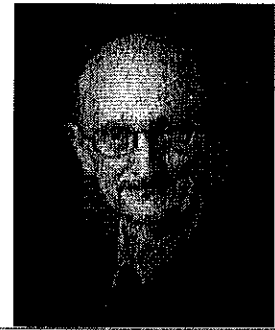


IT'S TIME TO MANDATE INFLUENZA VACCINATION IN HEALTHCARE WORKERS

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Influenza vaccination rates in many healthcare facilities in the U. S. have averaged less than 50% for the past decade.¹ This unfortunate fact demonstrates that voluntary efforts do not seem to be the answer. Evidence is strong that immunizing nurses and doctors protects their patients, as well as themselves and their families, from infection and death.

How many of us remember that those infected with the flu are highly contagious at least 24 hours before symptoms occur? Therefore, the practice of wearing masks when one becomes symptomatic, though it helps those who are potentially exposed afterwards, obviously does not prevent exposing others before one develops symptoms.

Surely no one questions the fact that every day we see patients in our practices who are vulnerable to infection. The vaccine is safe and effective, and we should mandate flu shots for all health-care workers.

There are many ethical reasons for mandating flu shots for care-givers:

1. Every code of ethics and every professional group states that the patients' interests must come ahead of anyone else's. The best interest of the patient trumps personal choice.

2. All of us are obligated to honor the "First Do No Harm" requirement. This requires that those formulating policies in health-care institutions implement that principle as a mandatory condition of employment or volunteering.

3. Health-care workers have a unique and special duty towards the vulnerable who can't protect themselves without our help. If a health-care worker is a cause for disease in the patient that he or she treats, that is inexcusable. Vaccination is an important step in preventing this from happening.

There is yet another moral reason to mandate flu immunizations in professionals: if we do not obtain

immunizations ourselves, this feeds unreasonable fears, reinforces anti-vaccine sentiments, and sets a poor example for those we urge to obtain the shots. Should we not be role models?²

The University of Pennsylvania Healthcare System and others have instituted this mandate. Medical exemptions are permitted, yet rates of flu immunization are now over 98% at those institutions. Non-professional workers have been motivated by the high rates of the professionals who are being vaccinated. Support for the mandate therefore has a "trickle-down" effect to others and remains strong.

It would be unwise to impose a mandate without explaining the empirical and moral rationales, however, as it would then be incompletely accepted. A thoughtful educational program, including counseling for those with concerns and doubts, is needed.

To protect the lives and welfare of patients and hospital employees, the American Hospital Association's Board of Trustees recently approved a policy supporting mandatory patient safety policies that require healthcare workers to either get vaccinated against influenza or to wear a mask in the presence of patients in healthcare settings during influenza season. This policy's aim is to achieve the highest possible level of protection.

New employees must understand that a flu shot is a condition of employment, and the reasons for this policy should be clearly laid out. In discussing the mandate, it is important to emphasize that the flu vaccine is both safe and effective. It should become just another practice that we add to our routine measures of safety and hygiene as part of our duties in healthcare. It also has the benefit of helping to keep health-care workers on the job and well, so that they can care for the sick.

The moral case for mandates combined with these facts will command support. The time is now!

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Comment by Christopher M. O'Connor, Esq. Associate General Counsel

In recent years, compulsory vaccination of healthcare workers against the seasonal flu (and other viruses such as H1N1) has gained considerable momentum, mainly due to the shockingly low number of healthcare workers who voluntarily receive the seasonal flu vaccine. Across the country, a handful of hospitals and other healthcare facilities now require all healthcare workers (including those not providing direct patient care) to be vaccinated against the seasonal flu virus. In addition, in 2009, New York became the first state to require all healthcare workers to be vaccinated against the seasonal flu virus and H1N1. Not surprisingly, the New York Department of Health's regulation and the healthcare facilities' compulsory vaccination programs were immediately met with fierce objections and lawsuits. Of the lawsuits, most notable is the suit filed by a state nursing union in Washington State seeking to prohibit the Virginia Mason Hospital and Medical Center from instituting its compulsory vaccination program. In New York, after at least three lawsuits were filed, a judge issued a temporary restraining order halting implementation of the regulation. Ultimately, New York's Governor suspended the regulation, purportedly in response to the limited availability of the H1N1 vaccine. Nonetheless, one must question the

degree to which the lawsuits and the public retort influenced his decision.

It is well settled that a state can compel citizens to be vaccinated against various communicable diseases if the benefit to the public outweighs the intrusion upon the liberty interests of individual citizens.¹ In determining the benefit to the public, courts will analyze the safety of a vaccine, its efficacy, and the degree of personal intrusion. Accordingly, a state's compulsory seasonal flu vaccination program will be legal if a court determines that the scale is tipped in favor of public health over invasion of personal autonomy.

However, the recent movement to institute compulsory seasonal flu vaccination for healthcare workers raises different issues and is less settled. In the case of the New York regulation it is the state that is requiring all healthcare workers to receive the flu vaccine. In the case of the Virginia Mason Hospital and Medical Center it is a private entity that is doing so. Generally, in the absence of any state or federal law to the contrary, a private employer may institute programs that are stricter than those which the state or federal government can implement. Accordingly, a private employer may have more flexibility to institute a compulsory flu vaccination program than a state. However, when faced with a lawsuit challenging the legality of a private

employer's mandatory flu vaccination program, I expect a court to analyze the legality in much the same way it would under a state mandated vaccination program. I would expect a court to balance the benefit of the compulsory program against the intrusion upon the rights of the employee.

As more healthcare facilities move to implement compulsory vaccination programs to protect patients

and staff, courts will be forced to determine whether a private employer or state can compel healthcare workers to be vaccinated against the seasonal flu virus. It is likely that the legality of a compulsory flu vaccination program will hinge upon the effectiveness of the seasonal flu vaccine and whether there are alternative methods to increase the number of healthcare workers who voluntarily receive the seasonal flu vaccine.

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