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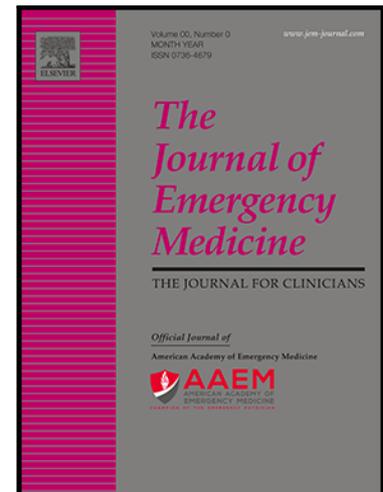
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Abstract:

Background

Since the development of the first Food and Drug Administration approved vaccine for the prevention of serious disease and death associated with the SARS-CoV-2 virus, healthcare workers have been expected to comply with mandatory immunization requirements or face potential termination of employment and censure by state medical board. Although most accepted this mandate, there have

been several who have felt this was an unnecessary intrusion and violation of their right to choose their own healthcare mitigation strategies and/or an infringement on their autonomy and other civil liberties. Others have argued that being a healthcare professional places your duties above your own self-interests, so-called fiduciary duties. As a result of these duties there is an expected obligation to do the best action to achieve the “most good” for society. A so-called utilitarian argument.

Discussion

We explore arguments both for and against these mandatory vaccine requirements and conclude utilizing duty and consequence-based moral reasoning to weigh the merits of each.

Conclusion

While arguments for and against vaccine mandates are compelling, it is the opinion of the Ethics Committee of AAEM that vaccine mandates for healthcare workers are ethically just and appropriate, and the benefit to society far outweighs the minor inconvenience to individuals’ personal liberties.

Key Words:

COVID-19; COVID Vaccine; Vaccine Mandate; Healthcare workers; SARS-CoV-2

Introduction:

The introduction of COVID-19 vaccine mandates for healthcare workers has caused debate and disruption in hospitals across the world, not to mention within the United States (U.S.). Several arguments have been made for and against the mandates, however mostly in the political and social media venues. As the Ethics Committee of the American Academy of Emergency Medicine (AAEM), we are entrusted to guide the Academy and its members, and hopefully the entire emergency medicine (EM) community regarding ethical matters affecting all facets of emergency care. The coronavirus disease of 2019 (COVID-19) quickly became a polarizing public health crisis, affecting people of all educational, socioeconomic, political, religious, and demographic backgrounds. COVID-19 greatly impacted emergency departments (EDs), which are often front and center to issues related to not only the disease and its manifestations but to the effects of vaccine mandates on healthcare professionals. As an ethics committee, we focus our arguments solely on ethics and do not debate the safety or efficacy of vaccines. The Ethics Committee accepts that these vaccines were recommended by the CDC and are FDA approved and proceed with the assumption that these vaccines meet safety requirements.¹ We will also not debate the role of immunity from prior COVID-19 infection as being equivalent to the vaccine, as study on the equivalency is still ongoing at the time of writing this manuscript. We will also avoid religious and legal arguments (except to mention one precedent case on public health law and vaccine mandates which was based on a utilitarian ethical principle). Similarly, we will avoid discussion on religious or medical exemptions that may legitimately prevent receiving the vaccine. We present the arguments both for and against vaccine mandates and weigh the substantive arguments by two panels of members, each representing arguments “for” (MM, BW, AU, ES) and “against” (LD, RB, DF, AG) mandates respectively. AG examined each of the arguments for their ethical soundness and using principles of moral reasoning invoking deontology and consequentialism, concluded with the recommended moral position.

Of note, we use the term “healthcare workers” to include a physician led team that may consist of any

combination of residents, fellows, medical students, nurses, advanced practice providers, and healthcare assistants and technologists. It is not enough to focus on one out of this diverse group. As a physician led group, it is the position of AAEM and most physician societies that medical care is best led by a board-certified physician, who also ensures the professional ethics guiding their practice are exhibited in each team member.

Discussion:

Arguments in Favor of Vaccine Mandates

Historically, vaccine mandates have long been part of the protections under public health laws of many nations of the world. As far back as 1807, the German state of Bavaria introduced a mandate for vaccination of the public after the development of the smallpox vaccine.² In the 1905 *Jacobson v. Massachusetts* decision, the United States Supreme Court ruled that state vaccine mandates were legal and enforceable to protect public health.³ While there have been in recent years controversies regarding mandatory vaccination for schoolchildren, in large part these vaccination mandates have continued yearly without public debate. Generally speaking, and utilizing the principle of acceptability, most members of the public have long accepted the role vaccines play in protecting the health of themselves and those around them. There are many definitions of acceptability in ethics, however we find most illustrative the following: “Acceptability is a multi-faceted construct that reflects the extent to which people delivering or receiving a healthcare intervention consider it to be appropriate, based on anticipated or experienced cognitive and emotional responses to the intervention”.⁴

The initial argument in support of the COVID vaccine mandates for healthcare workers must start with the principle of justice and consistency and their related ethical concepts that support fair and equitable treatments of individuals. Although justice is typically viewed from a patient-centric lens, it is reasonable to expect that healthcare workers not only treat their patients justly but be treated and act justly and consistent with their professional ethics. Justice is defined as “fair, equitable, and

appropriate treatment of persons”.⁵ There is a further implied principle within justice, namely consistency. It is impossible to be just yet inconsistent. Just policies, even with caveats and exceptions, must be reproducible and consistent otherwise they will not withstand scrutiny by society and as a result will not be ethical. A policy is just if it is fair, and the policy to mandate healthcare workers receive the covid vaccine is fair, equitable, and appropriate as it seeks to provide a means to distribute a necessary treatment without discrimination or bias and whose benefits far outweigh any risks.

For the last half a century, healthcare workers had generally accepted as part of the requirements in obtaining hospital privileges the role of mandatory vaccines for their and society’s good. It is reasonable and expected then to mandate additional vaccines, as diseases become prevalent and vaccines are discovered, with the same intent to provide protection to the healthcare worker and their patients. Prior to March 2020, in what we will refer to as the period BC, “Before Covid”, proof of certain mandatory vaccinations such as Hepatitis B, tetanus, measles, mumps and rubella and other childhood vaccinations (or proof of immunity) was an accepted norm to the process of starting clinical work in most clinical settings in the U.S..⁶ When COVID-19 vaccination became available, given the similar public health protection vaccination provided for this disease, it is reasonable and not an unusual or unfair burden on healthcare workers to add one more vaccine to the multitude they are required to get in order to provide clinical care. As stated in the first principle of AAEM’s Principles of Ethics⁷, there is a fiduciary duty by physicians to place the patient’s interests above their own. In keeping with this principle, it is hard to conceive that refusing to protect oneself from severe disease from COVID-19 as well as the reported decreased rate of viral transmission and hence disease in vaccinated persons compared to the unvaccinated,⁸ is consistent with placing the interests of patients above healthcare workers.

One of the core tenets of medical ethics is the principle of non-maleficence. This is best described as

our unique duty to “do no harm” as described in the Hippocratic oath, which states physicians must “act in a way which does no harm”.⁹ Given the data that suggests even with the most recent highly virulent and contagious mutations of the SARS-CoV-2 virus, there is a decreased risk of transmission from vaccinated individuals, hence vaccinated healthcare workers uphold their duty of nonmaleficence to their patients. In contrast, remaining unvaccinated potentially exposes highly vulnerable patients and co-workers to the virus and potentially COVID-19. Additionally, an unavailable healthcare worker from COVID-19 who is unvaccinated unfairly shifts more work burden on to their vaccinated co-workers, as well as reducing the pool of available healthcare workers to society. Worse during a pandemic.

Given the trust society has in the medical profession, and the resultant duty healthcare workers owe to society, ensuring wellness both physically and emotionally is integral in providing ethically based care. Healthcare workers aim not just to avoid causing harm to patients but ensuring good. Beneficence, another throwback to the Hippocratic Oath, is defined as “an act of charity, mercy, and kindness with a strong connotation of doing good to others including moral obligation. All professionals have the foundational moral imperative of doing right. In the context of the professional-client relationship, the professional is obligated to, always and without exception, favor the well-being and interest of the client”.¹⁰ This definition is especially helpful in reiterating the fiduciary responsibility healthcare workers have to their patients and the need to ensure they are willing and able to provide ethical care, which implies having not only the technical and experiential knowledge, but the appropriate state of mind and physical well-being. A sick healthcare worker diminishes the potency of the physician-patient relationship.

As alluded to earlier, public health ethics, policy and law have generally been structured around the utilitarian principle of doing the best for the most.¹¹ Its underlying theme is to maximize as much good in society to the benefit of the most members of that society. It acknowledges that there are certain segments of the society whose individual liberties may be affected to protect the welfare of other

members, but it is felt to be just and appropriate ethically for the greater good of society. Like all other vaccines mandated to attend school or for employment in a healthcare facility in the U.S., once the Pfizer-BioNTech COVID-19 Vaccine was approved by the FDA,¹² its role in risk mitigating the serious sequela of COVID-19 was sufficient justification to mandate all healthcare workers add this vaccine to the list of mandatory vaccines, thereby ensuring protection for the vulnerable who seek medical care. Serving as a mini-cosmos of society, healthcare workers' vaccine mandates ensure the greatest utility (protection from COVID-19) is achieved.

Argument against Vaccine Mandates

Utilitarianism appeals to us during times of crisis. It offers an enticing solution: to do the greatest good, to the greatest number of people. However, the pursuit of utilitarian ideals often challenges the rights of the individual. In the current pandemic, the utilitarian argument has been applied to vaccine mandates. Why is vaccination a moral issue? The decision to become vaccinated and the prevention of harm fulfills the first categorical imperative and it also has the appeal of prudence. Vaccine mandates risk treating individuals as a means to an end, and risk running afoul of the second categorical imperative. Utilitarian advocates would argue for vaccine mandates as it provides the greatest well-being for the most people possible. The utilitarian argument that vaccine mandates are doing the best for the most falls flat when taking into consideration that a vaccine for the seasonal influenza virus (Flu), for example, is available, and while required by many healthcare facilities, it is not mandated as there is a workaround for those who refuse it. Using the principle of consistency to ensure like circumstances are treated similarly; If utilitarianism was to be the underpinning of the COVID-19 vaccine mandate, one would expect that the Flu vaccine would also be mandated as its impact on the healthcare field is just as large as SARS COV-2, yet only four states require it.¹³ Furthermore, individuals who choose not to receive an influenza vaccine are not harassed, stigmatized, nor threatened with termination of their job, but are allowed to seek exemptions or are required to mask the entirety of the Flu season. Consistency is key in ethical principles, and consistency in this utilitarian argument seems to be lacking.

To the “pro” argument on acceptability, we must disagree. It requires very little formal research to demonstrate that many things deemed absolutely correct 100 years ago, may not be acceptable today. Society only questions the “status quo” when enough individuals refuse to follow it, and/or when advances in science or other studies elevates our collective knowledge. There are, and have been, many “accepted” practices that are neither fair, equitable, just, or ethical, and hence acceptability as a criterion lacks merits. Likewise, we must question the “fiduciary” argument that blindly mandates physician wellness and interests below that of their patients. Moral injury, burn out, posttraumatic stress disorder, anxiety, and the like are all concepts permeating the medical (especially EM) literature, and are directly related to the work environment of medicine. While it is important in general terms to hold the patient’s medical interests over one’s own, does this require self-sacrifice in order to uphold the Hippocratic Oath? Are we as healthcare workers now enslaved to the profession without any rights of our own? We are entrusted with great responsibility and trust by society and have access to the greatest bodies of knowledge, yet as subject matter experts we are not afforded the same “right to refuse” as any other autonomous agent in the free world. For that, we call foul.

It is our position that Kantian ethics provides a solution to this dilemma and addresses both the concerns of individual rights and society at large. Kant's moral theory describes individuals as having intrinsic worth as autonomous, rational agents. He describes a concept of “good will” where people have the capacity to recognize a moral act and the duty to act upon it. This is an ongoing, conscious process.¹⁴ In contrast, utilitarianism would view the intrinsic value of individual choice in its effects. In Jeremy Bentham's interpretation, this was hedonism: the degree of how much pleasure could be caused, or pain avoided. Other philosophers termed the ideal outcomes of personal decisions as “well-being”. For these utilitarian advocates, decisions or rules are viewed as moral to the degree in which they benefit the majority.

Central to Kant's work was his categorical imperatives; moral laws applicable to all individuals. These are laws freely accessible to individuals using reason and intellect and apply to all equally. The first

principle described the concept of universalizability; a moral actor considers the principle underlying their personal decisions and the effect if all other individuals acted in a similar manner. The second principle emphasizes that humanity should be an end in itself, and never a means to an end. As human beings are rational and autonomous, we can set our own goals; humans exist for themselves and are morally self-governed.

It is important to note that Kant thought that decisions could be divided into those that were prudent and those that were ethical. Often, these categories coincide. During the COVID-19 pandemic there was a wide range of public health decisions made with the intent of limiting morbidity and mortality. Masking, travel restrictions, and quarantining following exposure fall into both categories. A prudent individual, concerned about their own health and considering their duty to preserve the health of both them and their peers would reasonably adopt these measures to preserve their own health and longevity as well as that of their peers.

Kantian philosophers must argue against these mandates as it is the **individual's** duty to identify the moral good offered by these vaccines and take the appropriate action. Compelling action and violating personal autonomy to reach the so called, “herd immunity” would be a moral evil.

To this dilemma, we offer a solution. We have seen the public's trust in clinicians and the medical establishment erode throughout this pandemic as people chafe against changing mandates and norms. The evidence we have of the benefit of the vaccines for our patients is clear; it is both a prudent and moral decision. But it is a personal decision based on moral duty. Physicians must continue to educate and guide to moral clarity. To do anything else is to treat our patients as a means to an end.

Conclusion:

We have presented ethical arguments both for and against a mandate for healthcare workers to receive vaccination against COVID-19. A key argument for vaccine mandates rests on the ethical requirements for healthcare workers to place the well-being of the community as a whole above their own individual interests. Whereas, the key arguments against mandates states that an individual's autonomy must be

primary, and that autonomy should not be overridden or ignored in the name of a “higher” good.

Both arguments being compelling, it is the opinion of the Ethics Committee of AAEM that vaccine mandates for healthcare workers are ethically just and appropriate, and the benefit to society far outweighs the minor inconvenience to individuals’ personal liberties. This opinion rests on the following key conditions: the risks of the disease are significant to society as a whole, the vaccine has been FDA approved (which implies thoroughly tested and deemed “safe”), and there are exceptions for those with legitimate medical and/or religious reasons. Vaccine mandates are consistent with professional ethics and fiduciary duties to patients. Society’s interest should be held as primary over individual interests, especially as it concerns an action that is consistent and congruent with actions in our well established and accepted practice of medicine. That said, as we see a shift from pandemic to endemic status, and the research grows on natural vs obtained immunity, there may be a shift in this opinion over time on mandatory COVID vaccination.

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