



The third wave of the Covid-19 medico-legal query

Ms Síle O'Dowd, Legal Counsel, Medisec, outlines how medico-legal queries in relation to the pandemic have changed over the past year

Nearly a year on from the date of the first positive Covid-19 case in Ireland, and it is true to say over that time we have witnessed a rapid evolution of the common Covid-19 medico-legal queries received. With each new wave and each new level of restrictions introduced, there has been a corresponding change in the type of advice sought by doctors.

In the early weeks of March 2020, doctors were required to adapt almost every aspect of their practice in order to respond to the unprecedented challenges brought upon them by the arrival of Covid-19. At that time, much of the advice sought centred around the practicalities of remote consulting and the challenges this presented in terms of patient triage, clinical assessment, prescribing, follow-up and confidentiality as well as the appropriateness of remote consultations in certain areas such as assessments for EPAs (Enduring Power of Attorney), testamentary capacity, and involuntary admissions. As many nursing homes desperately battled with outbreaks at this time, we also sadly saw an increase in queries regarding the legalities of DNAR (do not attempt resuscitation) orders, the ethical requirement to commence CPR (cardiopulmonary resuscitation), and the procedures around death pronouncement and certification.

When restrictions were eased in June and July 2020 and businesses started to reopen throughout the community, there was another prompt change in the focus of advice being sought. New issues, which arose, related to: Infection control guidelines, requests for “fitness-to-work” letters and queries about treating the “staycation tourist”, as patients moved outside their county boundaries during the summer months.

The third wave

In more recent times, as we find ourselves in a third wave of the Covid-19 pandemic, with higher numbers of infections than ever and a return to level 5 restrictions, we have seen a further shift in the type of Covid-19 query with the focus turning towards issues of compliance with public health advice. We have set out some guidance on these points below:

► Refusal to self-isolate

Unfortunately, some patients refuse to follow advice to isolate while waiting for the results of a Covid-19 test or sometimes even after a positive test result is received. When faced with this scenario, as an initial step, a doctor should contact the patient directly to emphasise the importance of following self-isolation advice and encourage them to comply with the guidelines. It is also helpful to direct patients to the specific guidance available from the HSE and Health Protection



Surveillance Centre websites relevant to their situation. As part of this discussion, it is also recommended that you explain the requirement on you as a healthcare professional to notify the medical officer of health/department of public health of a patient's non-compliance with the advice to self-isolate in line with provisions under Section 30(2) of the Health Act 1947 and explain that HSE public health has a number of powers available to it in situations where it is believed that a person is not adhering to the rules. In our experience, this initial step has proved effective on many occasions in successfully persuading patients to follow the advice.

If a patient refuses to follow advice, it can present a difficult and conflicting situation of having to consider whether to breach the fundamental principle of patient confidentiality in order to notify public health. It is only if you remain concerned that the patient will not self-isolate and you are satisfied that in your clinical opinion the failure to breach patient confidentiality creates a significant risk of death or very serious harm to an innocent third party, that you need to take the step of advising the patient that you will have to notify public health. You may also want to consider seeking the assistance of your indemnifier in this situation.

If you do find yourself in a situation of notifying public health, you should carefully document any discussions with the patient and also bear in mind that only the minimum information necessary for the purpose of the disclosure should be provided to an appropriate person or authority.

► Refusal to wear face masks

Paragraph 50 of the Medical Council's *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* states that: “You are not obliged to put yourself or others at risk of harm when assessing or treating a patient. However, in such circumstances, you should make a reasonable effort to conduct an appro-

priate clinical assessment and treatment, taking appropriate measures to protect yourself and others.”

In order to try and reduce the risk of these situations arising, it is recommended that proactive steps are taken to bring any policies about wearing face masks to the attention of the patient prior to their consultation; for example, staff members should inform the patient at the time of booking their appointment and signs/posters should be visible on arrival to the premises. Here at Medisec, we have ‘wear a mask’ posters available on request in both hard copy and electronic format for display in your practice.

Should a situation arise where a patient does present for consultation and refuses to wear a face mask, you should be satisfied that there is no emergency/acute presentation or clinical reason for the patient refusing to wear a mask, prior to making a decision not to carry out a face-to-face consultation. As an alternative, you could advise they attend an emergency department or offer to arrange a tele/video consultation with the patient if appropriate.

If having assessed the situation, you decide not to proceed with the consultation, you should explain clearly the reasons to the patient and carefully document them in the notes.

► Requests for face mask exemption letters

While the legislation requiring the wearing of face covering includes a list of “reasonable excuses” exempting people from wearing face masks, it does not specifically state that a letter from a doctor is required for an individual to avail of an exemption from wearing a face mask. However, it has become quite commonplace for patients to request such letters from their doctors.

Bearing in mind the Medical Council's ethical guide provides that doctors “should only sign a certificate, prescription, report or document for a patient following a review of the patient's condi-

tion”, the recommended advice is that a consultation with the patient should take place before deciding whether to issue any letter to a patient. Ultimately, it is a clinical decision for you, following a review of the patient as to whether to provide a letter. There is no obligation to provide such a letter if, in your clinical judgement, it would not be appropriate or clinically indicated. Indeed, in some cases, a medical condition that may make it harder for a patient to wear a mask may also make them more vulnerable to Covid-19 and if this is the case, the risks of not wearing a mask should be clearly explained to the patient. Your clinical decision-making should be carefully documented along with any medical or public health advice or guidance provided and any discussion with the patient.

If you decide it is clinically appropriate to provide a letter, it is a decision for you as to whether to provide a factual letter simply confirming the patient's condition or whether to go as far as specifically stating that in your opinion, the patient's condition constitutes a reasonable excuse for the purpose of availing of an exemption under the legislation.

The next wave of queries

On the brink of the roll-out of a State vaccination programme, there is no doubt that this next phase will give rise to its own unique considerations. We have already received a number of queries from doctors regarding indemnity cover for the Covid-19 vaccination programme as well as requests for advice on consenting patients and the practicalities and pitfalls of running and operating vaccination clinics. At the time of writing, the terms of a state indemnity for the administration of the Covid-19 vaccine for registered medical practitioners is awaited.

In preparation for the vaccination phase, we have been liaising with our US underwriters, MedPro, in order to see what risk issues they have been faced with since vaccine roll-out commenced in the US. Their data has shown that the issues arising to date include: Vaccine storage and handling; staff training and education; off-site vaccination clinics; vaccine hesitancy; and vaccine side-effects. We anticipate that similar issues will arise this side of the Atlantic.

There is undoubtedly another challenging and difficult phase ahead. However, with the remarkable response and level of commitment and dedication that we have already witnessed from the healthcare profession over the past year, we are confident that any challenges arising during this next phase will be met and overcome and hopefully by this time next year, we will have waved goodbye to the Covid-19 medico-legal query.