



Queensland
Government

Metro North Health

Enquiries to: Megan Southwell
Email: Metro_North_WAU@health.qld.gov.au
Phone: (07) 3647 9685.

Ms Kesley Smith
2/31 Landsborough Avenue
SCARBOROUGH QLD 4020

Delivery by registered post and email: b42ashkar@bigpond.com

Dear Ms Smith

I refer to your employment as a Registered Nurse, Nursing Support Unit, Redcliffe Hospital, Metro North Hospital and Health Service (the **Health Service**) and the Health Employment Directive 12/21 Employee COVID-19 vaccination requirements (the **Directive**) (**Attachment 1**).

I have received information concerning your conduct, including your alleged failure to comply with the Directive (the **Allegation**). I consider the information sufficiently serious to warrant formal action and I consider that you may be liable for disciplinary action pursuant to section 187 of the *Public Service Act 2008* (the **Act**) for failing to follow a reasonable and lawful direction (**Attachment 2**). The purpose of this letter is to:

1. Outline my concerns
2. Advise you how I intend to deal with the information available to me
3. Invite you to respond
4. Provide you with instructions and support

Several documents are attached to this letter. Please carefully read each document as it is important that you understand each document. If you have difficulty understanding any document or have any questions, please contact Ms Megan Southwell, Senior Workforce Relations Advisor at Metro_North_WAU@health.qld.gov.au.

1. My Concerns

The Allegation and related particulars are set out below.

Allegation 1

It is alleged that you have failed to follow a reasonable and lawful direction to comply with the vaccination requirements set out in the Directive.

Information supporting the Allegation

The following **particulars** support the Allegation:

1. You are a Health Service employee to which the Directive applies.

2. In your role within the Health Service, you are categorised as an employee referred to within Group 2 under section 7.1 of the Directive which states you are a clinical employee who is employed to work in a hospital or other facility where clinical care or support is provided.
3. Under clause 8.1 of the Directive, you are required to:
 - have received at least the first dose of a COVID-19 vaccine by 30 September 2021; and
 - have received the second dose of a COVID-19 vaccine by 31 October 2021.
4. To date you have not applied for an exemption from the Directive.
5. In correspondence dated 15 October and 8 November 2021 from Mr Peter Patmore, Acting Executive Director, Human Resources, the Health Service, you were provided with a reasonable and lawful direction to comply with the Directive. In his correspondence Mr Patmore advised that you were required to receive the required dose and provide written confirmation that you had complied with the requirement to be vaccinated against COVID-19 within 7 days of receipt of his correspondence.

A copy of that correspondence is attached to this letter (**Attachment 3**).

6. To date you have not provided evidence of your compliance with either Mr Patmore's reasonable and lawful direction to you or the Directive.
7. I have considered all requirements under clause 5 of Public Service Commission Directive 14/20 Discipline (the **Discipline Directive**) and note the serious nature of your conduct and the risk to the health and safety of yourself, other employees and others within the Health Service (**Attachment 4**).

Having considered the information currently available to me in respect of the Allegation, I consider that there **may** be grounds for you to be disciplined as follows:

- Pursuant to section s 187(1)(d) of the Act, in that you may have contravened, without a reasonable excuse, a direction given to you by a responsible person, in that you failed to comply with the direction issued to you by Mr Patmore.

Enclosed documents

The following documents are enclosed for your consideration:

- Health Employment Directive 12/21 Employee COVID-19 vaccination requirements (**Attachment 1**)
- Sections 187 and 188 *Public Service Act 2008* (**Attachment 2**)
- Correspondence from Mr Patmore (**Attachment 3**)
- Public Service Commission Directive 14/20 Discipline (**Attachment 4**)
- Public Service Commission Directive 16/20 Suspension (**Attachment 5**)

2. How I intend to deal with the information

I have **not** made any decision in relation to the Allegation. However, I am concerned that the Allegation is serious and warrants formal action.

Should a decision be made that there are grounds for you to be disciplined under section 187 of the Act, the disciplinary action that may be taken includes, but is not limited to:

- a reprimand;
- a monetary penalty;
- transfer or redeployment to another role;
- a demotion to a role with a lower classification (with reduction in pay and duties); or
- termination of your employment.

3. Suspension from duty

Suspension on full remuneration

Section 137(1)(b) of the Act provides that an employee may be suspended from duty if the chief executive reasonably believes the employee is liable to discipline under a disciplinary law. The relevant sections of the Act regarding suspension from duty have been considered and complied with in conjunction with the requirements of Public Service Commission Directive 16/20 Suspension (the **Suspension Directive**) (**Attachment 5**). I confirm I am the authorised delegate to make suspension decisions under section 137(1)(b) of the Act. Further, I confirm there is no conflict of interest in my position as the delegate.

Section 137(10) of the Act provides natural justice is not required for the suspension of an employee on full remuneration. While at this stage I have formed no view as to the veracity of the Allegation, on consideration of the information before me, I reasonably believe you are liable to discipline under a disciplinary law.

For the reasons outlined below, I have decided that you should not remain in your current workplace at this time. Section 137(3) of the Act provides that before suspending an employee, consideration must be given to all reasonable alternatives that may have been available for you to perform.

I have considered whether there are any reasonable alternatives to suspending you from duty, including alternative duties, a temporary transfer (either in your current workplace or another workplace) or another alternative working arrangement, or asking you if you wish to access accrued recreation and/or long service leave.

I do not consider the alternative duties, or a temporary transfer, or other alternative working arrangements, to be available or appropriate in the current circumstances. In considering this, I have undertaken an assessment of the Allegation and your role within the Health Service and whether your continuation in the role or another role presents any potential risk to patients, other employees or others. I have also determined that no working from home arrangements may be accommodated as it is not viable or practical for a Registered Nurse to deliver care to patients from a home-based setting given your role is clinically loaded and necessarily requires direct patient contact.

Any working from home arrangements were granted on a temporary basis to allow flexible working arrangements during the COVID-19 pandemic to protect the health and safety of yourself, other employees and others. Further, it is alleged that you have not followed a reasonable and lawful direction and I do not consider other alternative working arrangements to be appropriate until the show cause process is complete.

Accordingly, pursuant to section 137(1)(b) of the Act, I have decided to suspend you from duty on normal remuneration. Your suspension will take effect immediately from the date this letter and, at this stage, will remain in place until **8 July 2022** unless altered as set out below, at which time I will consider the issue of suspension afresh.

During your suspension you are entitled to normal remuneration, less any amount you have earned from alternative employment undertaken during your suspension. If you engage in alternative employment during the period of this suspension with normal remuneration, the remuneration payable to you from the Health Service will be reduced by the amount earned by you from the alternative employment. I refer you to section 137(5) of the Act in this regard. Any deduction for alternative employment will not be more than the amount of your normal remuneration.

If you engage in alternative employment during your suspension, you are required to advise me immediately so your pay can be adjusted accordingly. Please note alternative employment does not include any other employment you held at the time of your suspension provided the other employment is not in contravention of the Act or *Code of Conduct for the Queensland Public Service*.

Your suspension will be reviewed regularly in accordance with the requirements of the Suspension Directive, including as outlined below.

Suspension without remuneration

Section 137(4) of the Act provides that a chief executive may decide that normal remuneration is not appropriate during a period of suspension having regard to the nature of the discipline to which the chief executive believes the person is liable. Under the Suspension Directive, in making any decision, I must consider:

- the nature of the disciplinary matter;
- the factors not within the control of the Health Service that are preventing the timely conclusion of the discipline process; and
- the public interest of the employee remaining on suspension with remuneration.

I must also apply the principles of natural justice, which include the right to be given a fair hearing and the opportunity to present your case, the right to have a decision made by an unbiased decision maker as well as the right to have the decision based on logically probative evidence.

Given the serious nature of the Allegation, consideration is also being given to a suspension without remuneration.

My consideration in this regard has not been arrived at lightly, and I have carefully balanced the nature of the Allegation as well as all the information that is currently available to me, including but not limited to the seriousness of the Allegation and considerations regarding the public interest, such as:

- the health and safety of the public and others who access the Health Service – particularly noting that many who access our health services are present on the Health Service's premises in a vulnerable physical state; and
- managing public resources effectively, efficiently and economically.

As the decision maker, I have considered your human rights in accordance with the *Human Rights Act 2019* and in accordance with clause 4.5 of the Discipline Directive. The direction to comply with the Directive does not itself compel a person to be vaccinated, however it does impose consequences upon people who are not vaccinated and have not been granted an exemption. The purpose of the Directive is to protect employees, patients and others from the possibility of contracting COVID-19 and to maintain a proper and efficient Health Service during a pandemic. I note there is no less restrictive yet equally effective way to achieve this purpose.

However, I confirm that I have **not** made any decision in relation to a suspension without pay at this time.

4. Invitation to Respond

Allegation

Before I decide how to proceed, I would like your views on the Allegation. I will consider all relevant information that you choose to provide. Accordingly, I now afford you the opportunity to show cause, in writing, within **fourteen (14) calendar days of receipt of this letter**, why you should not be disciplined in relation to the Allegation.

I will consider all relevant information that you choose to provide prior to making a decision in relation to the Allegation. Please supply all relevant information directly to me, in writing, at **Metro_North_WAU@health.qld.gov.au**.

Your response should be provided to me within **fourteen (14) days of receipt of this letter** and marked 'Private and Confidential'. If you require more time, please notify Ms Southwell on the details listed previously in this correspondence.

You are welcome to seek assistance from your union or a support person in preparing a response if you desire.

If you do not respond within **fourteen (14) calendar days** of receipt of this letter or a longer period as agreed with Ms Southwell, I will make a decision based on the information currently before me.

Suspension from duty without remuneration

Before I decide how to proceed in relation to any suspension without remuneration, I would like to receive your views on any suspension without remuneration. In accordance with the principles of natural justice, you are now afforded the opportunity to respond in writing, within **seven (7) calendar days of receipt of this letter**, why you should not be suspended without normal remuneration.

I will consider all relevant information that you choose to provide prior to making a decision in relation to any suspension without remuneration. Please supply relevant information directly to me at **Metro_North_WAU@health.qld.gov.au**.

Your response should be provided to me within **seven (7) days of receipt of this letter** and marked 'Private and Confidential'. If you require more time, please notify Ms Southwell on the details listed previously in this correspondence.

You are welcome to seek assistance from your union or a support person in preparing a response if you desire.

If you do not respond within **seven (7) calendar days** of receipt of this letter or a longer period as agreed with Ms Southwell, I will make a decision based on the information currently before me.

5. Lawful Directions

As a result of your suspension, you are not to present yourself in the vicinity of any of the facilities of the Health Service other than to seek necessary medical treatment or visit family or friends receiving medical treatment, without prior permission from your line manager or by contacting Ms Southwell on the details listed in this letter.

You are required to make yourself available for contact by Health Service officers during normal business hours whilst suspended from duty.

You are to notify your line manager immediately if your personal circumstances change so that you are able to present to work should you be directed to do so.

6. Review provisions

Pursuant to clause 11 of the Discipline Directive, you may request that the Public Service Commission conduct a review of a procedural aspect of the handling of this discipline matter. Your request must be in writing and include a clear statement of how you believe the Health Service has not complied with the Discipline Directive and the action you seek from the review.

Clause 9 of the Suspension Directive also provides you with the right to request the Public Service Commission conduct a review of a procedural aspect of the handling of this suspension matter. Your request must be in writing and include a clear statement of how you believe the Health Service has not complied with the Suspension Directive and the action you seek from the review.

If you wish to access leave during your suspension, you should make application to your line manager.

7. Instructions and Support

This letter, the attached documents and the Allegation are all confidential and you are required to keep them confidential. You may discuss the contents and attachments of this letter with anyone who is assisting you with a response. If you need to discuss this matter with any employee, you need to discuss this with Ms Southwell in the first instance.

My concerns and the Allegation reflect information provided to me. This may be confronting for you, but I remind you that all employees must:

- report concerns to management;
- maintain confidentiality; and
- be professional and respectful towards;
 - any person who raises concerns; and
 - any person who has concerns raised against them

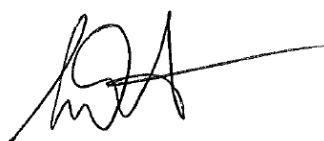
These requirements are outlined in the *Code of Conduct for the Queensland Public Service*.

I understand that reviewing and responding to these documents may be challenging. Metro North Hospital and Health Service has a confidential and independent counselling service. This is a free service. If you wish to use this service, please contact “Benestar” on telephone 1300 360 364 or visit one of the following websites:

1. <http://qhps.health.qld.gov.au/eap>
2. <https://benestar.com/>

If you have any questions in relation to this letter, please contact Ms Southwell by email on Metro_North_WAU@health.qld.gov.au.

Yours sincerely



Ms Louise Oriti
Executive Director
Redcliffe Hospital
Metro North Hospital and Health Service

20/06/2022