



Michael J. Lissau, JD
*Senior Vice President
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Scott J. Cooper, MMSc, PA-C
Capt, USPHS
Division of Continuing & Acute Care Providers
Centers for Medicare & Medicaid Services 7500
Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

Dear Mr. Cooper,

Thank you for your attention to Saint Francis Health System's concern regarding the previously expressed accreditation condition that Saint Francis extinguish its chapel's living flame sanctuary candle, which flame we religiously believe represents the living presence of Jesus in the Blessed Sacrament.

Thank you, also, for your assistance in facilitating a discussion between Saint Francis and The Joint Commission (TJC) in a May 4, 2023 conference call, wherein you articulated that CMS will not ask Saint Francis to extinguish the living flame and that CMS also understands that an electric or battery operated lightbulb is not an option for Saint Francis due to the religious significance of the flame itself.

During the conference call, we discussed the relevant fire safety codes: (1) NFPA 11.5.1.1.2, prohibiting sources of open flames within one foot of a nasal cannula, and (2) NFPA 11.5.1.1.3, prohibiting the sources of open flame within 15 feet of other types of oxygen delivery equipment. We discussed the superseding Religious Freedom Restoration Act (RFRA), its application to both to CMS and TJC in TJC's work in implementing federal law, and the previous requirement to extinguish the flame as a violation of RFRA. *See* 42 U.S.C. 2000bb-3 (RFRA applies to "applies to all Federal law, and the implementation of that law, whether statutory or otherwise"). Lastly, we discussed the statutory provision authorizing the Government to "waive, for such period as deem[ed] appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients." 42 U.S.C. § 1395x(e)(9)(c).

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The conference call also entailed factual inquiries into how the completely encased flame qualified as an open flame or how a concern even existed of a nasal cannula coming within one foot of the encased sanctuary flame mounted to the wall over six feet high. In an effort to find mutually agreed upon mitigation measures (whether from the perspective of the NFPA code concerns or the RFRA violation), it was mutually agreed that (1) the citation for the sanctuary flame would be removed and (2) Saint Francis will post a sign outside all of its chapels where the Blessed Sacrament is reposed and the living flame maintained, indicating the presence of the flame and restricting unauthorized persons from entering within the space near to the flame. We are grateful for your assurance that this agreement would set a precedent for other hospitals.

Despite the mutual agreement reached, for which we are thankful, we asked CMS for certain guarantees that the flame, which was not an issue before this year, would not be an issue in future years, provided Saint Francis continues to prudently maintain the flame with the already existing safety measures. Due to CMS/TJC's inability to define "open flame" and inclusion of sealed oxygen tanks in "other types of oxygen delivery," we asked you for a waiver of these relevant codes in relation to the live flame, because the inability to guarantee consistency in interpretation stoked certain concerns for us that future interpretations of the codes may result in another citation of the sanctuary candle.

We are grateful for your response to this concern in providing us with a waiver to the relevant NFPA Codes. We will post a sign outside our chapel(s) indicating the presence of a live flame and cautioning distance of oxygen delivery equipment and those with oxygen delivery devices from the flame. As requested in the letter, where possible, we will also install a rail, rope, or like barrier separating the patient/visitor space from the site of the living flame. We take fire safety very seriously, and we also take our faith very seriously. We are grateful for your consideration of our fire safety precautions that were already taken, of the new precautions we agree to take, and of our commitment to honor the living presence of Jesus with the living flame.

Respectfully,



Michael Lissau
General Counsel and Senior Vice President

Cc: Cliff A. Robertson, M.D., Chief Executive Officer for Saint Francis
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