

ASMS ADVICE TO MEMBERS ON RDA'S PROPOSED STRIKE - OCTOBER 2016

RDA members have voted for strike action in support of their MECA negotiations with District Health Boards and the RDA has given the required notice of a 48-hour national strike. The strike will occur between 7:00am Tuesday 18 October and 7:00am Thursday 20 October. In anticipation of that strike going ahead, ASMS issues the following advice to our members who will have to contend with the impact of the strike in the course of their work on those days.

If after considering this advice, you have further questions or concerns about your ethical and other legal obligations in the face of the strike, you should contact a member of the ASMS industrial team or the Medical Protection Society (0800 225 5677).

The basis of your legal and ethical obligations (and our advice below) comes from the medical profession's ethical codes (including those issued by the NZMA and Medical Colleges), statements of the Medical Council, statutory obligations under the Employment Relations Act 2000, in particular the *Health Sector Code of Good Faith*, in Schedule 1B of the Act and your common law and contractual employment law obligations.

Your obligations

Patient wellbeing is critically important and you must do whatever you legally can to protect and maintain your patients' wellbeing. If you do this, you will have discharged your ethical and legal obligations.

However, all employees have additional legal and ethical obligations to take responsibility for their own health and safety. You should know your limits and must not work beyond them, if you are to remain safe to practice.

How you respond to requests to do the work of striking employees that is not directly related to patient safety is a choice you may have to make. In making that choice

you should be aware that you do not have specific obligations to striking RMOs but you should consider how your actions may affect their legal rights and ability to bargain collectively and to reach a satisfactory outcome. In this regard ASMS encourages you to consider the following factors:

- The least harm or risk of harm to the interests of all parties, particularly the patients, will occur if the strike is not prolonged.
- As a general rule you should do nothing which might prolong the strike, such as undertaking the work of striking colleagues.
- You may no longer have the necessary i.e. up-to-date, training to do some of the work otherwise done by RMOs.
- Furthermore, the work you are being asked to do may be outside your scope of practice for which you are credentialed.
- By doing other employees' work, in addition to your own, you may increase the risk of harm to patients and be seen to take management's side in the dispute.
- However wrong that perception may be, management may regard your actions as supportive of them which in turn may encourage DHBs to take a harder line against the RMOs and thereby reduce the prospect of an early settlement.
- Wherever possible you should endeavour to carry out your normal duties, but only for so long as it is safe to do so.
- A lawful strike, as the RDA strike is, does not constitute an emergency situation. The employer will have had two weeks to develop its contingency plan and has had a responsibility to do so.



Your employer's obligations

The overwhelming legal and moral responsibility for dealing with the consequences of a lawful strike such as this one, rests with the District Health Boards as your (and the RMOs') employers. This includes making provision with the RDA for the delivery of life preserving services during the period of the strike.

Life preserving services

The Code of Good Faith for the Health Sector defines life preserving services as:

- (a) crisis intervention for the preservation of life;
- (b) care required for therapeutic services without which life would be jeopardised;
- (c) urgent diagnostic procedures required to obtain information on potentially life-threatening conditions;
- (d) crisis intervention for the prevention of permanent disability;
- (e) care required for therapeutic services without which permanent disability would occur; or
- (f) urgent diagnostic procedures required to obtain information on conditions that could potentially lead to permanent disability.

A DHB served with a strike notice is obliged to urgently put in place a contingency plan to ensure that life-preserving services will continue to be provided during the strike. Some years ago, all DHBs developed such contingency plans for just this eventuality and are now in the process of reviewing those plans and discussing their implementation with the RDA. DHBs are legally obliged to take all reasonable and practical steps to ensure life-preserving services are maintained during the strike. Furthermore, under the Health Sector Code of Good Faith, DHBs and the RDA are obliged to agree on the provision of sufficient competent RDA members to be available during the strike, if required, to maintain life-preserving services.

If the DHB is unable to provide life-preserving services without the participation of the striking RMOs it may request the RDA whose members are on strike to release sufficient striking RMOs to provide the life-preserving services, **but only** to the extent necessary to provide those services.

Other duties

Your employer may ask you, other employees or, in some limited circumstances, contractors to perform other duties normally done by striking RMOs and it may be you will consider it to be your professional and ethical obligation to agree to do so. However, in the absence of a clear ethical or other legal obligation to do this work, our strong advice is that you should refuse to do it. To do otherwise may only serve to prolong the strike and inflame workplace relationships after it is over; this is in no one's interest. Consider also the 'golden rule' – *do unto others as you would have them do unto you*.

However, if you are called upon to do extra duties or to work different hours during the strike you will be entitled to additional payment. With that in mind, ASMS will seek an agreement with DHBs nationally on appropriate rates of payment and the circumstances when they should be paid. However, the over-riding consideration must be that you practice safely without compromising the care of your patients or your own health.

Performance of striking employees' duties

Finally, ASMS acknowledges that the final decision as to what additional work you do during this strike is a personal one to be taken by each individual member. However, as with many difficult decisions, it may be easier to make and defend it if it is taken in consultation with your colleagues in your service or throughout the hospital or other workplaces.

