

Covid-19 – Medicolegal Dilemmas

Dr Samantha King, Medical Adviser at the Medical Protection Society, advises on some medicolegal dilemmas faced by healthcare professionals managing Covid-19 in New Zealand.

Q. I'm worried my working conditions and environment during this crisis may be unsafe - how can I protect my own health, and protect myself from potential errors resulting from these circumstances?

Firstly, employers have a duty of care to all their employees to ensure that the environment is safe to work in. It would be wise to discuss the contingency plans that are in place in your employing organisation now, so that everyone has a clear understanding of the risks that staff may face and the actions and procedures that will be put in place to protect staff.

An employee also has an obligation and therefore the right to bring to the attention of an employer any circumstances that might be detrimental to their, and other employees' health and safety in the workplace.

The Medical Council of New Zealand has reminded doctors of their ethical duty, according to Council's statement Good Medical Practice¹ to 'make the care of patients your first concern' and 'protect and promote the health of patients and the public'. However, your own health is also important. With regards to your own safety, Good Medical Practice also states, 'If a patient poses a risk to your own health and safety or that of other patients or staff, you should take all reasonable steps to minimise the risk before providing treatment or making suitable arrangements for treatment.' And also 'In an emergency, offer to help, taking account of your own safety, your competence, and the availability of other options for care.'

If you have pre-existing health conditions that place you at increased risk of infection, you should discuss working arrangements with colleagues and your employer. It may be appropriate to ask another suitably qualified clinician to take over the care of patients who are suspected to have, or have been diagnosed as having, Covid-19.

Secondly there is a risk that some systems in the healthcare sector will be put under considerable pressure and some may fail to cope or breakdown. If you are worried that patient safety or care may be compromised, you should raise your concerns with other clinicians in order to agree the best course of action to ensure the best care for patients.

You should record any concerns in writing, clearly and objectively setting out the reasons for your concerns and the potential impact on patient safety, with examples.

¹ www.mcnz.org.nz/our-standards/current-standards/good-medical-practice/

Keep a record of any correspondence or discussions about the problems you have raised and the steps that you have taken to try to remedy matters. If an adverse incident does occur, it can be useful to show that you took action. If those who are responsible do not take proper action you can consider reporting the matter further up the line of management, in line with your workplace policy.

Q. I'm concerned that I may be required to undertake duties that are outside of my speciality or expertise to help with the effort to manage Covid-19. What is the advice, and what are the indemnity arrangements?

If you are asked to perform a duty that you would not normally undertake, regardless of the circumstances you need to assess whether you have the skills and competency to proceed.

This will include considering what is in the best interests of the patient. If you do not feel it is safe to proceed and that to do so would place the patient at greater risk of harm than not undertaking the duty that has been requested, then you should advise whoever has asked you to do so and explain your concerns.

It would be wise to record the details of this decision in case it becomes necessary to explain the reasoning behind the decision to act or not to act.

If Medical Protection members have any concerns about the duties, they are currently performing to help manage Covid-19 they should contact us for advice.

MPS will assist you with any concerns arising from your clinical work, so long as you are working within your scope of practice.

Q. Can I decline if I am asked to work beyond my clinical competence? If so, how?

You should make the care of your patients your first concern. In the current crisis the expectation is that all doctors will do the best they can for their patients in the circumstances in which they find themselves and act in good faith. Sometimes in a crisis the circumstances may mean that the levels of care which would normally be given are simply not possible.

If, however, you believe that you are being asked to work in a way that is placing patients at risk of harm you should raise your concerns by following the workplace policy.

When deciding how to act you must consider the best interests of your patients and be prepared to explain and justify your decisions and actions.

Q. We are planning to conduct virtual consultations with patients – is there any advice you can offer?

MPS understands that in the current situation doctors are being encouraged to consult with patients over the phone or web-based platform, if possible. In particular at-risk patients whom you would prefer not to risk coming into the clinic.

In making the decision to offer a virtual consult, you must balance the risks and benefits to your patients and be satisfied that you can adequately clinically assess the patient without the benefit of a physical examination. For routine consultations in stable patients you may consider it safe to defer the examination to a later date.

When offering virtual consults, explain the risks and benefits so that the patient makes an informed decision. Regardless of the unique circumstances, I would recommend you make a record of the explanations given to the patient and the reasoning behind any decisions made, and the information given to patients, in case it is necessary to explain the approach taken later.

The Medical Council of New Zealand has published a statement on telehealth. I strongly advise you to familiarise yourself with this. This can be found here

www.mcnz.org.nz/assets/standards/a914d05922/Statement-on-telehealthv3.pdf

In addition, you may find the following statements helpful.

www.mcnz.org.nz/assets/standards/eccbbf5a1/Statement-on-good-prescribing-practice.pdf

www.mcnz.org.nz/assets/standards/0541c585e7/Statement-on-medical-certification.pdf

It is important you use a platform with suitable encryption and security. Your IT provider will be able to advise you regarding this.

Please be reassured that should you need to do a virtual consultation with a patient whom you would ordinarily see face-to-face, your membership with Medical Protection will enable you to request assistance for matters that could arise from such consultations during this time.

Q. What do I do if patients start demanding extra repeat prescriptions, as they want to stockpile?

There have been no reports of medicine shortages as a result of Covid-19.

You may however still face requests from patients for extra medication to stockpile 'just in case'. It is important not to allow yourself to be pressured by patients into overprescribing.

While medicine shortages are not anticipated at this time, the policy should include steps to take if patients do face delays obtaining routine medications.

Where there are no current concerns, honest and open communication will be key if a patient is insisting that they have extra supply, along with explaining and justifying decisions and actions. Despite this, some patients will remain angry about not being able to stockpile their prescriptions. Your organisation's complaints process should be offered at the consultation should they remain dissatisfied, and conversations should be noted in the patient's records.

Q. Do I have to see patients if the Personal Protective Equipment (PPE) run outs?

The Medical Council of New Zealand does not expect any doctor to deliberately put themselves in danger to treat a patient in a pandemic or emergency.²

My understanding is that currently there is no shortage of PPE available for health providers. However, in the event that PPE runs short we would expect further guidance to be issued by the Ministry of Health.

² Medical Council News-March 2020 can be accessed here www.mcnz.org.nz/about-us/publications/newsletters/medical-council-news-march-2020/#important-message-from-the-ministry-of-health

Q. I may be asked to stop routine work altogether - reviews for long term conditions, or smears for example – what if there are future medicolegal consequences such as delayed diagnoses?

In accordance with guidance issued by the Medical Council in their statement Safe practice in an environment of resource limitation³, you must consider the needs of all patients alongside your primary duty to your own patients and should actively balance these duties to try to get the best possible outcomes where resources are limited.

This means that if you are asked to stop some routine work for the benefit of patients generally then this would be acceptable. We would advise complying with Medical Council guidance in this regard as well as any future guidance that may be issued by the Ministry of Health.

Medical Protection members should contact us with any concerns.

Q. Having recently retired/deferred my membership, I have been asked by the Ministry of Health to return to the workforce to provide support during the COVID-19 crisis. Can I reinstate my indemnity with Medical Protection?

In response to the work that healthcare workers are undertaking during the COVID-19 crisis, all retired or deferred (e.g. maternity leave) members of Medical Protection who have held registration with the MCNZ within the last three years and was a member of MPS at the time will have their indemnity membership with us automatically reinstated completely free of charge if you return to work under the Notice of activation COVID-19 Pandemic scope of practice scheme. You will not need to contact our membership team to reactivate your membership if you are only providing assistance up until the current date required by the Ministry of Health of 30 September 2020.

Medical Protection can offer our temporary members assistance with matters such as medicolegal advice and regulatory representation, support with complaints, disciplinary proceedings, inquests and criminal investigations arising from clinical practice.

If you had intended to reinstate your APC and return to work before the 30 September 2020 (e.g. you were finishing maternity leave) you must contact our membership team on 08002255677 or membership@mps.org.nz and advise them of the change in order for you to be put into the appropriate grade and have the correct subscription rate charged.

³www.mcnz.org.nz/assets/standards/ca25302789/Safe-practice-in-an-environment-of-resource-limitation.pdf