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## Mask Mandate Confusion

Since we sent the Update earlier today, we have had several developments on the mask issue.

First of all, the Richmond Times Dispatch posted a story on the governor's press conference today. Here is the first paragraph:

"Gov. Ralph Northam said Thursday that businesses faced with a customer not wearing a mask should educate the person on the importance of mask wearing, and faced with a non-complying customer, are entitled to refuse service."

Given that, I contacted the governor's office and said that we needed clarity on just what his position was on mask enforcement by sellers. I posed the following:

This is the scenario for which we have no clarity. Customer who comes in to convenience store is not wearing a mask. Interacts with store employee while shopping or on check out.

- 1) Can we assume all non-mask wearers have a medical condition?
- 2) Is the store employee required to ask "why are you not wearing a mask?"
- 3) Assuming they ask and the customer says they have a medical condition can the transaction proceed?
- 4) If the customer responds "I don't agree with the policy" or the like how do we proceed?

I received the following response from one of the governor's senior staff.

**The businesses should try their best to educate their patrons, but we don't expect them to force individuals to wear a mask. That is especially so if an individual has a medical condition.**

Following is a response that was forwarded to me from the Virginia Retail Federation.

Does my business have liability for patrons or employees who refuse to wear a mask?

**"Businesses are not responsible for enforcement of EO63 on individual patrons. Businesses are responsible for enforcement of EO61 on employees who are required**

**to wear a mask."**

What is the penalty for not wearing a face covering in a public setting mentioned in Executive Order 63?

**Patrons who are not wearing a face covering can be the subject of enforcement via the Virginia Department of Health. In the case of egregious violations VDH can enforce through a court-issued injunction (civil) or summons and warrant, which are punishable as a Class One misdemeanor. Both require VDH to go through a judicial process prior to any potential arrest, which distinguishes this from a Class One misdemeanor through the criminal code. This is why the Executive Order cites title 32.1-health, and not the criminal code.**

So where does that put us as of 6:30 pm the night before the mask edict takes effect?

We have received several versions of this edict today. Fortunately it appears that late in the day the guidance from the governor's office has been changed to remove sellers and stores from mask enforcement. That is a completely different direction than we were given just four hours ago. Some have asked me what would I do? Based upon this new information, I would make sure that all my employees had masks on at all times they are dealing with the public, and let the public worry about themselves. I would keep copies of this update in your files and distribute them to your stores. I have the original emails on file with the appropriate addresses if we need to use them.

This has been a day unlike any other in 21 years here. Our efforts to get the latest information to you were hampered somewhat by a moving target and I apologize for any confusion that created. I will leave my editorial comments on the mask issue for another day.

As always thank you for your support of VPCMA.

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