer complies with CDC guidelines is qualified with the requirement that CDC guidance provide equivalent or greater protection than the FPS. This qualification essentially eliminates any flexibility this provision was designed to provide. It also raises the question of who determines the level of protection in CDC guidance versus the level of protection provided by the FPS.

Recognizing this, DOLI continues to update its Frequently Asked Questions in accordance with CDC guidelines. While the clarification in the FAQs is appreciated, our concern is that a court would still lean on the strict qualifying language in the FPS itself rather than the information in the FAQs.

Accordingly, the MSV respectfully requests that the Board repeal the FPS. In the alternative, the Board should adopt Governor Northam's substitute language that an employer's actual compliance with CDC guidance shall be considered compliance with the FPS.

Thank you for your consideration, and should you have any questions or if the MSV may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Clark Barrineau". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

M. Clark Barrineau
Assistant Vice President of Government Affairs and Policy
The Medical Society of Virginia

CC: Jay Withrow, Director, Division of Legal Support, DOLI
Princy Doss, Director of Policy, Planning and Public Information, DOLI
W. Scott Johnson, Esq., Hancock, Daniel & Johnson
Benjamin H. Traynham, Esq., Hancock, Daniel & Johnson

DM# 1190714