



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 my letter to you dated 20 June 2022 in which I invited you to show cause why you should not be suspended without normal remuneration pursuant to section 137(4) of the *Public Service Act 2008* (the **Act**).

I note that you have not provided a response to this invitation to show cause. In my previous correspondence, I advised you a decision would be made based on the information available to me.

I have reached my own conclusions independently regarding whether or not to suspend you without normal remuneration. I have carefully considered all the material before me. The fact that a particular matter is not specifically addressed in this letter does not mean that I did not consider it.

Response to show cause on suspension without normal remuneration

I note you have not provided a response to my correspondence dated 20 June 2022.

Decision on suspension without normal remuneration

Section 137(4) of the Act provides that a chief executive (or delegate) may decide that normal remuneration is not appropriate during a period of suspension, having regard to the nature of the discipline to which the delegate believes the person is liable. Under Clause 6.3 of the Public Service Commission Directive 16/20 Suspension, 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.

Whilst I have had careful regard to all material before me, including your response, I have determined that in accordance with section 137(4) of the Act that you should be suspended from duty without normal remuneration for the following reasons:

- the nature of the disciplinary matter; and
- The public interest in ensuring management of public resources effectively, efficiently and economically.

I note it is alleged that you have failed to follow a reasonable and lawful direction to comply with the vaccination requirements set out in the Health Employment Directive 12/21 Employee COVID-19 vaccination requirements (the **Directive**). The decision to direct you to comply with the vaccination requirements set out in the Directive was made considering the significant risk to the health and safety of healthcare workers, support staff, their families, and the patients under our care. The failure by you to follow the terms of the Directive, in conjunction with your subsequent failure to follow a lawful and reasonable direction to adhere to the Directive, demonstrates a potential unwillingness (if proven) to comply with Metro North Health, and Queensland Health, policy over an extensive period of time. The nature of the disciplinary matter is therefore of a serious nature.

Further, I have a statutory obligation to manage public resources efficiently, responsibly and in a fully accountable way. I have considered the timeframe for you to comply with the Directive, specifically the Directive came into effect on 11 September 2021 and the Health Service made its employees aware of the requirements of the Directive and provided sufficient time for employees to comply with the Directive. I do not consider it is an appropriate use of public monies for you to remain on suspension with remuneration for any further period.

Accordingly, pursuant to section 137(4) of the Act, I have determined that it is not appropriate for you to be paid normal remuneration during your suspension, having regard to the public interest, due to ensuring risk is appropriately managed regarding the health and safety of the public and the nature of the discipline matter. I have therefore determined that, effective immediately, the suspension without remuneration will take effect from **7 July 2022** and will remain in place until **7 October 2022** at which time I will consider the issue of your suspension afresh.

Appeal

If you believe the decision to suspend you without normal remuneration is unfair and unreasonable, you may lodge an appeal under Chapter 7 of the Act within 21 calendar days from your receipt of this decision to the Queensland Industrial Relations Commission (QIRC).

Further information about the appeals process can be obtained from the QIRC website www.qirc.qld.gov.au (in particular the Public service appeal guide) or by contacting the QIRC Registry on 3227 8060 or email: qirc.registry@justice.qld.gov.au.

Contact person and employee assistance

Ms Megan Southwell, Principal Workplace Relations Advisor remains the contact officer for you in this matter. Ms Southwell can be contacted at Metro_North_WAU@health.qld.gov.au.

I also wish to advise the 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://qheps.health.qld.gov.au/eap>
2. <https://benestar.com/>

Lawful directions

As previously advised, as a consequence of the 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 must also 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.

Should you fail to follow these lawful directions, you may be liable for disciplinary action that may lead to dismissal.

Human rights

I acknowledge that my decision to suspend you from duty without normal remuneration and the conditions placed on you during the course of your suspension may potentially limit your human rights including, but not limited to, your recognition and equality before the law; protection from torture and cruel, inhuman or degrading treatment; freedom of movement; freedom of thought, conscience, religion and belief; freedom of expression; and the right to take part in public life through employment in the public service.

However, in my view, these limits are reasonable and are demonstrably justifiable in the circumstances presented by your case. This is because it is demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom to ensure employees, patients and others are protected from the possibility of contracting COVID-19 when receiving health services, generally in a physically vulnerable state, and for Metro North Health, as part of Queensland Health, to maintain a proper and efficient Health Service in responding to the uncertainties presented during a pandemic.

Further, the Health Service has an obligation to manage public resources efficiently, responsibly and in a fully accountable way. I am persuaded that you have been provided with sufficient opportunity to understand the requirements of you and provide an offer to comply. I therefore consider that the limits placed upon your human rights, by the decisions contained within this letter, justify the potential impact on your human rights.

Questions

If you have any questions in relation to the matters raised in this letter please contact Ms Megan Southwell, Principal Workplace Relations Advisor on (07) 3647 9685 or at Metro_North_WAU@health.qld.gov.au.

Yours sincerely



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

6/7/2022