Public health and human rights during a pandemic – An unresolved dilemma concerning mandatory vaccination against COVID-19 for healthcare workers

James Ayukekbong, BMLS, MSc, PhD, CIC
Editor-in-Chief, Canadian Journal of Infection Control

EDITORIAL

Several vaccines against COVID-19 are currently being administered around the world, but uptake in some regions is suboptimal and the debate regarding mandatory vaccination has been raging with varying opinions. Italy recently made an exceptional decision to make COVID-19 vaccination mandatory for all healthcare workers (HCWs), after discovering outbreaks in hospitals that were linked to the refusal by staff to be vaccinated [1]. In other countries like Canada and the United States, authorities are struggling with the need to balance public health and human rights in order to achieve high vaccination uptake necessary to break the chain of transmission of the disease. Amidst these challenges, governments have both a duty to *respect* and to *protect,* and therefore, have to balance the respect of human rights and the protection of public health within the context of mandatory vaccination, especially for HCWs [2].

To be effective, any mandatory vaccination policy must establish a tangible connection between vaccination and a reduced risk of COVID-19 transmission. Of course, current data provides overwhelming evidence that COVID-19 vaccination reduces the risk of infection, and to effectively combat the disease, vaccine acceptance needs to reach a threshold to achieve herd immunity. This so-called herd immunity occurs when a large portion of a population becomes immune to a disease, making the spread of the disease from person to person unlikely. As a result, the population becomes protected – even those who have not been vaccinated [3]. Unfortunately, voluntary vaccination (especially with low uptake) is unlikely to be sufficient to achieve and maintain herd immunity. As a result, it becomes imperative for public health authorities to explore ways to achieve the anticipated level of population immunity required to interrupt transmission and control the disease. In this regards, a policy for mandatory vaccination could ensure high levels of vaccination coverage, but may come with legitimate human right concerns [4]. A study from Germany suggests that half of participants were in favour, and half against a policy of mandatory vaccination against COVID-19 [5]. The approval rate for mandatory vaccination was significantly higher among those who would get vaccinated voluntarily than among those who would not get vaccinated voluntarily [5]. It should be noted that there is also a large body of literature on the justification for the use of coercion in public health and infection control [6], and the sole ground for the use of such coercion (including restriction of liberty) is when there is risk of harm to others. It has also been suggested that for highly contagious and life-threatening diseases constituting a grave threat to public health, quasi-mandatory vaccination measures are likely to be justified [6]. On the other hand, international human rights prescribe that vaccination – like any other medical intervention, must be based on the recipient's free and informed consent. Bioethicists also suggest that people have a right to decide what they're willing to take into their body, and making vaccination mandatory violates that fundamental human right. Also, informed consent, whether expressed or implied, is an essential prerequisite of individual healthcare treatment, including vaccination [7]. Administering medical treatment in the absence of informed consent exposes healthcare professionals to liability. As a matter of fact, the requirement of informed consent protects an individual's right to bodily integrity and the only exception is in situations of emergency where the individual lacks the ability to provide consent.

In fact, the issue of mandatory vaccination may be peculiar because it involves the introduction of a foreign substance into the body, but mandating vaccination is not the only public health intervention that may violate human rights. Overall, the COVID-19 pandemic has provided many instances where constraints on individual rights and freedoms have been presented as justified in order to meet public health goals. For example, travel bans, social distancing, quarantine, restrictions on gatherings, mandatory masking, contact tracing and many other COVID-19-related measures adopted around the world have breached or constrained human rights. These rights include freedom of movement and association, the right

to education, the right to work and the right to privacy. Although this may be construed as violation of rights, these steps are taken to protect the most fundamental of all human rights: the right to life. Therefore, compulsory vaccination of eligible population is not more a violation of human rights than already instituted public health measures. Indeed, mandatory vaccination interferes with human rights, but may be necessary to safeguard public health [8].

In discussing this topic further, it should be noted that vaccine hesitancy may be for several reasons; medical, religious, cultural, or even phobia of injections. For others, it may just be a conscientious objection to receiving a vaccine. Therefore, a distinction should be made between someone who refuses a vaccine for medical reasons as opposed to being afraid or not believing in vaccines. Within this context, individuals may be accommodated to the point of "undue hardship" where prohibitive grounds are justified, but such accommodation may not apply where prohibitive grounds aren't justified [9].

From an occupational health and safety perspective, current legislations require employers to protect their workers from health and safety risks in the workplace. If vaccination can be shown to effectively minimize the transmission of COVID-19, then mandatory vaccination policies may be argued to be one way to satisfy this obligation [9, 10]. In long-term care or healthcare facilities where vulnerable residents are cared for, employers may be able to introduce policies that protect their residents and workers from health and safety risks in the workplace. Unions may oppose such policies by filing a "grievance", but it is up to an arbitrator to determine whether the policy is a reasonable exercise of the employer's management rights under the collective agreement, or within the context of occupational health and safety legislation. A recent example is that of Jennifer Bridges *et al* (Plaintiffs) and the Huston Methodist Hospital *et al* in Texas (Defendants), where the Plaintiffs sued the Defendants for instituting a policy that required employees to be vaccinated against COVID-19 by June 7, 2021. In this case, the district judge ruled in favour of the Defendant and the case was dismissed [11].

In Canada, COVID-19 vaccination rates among long-term care workers are significantly lower compared to the rates among residents they care for. More than 95% of long-term care and retirement home residents in the country have received at least the first dose of the COVID-19 vaccine, while vaccine hesitancy among employees continues to be an issue of concern [12]. Particularly concerning is the fact that residents (including even those who are vaccinated) are often confined to their rooms after staff members test positive for COVID-19. HCWs have a moral and ethical responsibility to care for their patients or residents and should, therefore, not constitute risk to them. By not being vaccinated and being vulnerable to infection and subsequently constituting a potential source of infection to patients or residents, renders this care unsafe [13]. If one should argue that mandating vaccination for HCWs violates their human right, then providing unsafe care, or putting vulnerable residents in harm's way is also ethically fallacious and violates residents' right to safety in their home.

The subject of mandatory immunization is not entirely new in healthcare. The United States Centers for Disease Control and Prevention recommends that HCWs should receive vaccines against preventable diseases like Tuberculosis, Chickenpox, Measles, Mumps, Rubella, Hepatitis B, etc. [14], and most healthcare facilities have implemented this policy as part of their occupation health and safety plan. But in all fairness, considering the fact that vaccination involves the introduction of an active biological substance into a healthy body, it is not uncommon for it to be associated with fear or anxiety and leading to hesitancy, especially if medical or scientific data is limited, or does not fully address the issue of long-term adverse effects [15]. Another element that may diminish confidence is the fact that several Western countries have exempted manufacturers from liability in the rare case where a person suffers serious illness or injury as a result of the COVID-19 vaccine [16]. In fact, some countries agreed to indemnify vaccine manufacturers for civil-legal claims as part of the purchase pact. This "no-fault" agreement prevents the legal right of an individual to sue should they suffer significant injury arising from the inoculation of the vaccine. Therefore, it could be argued that if a government should make the COVID-19 vaccine mandatory, then, there should be some compensation to individuals who suffer significant injury arising from the vaccine [15].

In conclusion, mandatory vaccination for HCWs may not necessarily mean punishment for those who opt not to get a vaccine, but may simply mean a prerequisite to provide direct care to vulnerable population [11]. But with the current shortage of HCWs in long-term care in Canada for example, if unvaccinated employees are restricted, then this could lead to a reduction in the already overwhelmed workforce putting a strain on the sector and jeopardizing even further the care of seniors. Together, any mandatory vaccination policy, however justified, must provide accommodations for individuals who have legitimate reasons for not receiving the vaccine. Public health authorities must continue to explore other strategies to encourage vaccine uptake through education and building of vaccine confidence. Institutions may also implement risk mitigation strategies such as mandatory masks and face shields and frequent COVID-19 testing for unvaccinated persons.

REFERENCES

1. Italy Makes COVID-19 Vaccine Mandatory for All Health Workers. Reuters: March 2021. https://www.usnews.com/news/world/articles/2021-03-31/italy-makes-covid-19-vaccine-mandatory-for-all-health-workers.
2. Ahmed. K. (2021). The Human Right to Vaccines: Preventing Discrimination Against the Unvaccinated. *Health and Human Rights Journal*. https://www.hhrjournal.org/2021/02/the-human-right-to-vaccines-preventing-discrimination-against-the-unvaccinated/.
3. Jones, D and Helmreich, S. (2020). A history of held immunity. *The Lancet*, 396(10254):810-811.
4. Vaz, O. M., Ellingson, M. K., Weiss, P., Jenness, S. M., Bardají, A., Bednarczyk, R. A., & Omer, S. B. (2020). Mandatory Vaccination in Europe. *Pediatrics*, 145(2), e20190620. https://doi.org/10.1542/peds.2019-0620.
5. Graeber, D., Schmidt-Petri, C., & Schröder, C. (2021). Attitudes on voluntary and mandatory vaccination against COVID-19: Evidence from Germany. *PloS one*, *16*(5), e0248372. https://doi.org/10.1371/journal.pone.0248372.
6. Savulescu J. (2021). Good reasons to vaccinate: mandatory or payment for risk? *Journal of medical ethics, 47*(2), 78–85. https://doi.org/10.1136/medethics-2020-106821.
7. Zagaja, A., Patryn, R., Pawlikowski, J., & Sak, J. (2018). Informed Consent in Obligatory Vaccinations? *Medical science monitor: international medical journal of experimental and clinical research, 24*, 8506–8509. https://doi.org/10.12659/MSM.910393.
8. Nilsson, A. (2021). Is mandatory vaccination against COVID-19 justifiable under the European Commission on Human Rights? *Global campus on Human Rights*. https://gchumanrights.org/preparedness/article-on/is-mandatory-vaccination-against-covid-19-justifiable-under-the-european-convention-on-human-rights.html.
9. Straszynski, P. (2021). Mandatory Vaccination and your workplace. *Torkins & Manes*. https://www.torkinmanes.com/our-resources/publications-presentations/publication/mandatory-vaccination-and-your-workplace.
10. Emond Harnden (2021). Labour and Employment law. Mandatory COVID-19 vaccination in the work place. https://www.ehlaw.ca/mandating-covid-19-vaccinations-in-the-workplace/.
11. United State District Court. Southern District of Texas. Case 4:21-cv-01774. Document 8. Filled on June 12, 2021, Texas. https://www.lawandtheworkplace.com/wp content/uploads/sites/29/2021/06/Bridges-v.-Houston-Methodist.pdf.
12. Griffith, J., Marani, H., & Monkman, H. (2021). COVID-19 Vaccine Hesitancy in Canada: Content Analysis of Tweets Using the Theoretical Domains Framework. *Journal of medical Internet research*, 23(4), e26874. https://doi.org/10.2196/26874.
13. Van Hooste, W., & Bekaert, M. (2019). To Be or Not to Be Vaccinated? The Ethical Aspects of Influenza Vaccination among Healthcare Workers. *International journal of environmental research and public health*, 16(20), 3981. https://doi.org/10.3390/ijerph16203981.
14. CDC. Immunization of Health-Care Personnel: Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR, 2011; 60(RR-7).
15. McMillan, A. (2021). Mandatory vaccination legal, justified, effective? International Bar Association. https://www.ibanet.org/article/70E1F93E-A23B-4F1A-A596-AEEF8475024.
16. Halabi, S., Heinrich, A., Omer, SB. (2020). No-Fault Compensation for Vaccine Injury - The Other Side of Equitable Access to COVID-19 Vaccines. *N Engl J Med*, 383(23).

ACKNOWLEDGEMENT

Sincere thanks to Dr. Ranga Reddy Burri, President of the Infection Control Academy of India and Dr. Devon Metcalf, Associate Editor of the *Canadian Journal of Infection Control* for their review and useful suggestions.