

# RISK IS REAL

## Re-Starting your Practice based on Data, not Dates

### Q&A Synthesis

**Question:** Should we (medical practices) test employees or require them to be tested and provide a copy of their test results?

**Answer:** The EEOC has issued guidance that employers may test workers for COVID provided that the administration of the test is job-related and consistent with business necessity. The linked [JD Supra article](#) notes that, “While the EEOC guidance suggests that testing employees for the presence of COVID-19 would not violate federal anti-discrimination laws, it leaves open whether such a testing program is legally permissible under other federal and state laws or agency guidance in areas including workplace privacy, occupational safety and health, and workers’ compensation.” An applicable parallel is the requirement by medical offices for employees to prove that they are negative for TB before hire, [per CDC recommendations](#). In larger practices and health systems, the employer typically provides the TB test. Smaller practices may ask prospective employees to be tested and provide the results pre-hire. In the current state, a practice would need to test every employee every day for COVID for testing to serve as a valid pre-hire screening, which is not practical or feasible.

**Question:** Can we require vendors entering our practice site to be tested?

**Answer:** The CDC has issued [guidance to employers](#) that are resuming business operations to conduct daily health checks of individuals accessing the workplace, which is centered on daily health checks, such as temperature and symptoms questionnaires.

**Question:** Should we add COVID language to our surgical consents?

**Answer:** We've discussed this with and heard from a number of dermatology and plastic surgery practices and have heard from a number of health law attorneys. There is a great deal of variation in opinions on this subject. Some practices are having all patients tested before in-office and ASC surgery and requiring a signed consent that includes COVID risk for every patient. Others are not requiring any additional consent. If your practice is in a hot zone and/or executive orders are in place limiting non-essential services it may be prudent to obtain a consent to mitigate liability, particularly if the service could be considered non-essential. One important point is to check your state laws. Some states are requiring testing. Note the [ACS MeNTS](#) scoring provides the patient with an objective assessment of their COVID risk prior to undergoing surgical procedures.

**Question:** Should we have our employees sign a statement that they are aware of and accept the risks related to COVID exposure?



**Answer:** This is not recommended. [OSHA's General Duty clause](#) requires all employers to furnish to each worker "employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." Asking employees to sign such a statement does not release the employer from this provision. Medical practices that implement reasonable safety controls to fulfill this general duty will reduce their liability in the face of a general duty citation.

**Question:** Should we add a COVID section to our current Exposure Control and Infection Control Plans or should it be a standalone plan?

**Answer:** COVID protocols focus on infection control measures, but the respiratory protocols are very similar to those in the Tuberculosis prevention plan that are typically addressed in the exposure control plan. We believe COVID provisions can be incorporated into the exposure control plan and emergency action plan. COVID-specific protocols should be captured in a checklist and segregated based on department-specific requirements in the event of an outbreak. Your front desk COVID protocols will necessarily be different than clinical areas and different from administrative departments.



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### Session #2 Resource List

Link to OSHA COVID guidance documents: <https://www.osha.gov/Publications/OSHA3990.pdf> and <https://www.osha.gov/Publications/OSHA3993.pdf>

Link to EPA Guidance for Cleaning and Disinfecting: [https://www.epa.gov/sites/production/files/2020-04/documents/316485-c\\_reopeningamerica\\_guidance\\_4.19\\_6pm.pdf](https://www.epa.gov/sites/production/files/2020-04/documents/316485-c_reopeningamerica_guidance_4.19_6pm.pdf)

Link to White House Gating Criteria: <https://www.whitehouse.gov/openingamerica/>

Link to JACS MeNTS COVID risk scoring system: <https://www.facs.org/media/press-releases/2020/covid-scoring-system0414/worksheet>

Link to JAAD Pre-Proof “Perspectives on the Recommendations for Skin Cancer Management During the COVID-19 Pandemic” article: [https://www.jaad.org/article/S0190-9622\(20\)30821-5/pdf](https://www.jaad.org/article/S0190-9622(20)30821-5/pdf)

Link to NYT “Many Dermatology Practices Stay Open, Ignoring Public Health Pleas” article: <https://www.nytimes.com/2020/04/08/health/coronavirus-telemedicine-dermatology.html>

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Welcome and Thank You for joining us today.  
The broadcast will begin momentarily.



Jennie Hitchcock is the President and co-founder of Compass Healthcare Consulting, a professional services firm that helps healthcare organizations assess and manage a wide range of risk and regulatory issues.



1

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2



3

## Liability Issues to Consider

- Standard of care
- Too slow/too fast to open up for "non-essential" services





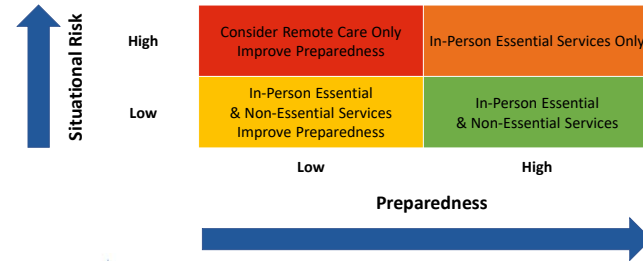
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## Defined, Transparent & Responsive Oversight



5

## Step 1: Decision Framework



6

## Step 2: Preparedness Assessment



Preparedness Risk Element	Y	N
Is there a documented infection control plan on site updated consistent with new OSHA guidance?		
Can the site produce classification of its workers based on COVID exposure?		
Can the site produce its pre-COVID exposure control plan and the updated plan?		
Is there a designated safety coordinator for the site?		
Can the site produce its policies regarding social distancing?		
Is signage posted in the site per policy and per local requirements?		
Is all equipment placed per policies e.g. hand sanitizer, cleaning supplies, face coverings?		
Can the site produce its employee COVID-19 testing and illness policy?		
Can the site produce its policy for visitors and third parties (e.g. vendor reps)?		
Can the site produce training recent training records for all required safety training?		



7

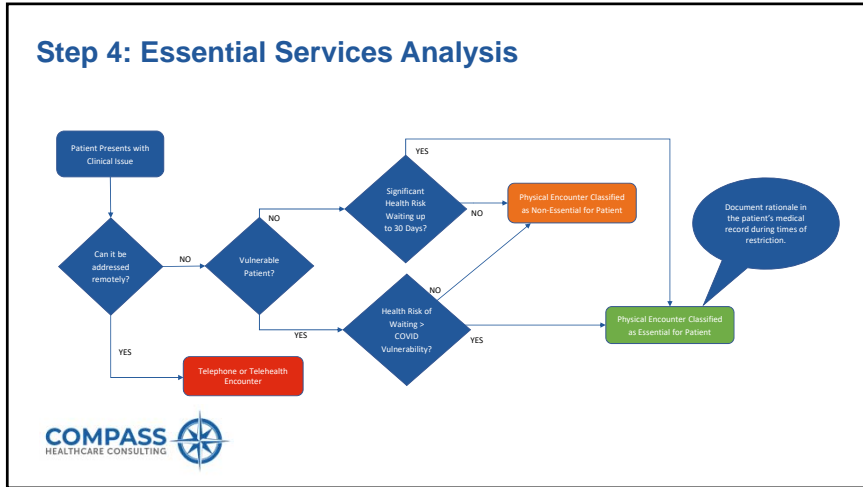
## Step 3: Situational Risk Analysis



Situational Risk Element	Y	N
Does the site have sufficient PPE (define par level by site)?		
Is the site's service area free from community transmission of COVID?		
Are daily deaths in the site's service area decreasing?		
Do the site's employees have consistent childcare?		
Is the site free of workers at the site exposed/diagnosed within the last 14 days?		
Is the site free of COVID cases traced back to the site from a visit in the last 14 days?		



8



9

### Examples from JACS and JAAD

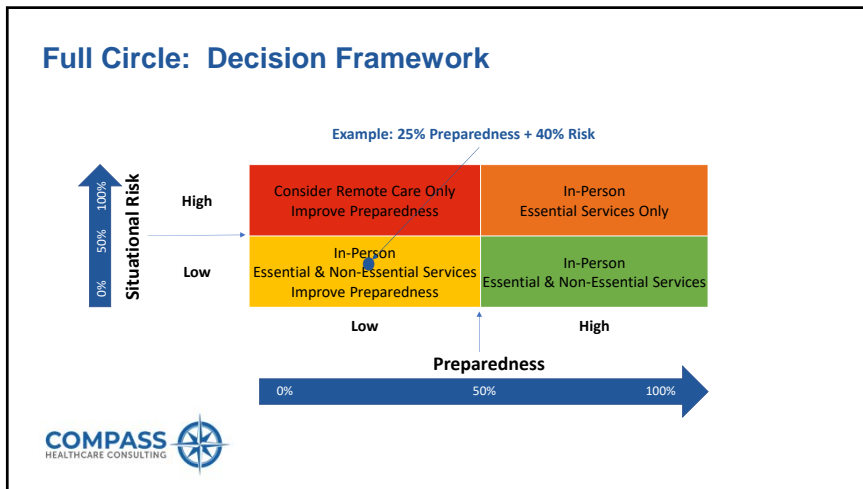
- ACS – Medically Necessary Time Sensitive (MeNTS) Scoring System
  - Procedure
  - Disease
  - Patient
  - Total Score determines justification for procedure
  - Patient initials scoring sheet
- JAAD – Classifies Skin Cancers into Risk Categories
  - Low e.g. BCC, cSCC without risk factors can wait 3 months.
  - Intermediate e.g. T1 melanoma with clear margins
  - High e.g. rapidly grown cSCC in mask areas of face
  - Discusses patient and resource use

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Medically Necessary, Time-Sensitive Procedures: Scoring System to Ethically and Efficiently Manage Resource Scarcity and Provider Risk During the COVID-19 Pandemic, Prachand, Vivek N. et al. Journal of the American College of Surgeons, Volume 0, Issue 0, doi: <https://doi.org/10.1016/j.jamcollsurg.2020.04.011>

Geskin LJ, Trager MH, Asai SZ, Bickers DR, Carvajal RD, Nghiem P, Taback B, Zetouni NC, Samie FH, Perspectives on the Recommendations for Skin Cancer Management During the COVID-19 Pandemic, Journal of the American Academy of Dermatology (2020), doi: <https://doi.org/10.1016/j.jaad.2020.05.002>

10



11

Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.

(Winston Churchill)

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12

# RISK IS REAL

Plan to join us for our next monthly webinar featuring live Q&A:

Wednesday June 10 @ 2pm EST



The Q&A is open and we want to hear from you!

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