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THE FLU VACCINATION AND MANDATORY MASK WEARING

This winter flu rates have reached epidemic levels across New Zealand and over the last few months the DHBs have been approaching all of you to get vaccinated. Most of you will now be aware that Waikato DHB has chosen to enforce mandatory mask wearing amongst its non-vaccinated staff. A handful of employees have been suspended and one has been dismissed for failing to comply with these requirements. What follows below is a brief run-down of the situation which includes some insight into the role of the NZMLWU (past and present) in regards to Waikato DHB’s mandatory mask wearing policy.

BACKGROUND

The issue of vaccinations and the flu vaccination in particular has been on our agenda over the past few months, as it has been for our sector. In 2015, despite improved uptake of the flu vaccination amongst DHB employees, one DHB (Waikato) has continued to adopt what is perceived to be a punitive approach to non-vaccinated staff, insisting that they wear masks when in direct patient contact or otherwise risk suspension and disciplinary procedures.

ROLE OF NZMLWU

We felt at this time it might be appropriate to discuss the role of the Union in this matter. Amongst our membership we have the full spectrum from those passionately in favour of vaccinations, to those equally against. So should NZMLWU even have a view and if so on what basis?

We first became involved in this matter over a year ago as a result of one DHB (not Waikato) circulating a draft vaccination policy, which included the intention to seriously disadvantage employee’s employment if they were not vaccinated. This “disadvantage” was not simply wearing a mask, but could have also resulted in redeployment and possibly the dismissal of an employee who refused vaccination.
This policy had been motivated by a passionate belief in the role of vaccinations to protect patients; children from whooping cough and the like. Whilst their motivation wasn’t questioned, the failure to consider wider implications, including individual’s rights fell well short of the mark. We were not too happy about that approach, which lead to both an “oh no you don’t” but also some further investigation of the issues.

RIGHT NOT TO BE VACCINATED

So starting with the right not to be vaccinated – we all have that right. Being injected against our will is assault, pure and simple. In addition, when in receipt of healthcare, everyone is covered by the HDC Code of (patient) Rights. This provides for the right to informed consent and the right to say “no”. It also provides for the right to be treated with respect. Given one role of a union is the legal protection of member’s rights, enforcing the right not to be vaccinated goes without question.

The issue of vaccination largely comes down to an individual view (I do or I do not wish to be vaccinated because I…) or a collective one. On the latter, there is both a public health good derived from vaccinations and an employment one. The former relates to the reduced spread of disease and therefore harm, especially amongst those in our communities who are most vulnerable, and the latter, lack of staff to treat the sick due to staff themselves being sick. And yes, for the employer less sick days resulting in reduced cost is attractive.

THE VACCINATION

Evidence confirms that whilst not a perfect remedy, vaccination is the best mechanism we have to prevent the spread of disease and the human toll that disease represents. Herd immunity, where vaccination rates are high enough to stem the spread of disease and therefore protect a community, is the goal. The drop in vaccination rates in Canterbury and outbreak of measles is a perfect example. Measles is a serious and life threatening disease, with that outbreak resulting in dozens of young people being admitted to ICU with encephalitis and the like.
But back to the flu... the vaccine for which is not 100% effective. Each year the vaccine must be reconstituted to capture the new strains of flu that emerge. This nasty little beast genetically morphs from year to year, hence its success as an organism! As impressive as this may be, let’s not forget, it also kills. Regardless of your view on vaccination, this virus is not the common cold we can all expect to suffer most years. It is a serious and life threatening virus that has caused millions to die.

**APPRAOCH TO THE ISSUE**

When the unions and DHBs (in the forum known as NBAG) collectively came together to investigate the issue what became clear was that a positive, educative and supportive approach to the issue of vaccinations was far more successful than punitive, threatening or negative. If the overall motivation is community good through protection from disease, having people “on board” is going to be more effective than the resistance a negative approach inevitably engenders. This is not so much about vaccinations per se, but about how we approach the issue.

Acknowledging that employees can’t be required to be vaccinated, what about the DHBs ability to decide what to do with the non-vaccinated staff? In fairness NBAG didn’t even go there (at that time). We agreed a positive and constructive approach was better and looked (amongst other things) to whether the Unions had a role in leadership on this issue, thereby in effect avoiding a negative reaction that some DHBs might have in the face of non-vaccination. The answer was yes: better to keep members out of trouble whilst recognising that everyone has rights. NBAG put out guidelines to the DHBs supporting a positive and educative approach, rather than a punitive one. And the unions agreed to support engagement with members on this issue.

For our part we surveyed member’s views and provided further information as required. In Northland DHB we embarked on a case study to determine whether our member’s active engagement had any material effect on vaccination rates. And the answer was yes: with members from not just the labs, but radiology and resident doctors also recording higher vaccination rates (between 74% and 90%) than those in the DHB overall.
So far so good. Unions avoided the punitive and inevitably adversarial approach DHBs might take against members: DHBs got support on the vaccination process, accepting that some of our members would not (agree) but as herd immunity was the goal we would get there anyway. A quiet note here... for all the DHBs expressed concern, the percentage uptake amongst management wasn’t different from the rest of the staff, confirming that we are dealing with a wider and more intrinsic issue than superficial review might suggest.

FAILURE TO CONSULT

So why did Waikato ignore NBAG advice and fail to engage with the unions on the issue? Well, Waikato DHB has an already evidenced poor culture when it comes to employee engagement, so probably no surprises there. It is sad, but this DHB continues to have a poor attitude towards their own employees on a number of fronts, including bullying. And again, regardless of personal “pro vaccination” or not views, members have been almost universally concerned at how Waikato DHB is handling this matter.

We have made a joint application to the Employment Relations Authority to test the DHBs policy on the basis of a failure to adequately consult prior to implementation. Not only is the issue of ignoring considered national advice on the matter concerning, a whole lot of other issues have arisen that, had proper consultation occurred, would most likely have been worked through.

UNRESOLVED ISSUES

A number of issues do need to be resolved, including:

- What other measures did the DHB take to increase vaccination rates before resorting to the enforcement of mask wearing?
- What is “direct patient contact”?
- How effective is mask wearing, including how often we need to change masks to be effective?
- What of the effect on patient - staff communication through a mask?
- Distribution of personal health information (vaccination status is health information).
What of patient and visitor vaccination status? Visitors can equally spread the virus (remembering the flu is communicable up to 14 days prior to symptoms emerging) so what is the point of just concentrating on staff?

- If the patient is vaccinated, should the staff member have to wear a mask?
- If such a public health issue, consistent application of measures are surely required? If that means short staffed areas being left without staff and services interrupted as a result, what is the balance between non vaccinated staff on duty and no service?

We could go on…. Waikato’s approach is also causing resistance amongst staff, and could be self-defeating. It is also exacerbating a prevalent negative culture in this DHB which is corrosive, damaging to staff and in need of change. All of these issues are of concern to us and our members.

**NZMLWU INVOLVEMENT**

So in summary... why is NZMLWU involved in this issue?

- Because members have rights and we are tasked legally with preserving those rights.
- Because our members including phlebotomists, and other laboratory staff who have direct patient contact have been directly affected by Waikato DHB’s approach.
- Because we also have a role to play in avoiding conflict and progressing matters on an evidence based and reasonable basis.
- Because Union leadership is evidenced as being instrumental in assisting with positive change on issues such as this (and our own experience supports this).
- Because at the end of the day our members want what is in the interests of not just themselves but their patients and communities. However as with most things in health, this is a more complex issue than a superficial glance might suggest, and we need to do the best we can to get it right.

If you have any queries, concerns or comments in regards to the above please do not hesitate to contact the NZMLWU office at support@nzmlwu.org.nz or on (09) 526 0280.