Covid-19 Medicolegal dilemmas – South Africa

Dr Graham Howarth, Head of Medical Services, Africa, at the Medical Protection Society, advises on some medicolegal dilemmas faced by healthcare professionals managing Covid-19 in South Africa.

Q: I am having to do increasingly more remote consultations – is there any advice and how does this affect my indemnity?

A: The use of telemedicine has been advocated, including by the South African President, as one of the ways of delivering healthcare during the crisis. At the time of writing, HPCSA’s published guidelines around telemedicine have not yet been updated to reflect the current situation, but we anticipate that they will address this as soon as possible, in the spirit of the President’s National State of Disaster address.

We recognise this is an extremely challenging time for all healthcare professionals and Medical Protection is here to support you. The treatment of patients is of paramount importance and we want you to be able to deliver this in a safe and effective way.

Medical Protection has published advice relating to practicing telemedicine in response to the crisis. Visit www.medicalprotection.org to read COVID-19 and remote consultations – how we can help.

If you are undertaking a remote consultation

When considering a remote consultation, you should weigh up whether you can adequately assess the patient remotely. If you have doubts then you should recommend the most appropriate route for the patient to seek medical assistance, in accordance with local public health/government guidance.

Where face-to-face consultations are not feasible, you need to be satisfied that proceeding in this way is in the patient’s best interests and that you can adequately assess the patient remotely. You should document that you have undertaken this consideration in the clinical records. Unless there are exceptional circumstances, it is preferable that remote consultations will relate to patients already known to you or where you have access to their full medical records.

During any remote consultation, both doctor and patient should be able to reliably identify each other. If a face-to-face consultation is preferred, but not possible, then you should inform the patient of this and explain why you have, on this occasion, pursued a teleconsultation.

In cases of emergency, patients should be encouraged to seek assistance via the recommended route, in accordance with the most recent government and/or public health guidance.

Practising safely and your indemnity position

In all remote consultation situations, it is your responsibility to ensure you practise in accordance with any applicable laws and regulations around the diagnosis, treatment, prescription and provision of medication to patients.

If the patient is not able to access local, face-to-face medical advice due to quarantine protocols, and you are satisfied that this is the case and documented this rationale – then you will be able to request assistance from Medical Protection for incidents that arise from
the consultation, where the complaints or claims are brought in South Africa (the jurisdiction in which you hold your membership).

However, you should be aware that you will not be able to seek assistance from Medical Protection for remote consultations undertaken on a new patient in another country.

Further information can be found on www.medicalprotection.org, including advice on remote consultation with an existing patient in another country, remote consultation with a new patient in the same country as you, and your indemnity position.

**Q: Do I have to see patients if I do not have adequate Personal Protective Equipment?**

**A:** The WHO advise that provision of appropriate PPE supplies should be an institutional priority for infection prevention and control measures for healthcare workers caring for suspected Covid-19 patients.

Your own health is important, and regulators in other jurisdictions have reminded doctors of their ethical duty to selfcare in order to protect themselves, their colleagues and their patients.

The South African Medical Association has advised members not to see patients if they do not have sufficient equipment to protect against Covid-19. They advise, where possible, to carry out a teleconsultation for Covid-19 patients, in order to lessen the risk to staff and other patients.

If you have pre-existing health conditions that place you at increased risk of infection, you should discuss working arrangements with colleagues or your employer. It may be appropriate to ask a suitably qualified clinician to take over care of Covid-19 patients.

**Q:** If the government co-opts private hospitals for State patients, will I be indemnified for treatment carried out while working in this hospital?

**A:** Our expectation is that the state will indemnify members treating public patients, even if private hospitals are being utilised to provide the care. Medical Protection will of course provide advice and representation for non-claims matters (e.g. HPCSA matters, inquests, complaints, reports etc.) arising from this work.

Doctors will face enormous challenges in the months ahead and we will work with the Government to ensure there is clarity on indemnity arrangements which will allow doctors to focus on treating patients.

**Q:** I’m concerned I will be required to undertake duties outside my speciality or expertise. What is the advice, and what are the indemnity arrangements?

**A:** It is highly likely that many clinicians will be asked to support the response by performing duties they would not normally undertake.

Many state-employed doctors may also have an employment contract stipulating they are obliged to follow reasonable instructions, which could extend to seeing emergency patients even if outside the scope of their speciality.

If a doctor is asked to perform a duty they would not normally undertake, they need to assess whether they feel they have the skills and competence to proceed. This will include considering what is in the best interests of the patient. If they do not feel it is safe to proceed and that to do so will place the patient at greater risk of harm than not undertaking the duty.
requested, then they should advise whoever has asked them to do so and explain their concerns.

Our advice is to record the details of this deliberation in case it becomes necessary to explain the reasoning behind the decision.

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

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

A: Doctors should make patient care their first concern. In the National State of Disaster, 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.

If a doctor believes they are being asked to work in a way that is placing patients at risk of harm they should raise their concerns by following the workplace policy and the HPCSA’s guidance. When deciding how to act, doctors must consider the best interests of their patients and be prepared to explain and justify their decisions and actions.

Q: I anticipate my clinic/hospital, like many, will not have sufficient resources – for example ventilators and ICU beds – to treat all patients at the peak of the outbreak. What clinical decisions should I make to best treat patients?

A: We appreciate this is the most challenging calling for any health professional. As in any crisis, doctors should make patient care their first concern. 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.

The National Department of Health and National Institute of Communicable Diseases have developed clinical guidelines and FAQ, doctors are encouraged to check for updated guidance.

When faced with challenging clinical decisions, doctors should continue to familiarise themselves with existing protocols, get a second opinion about diagnosis and treatment options, and document decision making process.

Q: I’m worried that 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 those circumstances?

A: If you work in a large organisation, it would be wise to discuss the contingency plans that are in place so that everyone has a clear understanding of the risks and procedures put in place to protect staff.

Your own health, and that of your family, is important, and regulators in other jurisdictions have reminded doctors of their ethical duty to selfcare in order to protect themselves, their colleagues and their patients.

There is a high risk that systems in the healthcare sector – already under pressure – 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.
Doctors should record any concerns in writing, setting out reasons for their concerns and the potential impact on patient safety. Keep a record of any discussions about the problems you have raised and the steps that you have taken to try to remedy matters.

Here to help

With the continued spread of Covid-19, we know that this is a worrying time for everyone, but particularly for those healthcare practitioners who are providing frontline services and advice to patients. We understand your concerns and are here to offer support and advice if you need it.

Medical Protection’s website www.medicalprotection.org includes information on how to contact us and will be updated with any further guidance in the coming weeks.

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