

## COVID-19: Managing unvaccinated patients

*Medical Protection has received many recent queries from members about their obligations to treating patients who have not been vaccinated against COVID-19. Here we address some of these queries and summarise the key guidance*

The first case of COVID-19 in New Zealand was reported on 28 February 2020. The Delta variant is now the dominant strain in New Zealand, and government policy changed on 4 October 2021 from a strategy of elimination to one of suppression. It is likely that COVID-19 will exist in the community for the foreseeable future and will be encountered by doctors.

The government has announced that the existing COVID-19 Public Health Response (Vaccinations) Order 2021 will be updated to require anyone conducting high-risk work in the health and disability sector to be fully vaccinated by 1 December 2021.

With reference to the Health and Safety at Work Act 2015, some private businesses have adopted policies seeking to exclude unvaccinated people from their premises.

The government has indicated that future regulations will exclude unvaccinated people from certain places, such as music festivals. However, the Prime Minister is on record saying that unvaccinated people will not be prevented from accessing essential services, including healthcare.

The Medical Council has not provided specific guidance on whether doctors may decline consultations with unvaccinated patients, although its Chairperson has stated: "Professional responsibilities at the frontline: in making patient care your central concern, Council does not expect you to place yourself in harm's way. The key to this is ensuring availability and effective use of personal protective equipment, and following relevant infection control measures."

The most relevant Standards adopted by the Medical Council are:

- [Good Medical Practice](#) (December 2016) (see paragraphs 12, 13, 19, 20 and 52)
- [A doctor's duty to help in a medical emergency](#) (June 2021)
- [Ending a doctor-patient relationship](#) (December 2020).

It is recommended that doctors familiarise themselves with these standards.

### What must doctors do?

- You must offer to help in an emergency, taking account of your own safety, scope of practice and the availability of other options for care.
- You must not refuse or delay treatment because you believe that a patient's actions have contributed to their condition. Nor should you unfairly discriminate against patients by allowing your personal views to affect your relationship with them. Your personal beliefs, including political, religious and moral beliefs, should not affect your advice or treatment.
- Any decision to decline consultations with unvaccinated patients should be motivated by risk management, not prejudice against unvaccinated patients' choices.
- You must ensure continuity of care – which may mean facilitating transfer to a different doctor with appropriate handover.

### General practice/urgent care

#### *Managing unvaccinated patients*

It is appropriate and lawful to manage the increased risk unvaccinated patients present by:

- Phone triage and phone consultations where clinically appropriate
- Isolating them from other waiting patients
- Seeing them in a RED stream clinic

- Using additional PPE
- If practicable and clinically appropriate, requiring unvaccinated patients to test negative for COVID-19 prior to any consultation
- Exempting more vulnerable staff from providing care to them
- If reasonably necessary, requiring double appointments or charging for extended consults and the costs of PPE to accommodate additional safety measures.

The same measures can be adopted for patients who refuse to wear a facemask.

Some clinicians may feel that those patients who have clinically legitimate reasons for not using facemasks or remaining unvaccinated should not be charged more for GP services. If the practice has a standard charge that they apply for the use of PPE in these situations, clinicians do have the discretion to waive that charge in specific circumstances, if they feel it is appropriate. You are not required to accept self-declared facemask 'exemptions' as legitimate.

GP practices are, however, required to provide care to all enrolled patients (including unvaccinated patients) within the terms of their service agreement with a PHO. PHO service agreements are, however, likely to provide for circumstances where the doctor-patient relationship may be terminated – meaning the transfer of enrolment to a different practice. It is recommended you seek specific advice if you are considering ending the doctor-patient relationship because a patient refuses to be vaccinated. This is because of the risk of an adverse decision from a regulator such as the Medical Council, HDC or Human Rights Commission.

If a GP practice concludes for health and safety reasons that it would prefer not to provide care to unvaccinated patients, this may be communicated to patients in a respectful way that preserves confidentiality. You will, however, need to continue providing care to unvaccinated patients while they remain enrolled with you.

Further guidance for GPs may be provided by others, including the RNZCGP, Medical Council or government.

### **Private healthcare providers**

In addition to the steps outlined above to manage the increased risk unvaccinated patients present, private healthcare providers may:

- Charge more for any additional time or PPE needed to manage risk
- Consider adopting a policy that limits services to unvaccinated patients.

Before taking the step of adopting a policy that limits services to unvaccinated patients, you should:

- Consider whether you can adequately minimise the risks of COVID-19 in other ways
- Consider whether any existing patients who are unvaccinated will be disadvantaged, including whether continuity of care can be maintained
- Consider whether there is an equivalent healthcare provider that is accessible (eg local) and which you will be able to refer unvaccinated patients to
- Ensure the policy does not affect the provision of care to unvaccinated patients seeking healthcare that is urgent and essential.

You may also wish to seek specific legal advice.

### **District Health Boards**

It is very unlikely that District Health Boards (DHBs) will consider declining services to unvaccinated patients. The employment obligations of DHB doctors will determine what they must do. Where DHB doctors consider the workplace is unsafe or their individual circumstances mean they should not have contact with unvaccinated patients, they should seek assistance from their union.

### **Risk and disclaimer**

Healthcare practitioners declining to see or taking steps to disenroll unvaccinated patients should proceed with their eyes open. They may face:

- HDC complaints
- Referrals to the Medical Council or other relevant regulatory authorities such as the Psychologists Board or Dental Council
- Allegations of indirect discrimination under the Human Rights Act 1993.

This is complex area in which to give advice, as the courts have not yet considered any cases of unvaccinated people being refused services. In general:

- It cannot be ruled out that the HDC *may* reach the opinion that declining services to unvaccinated patients is a breach of the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994. The risk of such a finding can be minimised by treating unvaccinated patients with respect and otherwise in accordance with the Code.
- It cannot be ruled out that regulatory authorities such as the Medical Council *may* adopt the position that it is unethical to decline services to unvaccinated patients. It is, however, likely that doctors would be given time to change their policies. This issue is unlikely to be treated as a disciplinary matter.
- It cannot be ruled out that a patient may complain to the Human Rights Commission and endeavour to have their feelings of discrimination litigated before the Human Rights Review Tribunal. While there are strong defences to a claim of indirect discrimination, it is impossible to completely exclude the possibility of an adverse finding.

*This document is intended as general guidance, which is given in the absence of any guidelines being published by regulatory authorities (such as the Medical Council), Human Rights Commission or government. It is not specific legal advice, nor a guarantee that the recommended approach will avoid criticism or adverse findings.*