September 27, 2021

**BY EMAIL AND REGISTERED MAIL**

Dear List Name Your Hospital Union,

**RE: URGENT ATTENTION REQUIRED
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I am a member of The United Health Care Workers of Ontario, which is a growing collective of health care workers in the province who are impacted by Directive #6. In essence, we will ensure that our rights pertaining to health privacy and rights pertaining to bodily autonomy are fully acknowledged and respected by all of our employers and unions. We are looking for clear and unequivocal responses to our questions and concerns as expressed herein this letter and appreciate your cooperation so that we may all move forward towards a mutual resolution and plan.

[The Public Health Agency of Canada](https://publications.gc.ca/collections/collection_2016/aspc-phac/HP3-1-23-S4-eng.pdf) (Part 1 page 3) acknowledges and informs that “***Unlike some countries, iealtmmunization is not mandatory in Canada; it cannot be mandatory because of the Canadian Constitution***”.

**Our Position as The United Health Care Workers of Ontario**

As an individual and part of this collective, our position is simple. It is our intention to assert our rights as they pertain to medical privacy. This means we cannot, and do not desire to contravene any legal rights that protect our medical privacy. As such, we will not at any time consent to revealing our personal health information pertaining to COVID-19 related topics. We will not voluntarily consent to disclosing our vaccination status to our employer or union.

We verily believe that we cannot consent to any policy or directive requesting disclosure of our COVID-19 vaccination status as we believe it is in direct contravention of privacy laws. In addition, we believe that the onus and obligations have not been sufficiently or adequately satisfied to justify a requirement imposed by the health care employers to require disclosure of vaccination status. In addition, there are many issues arising from these policies or directives as they are ambiguous and uncertain as to expectations, obligations, onuses, and consequences. This leaves us no option but to pose further questions and exercise our rights in negotiating any unilateral imposition enforced by our employer without due process, disclosure, or transparency. Any further denial to justify and adequately address our concerns and questions will give us no option than to pursue further action. We will not encourage or take part in any discrimination levied upon us based on our decision to keep our personal health information private.

I write this letter to outline concerns and inconsistencies. As an individual and part of this collective, we have many issues and concerns that have not been addressed by our employer or by our union. We have not been able to engage in open and candid discourse about these issues and our rights are directly being implicated. We feel as though we are being failed by our union and by our employer in being dealt unilaterally imposed deadlines to disclose vaccination status, but have had no availability to seek transparency behind the rationale and legal implications of fulfilling any vaccination policy requirement. As such, to move forward would be pre-mature and cause further legal implications with the number of uncertainties, ambiguities and open-endedness to these policy requirements.

**Mandatory Vaccination Policies**

I believe that there must be a closer look at the authority for this vaccination policy. I am aware and believe the mandatory vaccination policy by my employer is based on the CMOH’s Directive #6. As the directive itself is a template for policy requirements, I am uncertain as to why you, as the union, have chosen to adopt a policy without engaging in discourse with my employer, the CMOH or all employees under the union. If you have been involved in such discourse, then kindly make this known to me in writing so that I can understand the science/reasoning relied upon by my employer to adopt and implement a policy.

In addition, in the employers’ mandatory vaccination policy, it is clear that they are asking workers to disclose their COVID-19 vaccination status through learning programs or requirement of proof of vaccination. I identify these policies as a clear and egregious discriminatory action against those who maintain the right to keep their health information private. What is the purpose and intent of asking COVID-19 vaccination status as a condition for this employment? Why are undisclosed or non-vaccinated employees being penalized for not receiving the COVID-19 vaccination?

These, and many concerns and questions, are being posed to you as we have engaged multiple times to seek answers from our unions, who have not voiced our concerns to the employers. As such, we do not have any answers.

**Unions**

Our unions have shown little indication of its’ support for its member’s medical privacy. Our unions have not raised our concerns about these egregious policies or pointed this miscarriage out to its members. Kindly provide me with the written negotiations and/or collective bargaining process utilized for transparency purposes to understand whether our concerns were raised by you after the employers adopted their mandatory COVID-19 vaccination policies. Failure to provide transparency in union discourse will further enable me to believe that our concerns and questions were not raised or acknowledged in the formation of this policy. As an individual and part of this collective, we are stating here unequivocally that this must change.

In the legal opinions brought forward by the unions, the following assertion was made:

*Employers have the right to create any policy they want and they can ask for our disclosure as long as there is a secure way to store the information in a portal.*

This is entirely not the point.

Just because the employer can do something, does not mean it is correct or necessary in this situation. The point is that this is still a breach of our privacy rights, unionized or non-unionized, no matter who is asking or where they are storing this information, unless this is our own medical doctor. More importantly, for those who have disclosed that they have not received their COVID-19 vaccinations, and for those who have not disclosed this private health information, employers are:

DISCRIMINATING against all employees who disclose they are unvaccinated and/or who are not disclosing their vaccination status; and

Taking PUNITIVE action against us, by forcing **involuntary** **leave without pay** (Unpaid Administrative Leave) and threat or actual termination of employment for cause.

We will not encourage or take part in any policy that has not been sufficiently negotiated, especially one that is in direct contravention of privacy rights.

**Directive #6 Is Not an Order**

I need to be clear given that my livelihood is at stake. Since there are many inconsistencies and unanswered questions, I am looking for transparency and accountability for any unilateral action taken, or imposed, by my employer. As such, I seek clarification as to Directive #6. Unions have advised health workers that Directive #6 is an “Order” which we must comply with.

This is not true. This is simply a Directive. And a Directive is not the law. No Orders have been made by the Chief Medical Officer of Health under the [HPPA section 29.2 Orders to deal with communicable disease outbreaks](https://www.ontario.ca/laws/statute/90h07#BK36).

**Therefore, I implore you as my union, to file an immediate grievance to my employer for mis-representation of Directive #6.**

**Directive #6 issued under section 77.7 of the *Health Protection and Promotion Act* (HPPA) – Precautionary Principle**

Furthermore, with respect to Directive #6, under [section 77.7(2) of the HPPA](https://www.ontario.ca/laws/statute/90h07#BK36), the Chief Medical Officer of Health (CMOH) is using the “**Precautionary Principle**” to continue to justify the “*opinion of the Chief Medical Officer of Health that there exists or may exist an immediate risk to the health of persons anywhere in Ontario from COVID-19”.*

In a February 25, 2021 Ontario Labour Relations Board court decision regarding the case [*LCBO vs Ontario Public Service Employees Union*](https://www.canlii.org/en/on/onlrb/doc/2021/2021canlii15607/2021canlii15607.html), Justice Archie Campbell ruled under section 32.37. that:

*the* ***precautionary principle*** *is to be put into action in order to prevent unnecessary illness and death.  As explained by Justice Campbell, this* ***principle applies where health and safety are threatened even if it cannot be established with scientific certainty*** *that there is a cause and effect relationship between the activity and the harm. The entire point is to take precautions* ***against the as yet unknown****.*

However, I submit that **after twenty (20) months, the “Precautionary Principle” no longer applies** and the proof of burden rests fully with the CMOH to now provide known scientific evidence which supports all measures ordered or issued by the CMOH under all Directives. In other words, if no “known” scientific certainty has not yet been found after twenty (20) months, then simply put, there is none.

To suggest that after twenty (20) months, there is no scientific evidence thus engaging the precautionary principle would be a complete contradiction to the vaccination requirement itself, I.e., is there no scientific evidence to show the virus and the effectiveness of the vaccination? If not, then why is it becoming a clear condition for employment? In addition, I believe it would be further contradictory to engage the precautionary principle as this would call into question any hospital’s “COVID-19 Patient Treatment Protocol”. Once again, what is the science utilized to justify any protocol to treat COVID-19 patients? In all instances, it is either we have science to support these protocols and vaccination requirements, thereby disengaging the precautionary principle, or we do not have the science or certainty thereby engaging the precautionary principle but calling into question the legal basis for enforcing vaccination without clear and certain science as to its efficacy.

**Therefore, I implore you as my union, to conduct two (2) immediate action items:**

1. Demand that my employer request from the CMOH to identify if they are still using “Precautionary Principle” under section 77.7(2) of the HPPA; and obtain from the CMOH written confirmation of such.

2. If the CMOH identifies they are not using the “Precautionary Principle” under section 77.7(2) of the HPPA, that my employer request and obtain written known scientific evidence provided by the CMOH that supports all of the measures issued under section 77.7 of the HPPA.

These issues are complex; however, my livelihood is at stake. I am facing severe consequences, both known and unknown, without disclosure or transparency. As such, I cannot move forward without clear and unequivocal understanding as to the legal basis as without such evidence any consequences would be unjustified.

**Unpaid Administrative Leave**

Once again, any unclear consequences following “non-disclosure of vaccination status” or “disclosed non-vaccinated status” is troublesome as it does not allow an employee to formulate a true and accurate cost-benefit analysis in deciding their stance on the employer’s policy. In addition, there are inherent contract law issues that I believe are not possible to enforce and penalize me for alleged non-compliance. I have not engaged in negotiations with you to parachute such a clause or policy into my employment contract, including one which jeopardizes my employment position.

**Therefore, I implore you as my union, to file an immediate grievance to my employer for breach of my Collective Agreement.**

In addition, my employer has created this non-existent and non-negotiated and agreed upon leave provision and is enforcing it by involuntary leave without pay and threat of termination of employment for cause under the following conditions:

1. Not disclosing vaccination status

2. Not submitting to testing

3. Not submitting to mandatory vaccination

Unions have further advised that employees who are put on Unpaid Administrative Leave will not only be terminated for cause, but the compounding ill affect will result in no severance being paid and no eligibility of EI benefits from Service Canada. *This is an outrageous violation of my employment rights and human rights*, and I will not tolerate this. Unionized or non-unionized, we stand united.

Therefore, please consider all previous coerced disclosure of my vaccination status as void and/or expired. To that end, please be advised that I restore my right individually and as part of the United Health Care Workers of Ontario collective, to medical privacy and choice and protection of that inherent right. As such, I will no longer disclose or participate in any exercise that seeks to undermine or violate those protections.

**Therefore, I implore you as my union, to conduct two (2) immediate action items:**

1. File an immediate grievance to my employer for an egregious abuse of authority by enforcing a non-existent leave provision that does not exist in my current Collective Agreement.

2. If I am terminated for cause, file an immediate grievance to my employer for wrongful dismissal.

**Bona Fide Occupational Requirement**

Our employers and unions have notified us that we must become vaccinated with the COVID-19 vaccinations or face disciplinary action, up to and including termination of employment for cause. This is a discriminatory requirement of our employment.

The Ontario Human Rights Commission, under [section 9.Reasonable bona fide requirements](http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression/9-reasonable-bona-fide-requirements) informs that **employers may lawfully discriminate, based on an otherwise prohibited ground under the *Human Rights Code* in Ontario, if they can prove legitimate business reasons.**

**Therefore, I implore you as my union, to conduct three (3) immediate action items:**

1. Demand from my employer their *Job Analysis*for my position which shows the breakdown of every one of my job tasks and their assessment of the risk level.

* The risk must be “measurable” and “quantifiable". Simply saying that being unvaccinated is a risk to the public and patients/staff in the health care system, needs to be measured and quantified.
* My employer needs to demonstrate this with hard scientific evidence and statistics.
* My employer is required to demonstrate that the risk cannot be mitigated by other measures (masks, barriers, social distancing, working from home, etc.).

2. Once my employer presents their Job Analysis for my position, you as my union need to ask my employer for written clarification on which aspects of my position is dangerous, if I am not vaccinated.

3. Finally, as my union, you need to ask my employer for written explanation what accommodations were explored, and why they determined that those accommodations would be considered “undue hardship”.

Since my employer has mitigated the risk for the last twenty (20) months by imposing mask wearing, social distancing, working from home, etc., then why is it suddenly a hardship?

**Duty to Fair Representation**

Unionized employees do not have the liberty to sue employers. The Union is our legal representative whether we like it or not. I understand there are benefits and cons to joining a union. However, the importance of the union therefore increases since there is an inherent power imbalance between employees and employers, as such I seek much needed assistance from my union in this regard. As such, I reiterate the importance and legal obligation that unions must exercise their negotiation powers under collective bargaining.

Had my union filed grievances as implored here to do, and in accordance with your habitual commitment to protect my employee rights, rather than paying for legal opinions designed to argue how arbitrators would likely rule against the union, both the union and the membership would be in a much better place right now. Directive #6 is not the law. Unions, as our legal representatives, should have known this. That is what you are paid to know through my union dues.

**Moving Forward**

To reiterate what I stated at the beginning of this letter, I am a member of The United Health Care Workers of Ontario. We are a large mass of united health care workers, and our numbers are growing by the day. Unionized and non-unionized, we stand united. I expect my union to uphold my rights and lobby vigorously on my behalf to make my employer remove their mandatory COVID-19 vaccination policies that are predicated on an infringement of our medical privacy.

Note that I have not even dealt with the criminality behind the prospects of actually being forced to vaccinate as a condition of my employment. If my union proves unwilling to represent me on all of the issues emphatically implored herein this letter, in no uncertain terms, the grievances my signature attests to, this dereliction of your duty could lead to serious consequences for the union.

Unionized or non-unionized, we stand united.

It is my sincerest desire to resolve these major issues with you in an open, transparent and amicable manner, and doing so with the utmost of good faith between our two parties.

In closing, I seek your immediate assistance and respectfully ask for a written acknowledgement of receipt of my letter, including your written responses to my questions posed and urgent action items requested by X number of calendar days. My goal is to discuss these urgent issues with you face-to-face in the hopes we may come to a resolution without my need to take legal action to protect my rights.

I reserve all my legal rights.

Your name
Your address