MEDICAL MUTUAL

Liability Insurance Society of Maryland

PROFESSIONALS ADVOCATE

Insurance Company

MEDICAL PRACTICE IN THE FACE OF COVID-19

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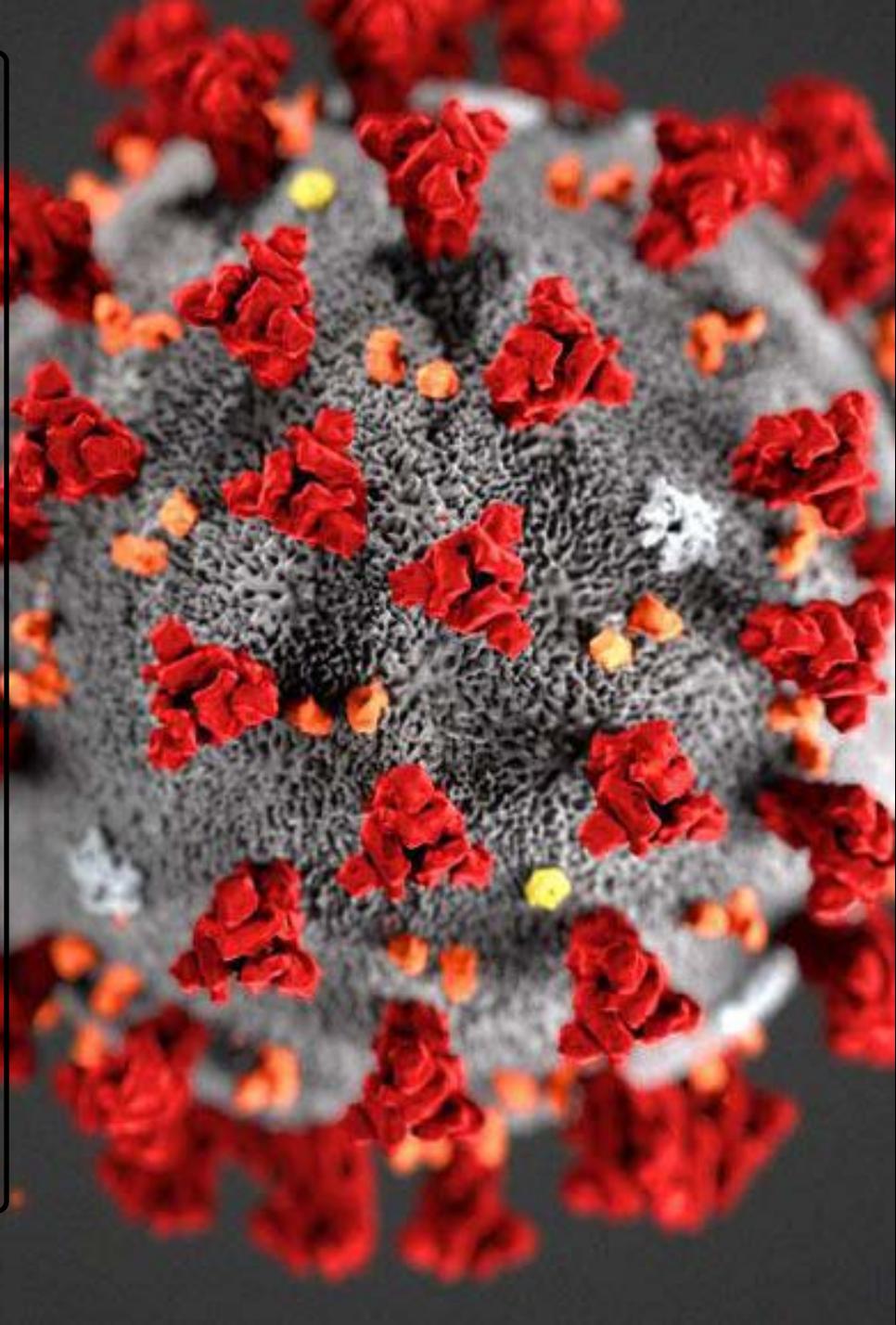
- **Mr. Sly is licensed to practice law in the State of Maryland.**

- **By attending this course you agree that Mr. Sly is not providing you with legal advice and no attorney-client relationship is formed.**

- **This is course is designed to provide helpful hints and information.**

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COURSE OBJECTIVES

- **Understand the basic safety rules and concepts for reopening medical practices**

- **Know the process for enhanced informed consent**

- **Recognize and navigate the issues with telehealth**

- **Make sense of Good Samaritan and immunity laws, and understand your responsibility to your employees**

MODULE 1

Cleaning and Disinfecting

CDC
Recommendations

Coronaviruses on surfaces and objects naturally die within hours to days. Warmer temperatures and exposure to sunlight will reduce the time the virus survives on surfaces and objects.

Normal routine cleaning with soap and water removes germs and dirt from surfaces. It lowers the risk of spreading COVID-19 infection.

EPA-approved disinfectants are an important part of reducing the risk of exposure to COVID-19. Alternative disinfectants can be used (for example, 1/3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions). Bleach solutions will be effective for disinfection up to 24 hours.

Approved Cleaning Agents

The EPA has an approved list of cleaning agents. https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2

EPA has a database to compare products: https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2#filter_col1

- Store and use disinfectants in a responsible and appropriate manner according to the label. Do not mix bleach or other cleaning and disinfection products together–this can cause fumes that may be very dangerous to breathe in. Keep all disinfectants out of the reach of children.

- Always wear gloves appropriate for the chemicals being used when you are cleaning and disinfecting. Additional personal protective equipment (PPE) may be needed based on setting and product. For more information, see **CDC's website on Cleaning and Disinfection for Community Facilities**.

- Practice social distancing, wear facial coverings, and follow proper prevention hygiene, such as washing your hands frequently and using alcohol-based (at least 70% alcohol) hand sanitizer when soap and water are not available.

Gov. Hogan's Order:
May 6, 2020

Any licensed healthcare facility or healthcare provider resuming elective and non-urgent medical procedures shall have at least one week's supply of personal protective equipment (PPE) for themselves, staff, and as appropriate, for patients.

Note: PPE requests to any State or local health or emergency management agency will be denied for elective and non-urgent medical procedures.

Note: The healthcare facility or healthcare provider must be able to procure all necessary PPE for its desired services via standard supply chains.

Note: For hospitals with COVID-19 patients, MDH will determine a daily PPE per patient use rate for PPE requests.

Maryland Certification

Waranch & Brown, LLC 410-821-6014

SAMPLE

SELF-CERTIFICATION FOR RESUMPTION OF NON-EMERGENT CARE DURING THE NATIONAL CORONAVIRUS PUBLIC HEALTH EMERGENCY

Name of Health Care Facility _____

Name and Contact Information for Managing Authority or Health Care Provider

_____

We certify that the health care facility has at least one week's supply of personal protective equipment (PPE) for health care practitioners, staff, and (as appropriate) patients.
_____(initials)

We certify that the health care facility will procure all necessary PPE via standard supply chains and will not procure PPE for elective and non-urgent medical procedures from the state or emergency management agencies.
_____(initials)

We certify that social distancing will be strictly maintained in all settings.
_____(initials)

We certify that all health care workers, patients, and visitors will be screened for COVID-19 symptoms upon arrival. We certify that staff will be required to stay home if they exhibit COVID-19 symptoms.
_____(initials)

We certify that the facility and staff will implement enhanced infection control measures in accordance with the most current CDC guidelines.
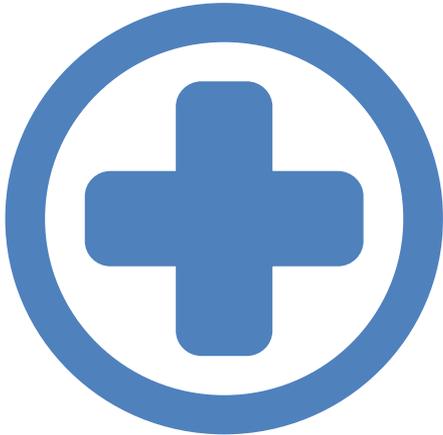_____(initials)

_____

Signature & Date

Governor Northam's Orders

- **https://www.governor.virginia.gov/executive-actions/**

- **Collection of all Executive Orders**

- **Addresses Public Emergency, Immunity, and billing issue, e.g., Medicaid**
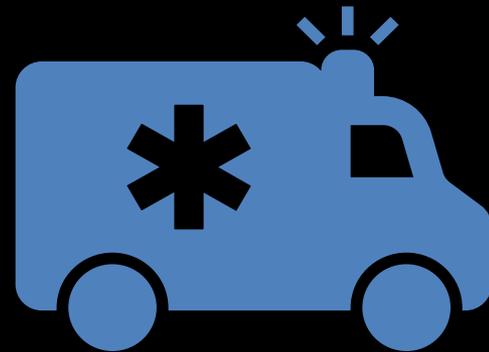
Further Considerations

- Encourage everyone to bring lunch rather than order in/going out or consolidate lunch order(s)
- Document daily disinfecting procedures
- Regular communication and training
- Plexiglass screen at front desk
- Encourage everyone to stay home if they are sick
- Encourage social distancing (6') at all times
- Discourage everyone from using others' phones, desks, offices, or other work tools and equipment, when possible
- Stagger patient appointments. No walk-ins.
- Limit non-patient visitors/deliveries, e.g., consider having FedEx/UPS drop off packages outside the office
- Active monitoring (temperatures, etc.)?
- Have hand-held contactless thermometer available
- Consider placing a wipeable cover on electronics, *e.g.*, keyboard
- Consider whether one wishes to continue having cleaning crew in office or have everyone dump their personal trash in central bin that can be placed outside office at end of day
- Consider having staff sign document agreeing to follow recommendations

Further Considerations
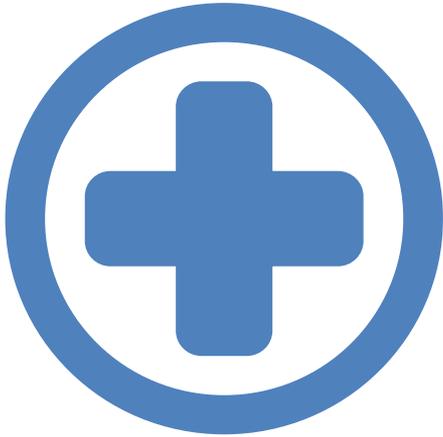
- **Provide a cleaning/sanitizing station BEFORE entering your office**

- **Offer masks to all patients**

- **Rotate staff**

- **Telework**

- **Questioning all patients before entering and upon check-in**
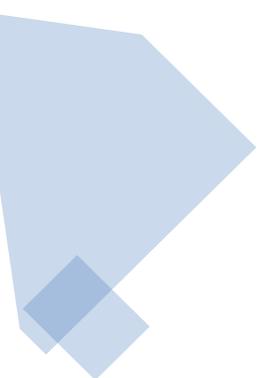
Questions

In the past 14 days, have you tested positive for COVID-19?

Have you been in close contact with any person who has been diagnosed with COVID-19 or who has been self-quarantined?

Do you have a cough or fever?

If you answered "yes" to any of these questions, please call _____ BEFORE entering our office.

What if staff gets sick?

Plan to rapidly advise all employees if an employee/vendor/visitor is sick

Have a system for notification without revealing identity

Have a plan for cleaning/disinfecting office in light of illness

Encourage employees to get tested/watch for any symptoms

Employee Recovery CDC Guidelines

1. If an employee has a fever and a cough, but then gets better without COVID-19 testing or medical care, they would be allowed to return to work under the following conditions:

• Three days have passed since their recovery, which means their fever is resolved without the use of fever-reducing medication and their respiratory symptoms have improved; and
• At least seven days have passed since they first experienced symptoms

2. Another case could be an employee who is medically confirmed to have COVID-19 and is showing symptoms. In this instance, the worker would be allowed to return to work if:

• Their fever has been resolved without the use of fever-reducing medications;
• Their respiratory symptoms have improved (for example, cough or shortness of breath); and
• They have had two negative COVID-19 tests

3. For employees who have a laboratory-confirmed case of COVID-19, but are not showing any symptoms, CDC currently says they may return to work:

• After at least seven days have passed since the date of their first positive COVID-19 test; and
• They have had no subsequent illness

MODULE 2

Informed Consent issues

Informed Consent

- **The provider must obtain informed consent**

- **Risks and benefits must be discussed**

- **Where available, data must be provided**

- **Documentation is critically important**

COVID-19 SPECIFIC INFORMED CONSENT LANGUAGE

COVID-19 is an infectious virus that currently has no direct treatment and for which there is no current vaccine. While we have taken reasonable steps to limit the potential for transmission of COVID-19 in our office, you agree that you understand transmission of COVID-19 is still possible.

You understand our office offers a HIPAA compliant telemedicine option. However, your care and/or your preference requires an in-person visit with our staff and health care providers. Where required to provide you care, our staff and health care providers may be within 6 feet of you and may touch you and your personal objects. You understand that person-to-person contact may increase the chance of COVID-19 transmission. It may be necessary that you quarantine and/or take other steps in the event it is determined that you may have been exposed to COVID-19.

You further understand that recommendations and guidelines regarding COVID-19 are subject to modification.

MODULE 3

Telehealth

- ALL rules regarding negligence apply
- HIPAA rules apply
- Maryland now permits asynchronous communication
- Documentation is critical
- Retain all communication

Telehealth Billing (MD)

https://www.medchi.org/Portals/18/Files/Resources/MedChi%20Telehealth%20Billing.Coding%20Guidelines%20(4).pdf?ver=2020-04-28-125700-240

Virginia Medical Society

- **https://www.msv.org/**
- **https://www.msv.org/resources/hot-topics/coronavirus-disease-2019-covid-19**
- **https://www.msv.org/sites/default/files/covid-19_telehealth_billing_ref.pdf**
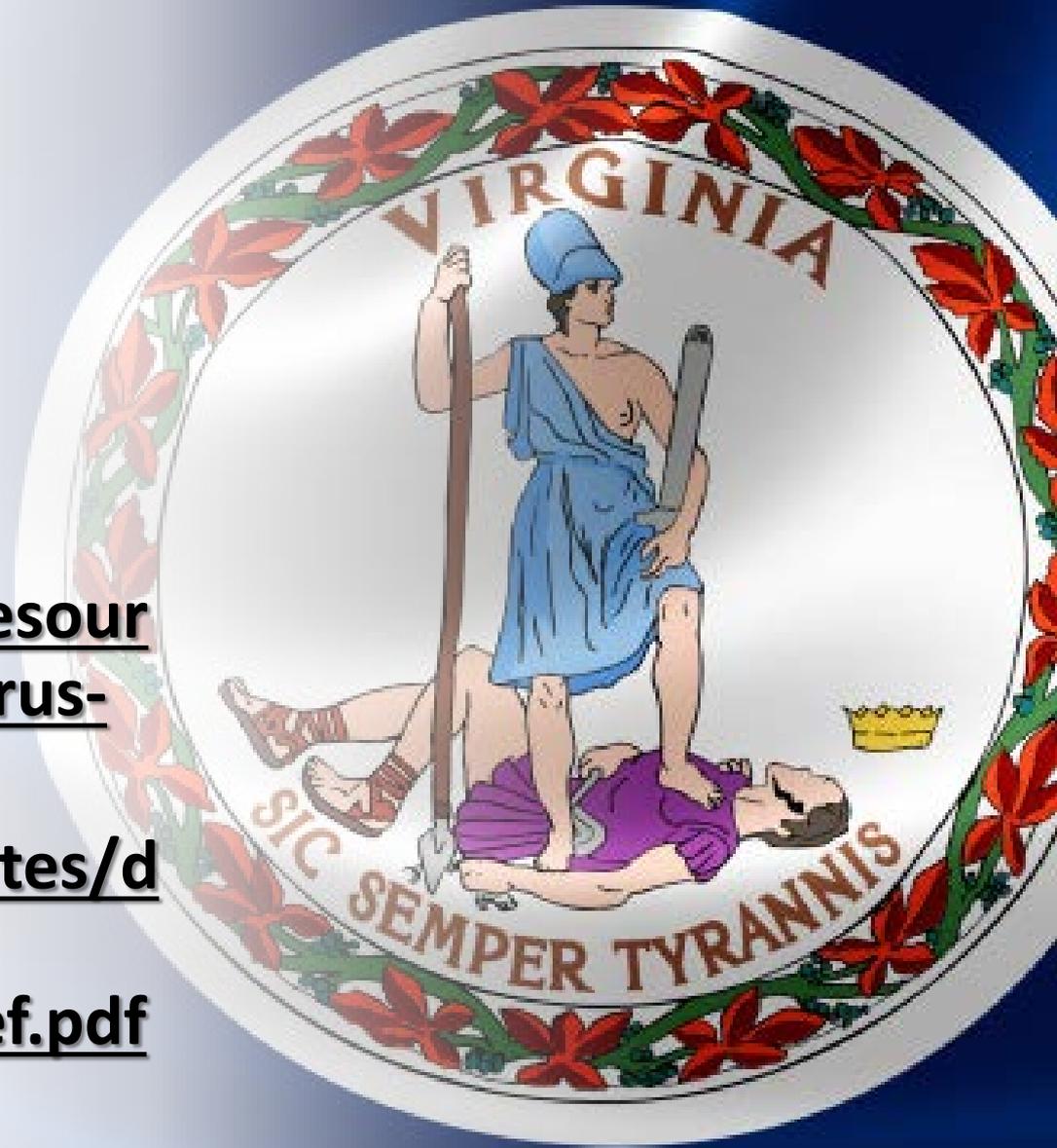
MODULE 4

Workers' Compensation

- The exclusive remedy

https://www.osha.gov/SLTC/covid-19/

- **Specific guidance for general healthcare and dentistry**
- **OSHA refers to CDC for recommendations**
- **Differentiate clean areas (e.g., where PPE is put on) from potentially contaminated areas (e.g., where PPE is removed);**
- **Handle waste and other potentially infectious materials; and**
- **Clean, disinfect, and maintain reusable equipment and PPE**

Lawsuits

Good Samaritan Law

Applies only when a person is acting without payment

Limits liability to grossly negligent acts

"Immunity"

President Trump issued a National Emergency Order

Governor Hogan issued a State Emergency Order

Governor Northam issued a State Emergency Order

But . . .

Immunity is limited

Gross negligence is required

It is limited to only coronavirus cases

- But, what if a patient is negligently infected with coronavirus?
- Does it apply to patients whose care has been delayed due to coronavirus?

Recommendations

- Record what you knew and when regarding coronavirus and relevant recommendations
- Be flexible in scheduling staff and patients
- Consider the emotional toll the pandemic is taking on your patients, your staff, and you
- Remember to take care of yourself while you are taking care of others

Other Resources

- **https://www.medchi.org/Your-Resource/Public-Health/Coronavirus-Resource-Center**

- **https://www.montgomerymedicine.org/covid-19-practice-reopening-toolkit/**