Medical Council ethics guide – what's new?

Stephanie O'Connell looks at the provisions of the ninth edition of the Medical Council's Guide to Professional Conduct and Ethics for doctors

ON NOVEMBER 1, 2023, The Medical Council launched the 9th edition of its *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (the Guide), which came into operation from January 1, 2024. The guide can be viewed at **www.medicalcouncil.ie**

Publication of the Guide follows a comprehensive consultation process with members of the public, doctors and a broad range of partner organisations. The Guide seeks to support doctors by providing principles-based guidance on how best to work in partnership with patients and covers a wide range of scenarios which may arise over the course of a doctor's career.

As in previous editions, the term 'must' is used where there is an absolute duty on the part of a doctor to comply with the guidance that follows, while the term 'should' is used to describe best practice in most circumstances, accepting that it may not always be practical to follow the guidance or that another approach may be appropriate in particular circumstances. This article looks at some of the key provisions particularly relevant to GPs and their practices.

Patient safety and open disclosure (paragraphs 2 and 4 of the Guide)

The new edition of the Guide introduces an absolute duty to practise and promote a positive culture of patient safety. The language around unanticipated and unintended outcomes has been updated and under the new guidance, where an adverse outcome occurs, a doctor must make sure that the effect on the patient is minimised as far as possible, must facilitate timely and compassionate open disclosure and must report the incident, learn from it and take part in any review of the incident.

The Guide defines open disclosure as an honest, open, compassionate, consistent and timely approach to communicating with patients and, where appropriate, their family, carers and/or supporters, following patient safety incidents.

This new definition allows for inclusion of decision supporters under the Assisted Decision-Making (Capacity) Act 2015, which was fully commenced last year. The Guide confirms that the response to a patient safety incident from health service providers, including doctors, must be professional and empathetic and reiterates that a culture of open disclosure must be promoted and supported.

The Guide also confirms that you must comply with the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 and any national policies regarding open disclosure.

Continuity of care (paragraphs 33 and 40 of the Guide)

The Guide defines continuity of care as 'the provision of healthcare in a co-ordinated manner with the involvement of different practitioners in different healthcare settings'. The Guide identifies the movement of patients within and between primary, secondary and tertiary care as having the potential to be high risk for their safety if continuity of care is disrupted.

There are a number of new provisions under this heading relating to obligations and responsibilities when patients are referred, discharged or transferred, which provide clarity from a patient safety point of view and from the perspective of practitioners understanding their duties and responsibilities. Under the Guide, GPs should be informed, in a timely and prompt manner, of any treatment, referrals and plans for care provision. There is now an absolute duty to share all relevant information with colleagues in a prompt and timely manner when referring, delegating or transferring the care of a patient, or discharging a patient.

There are new, clear obligations relating to discharging patients. Discharge of a patient from care must be accompanied by a timely and prompt discharge summary, which includes at least the minimum basic information, including:

- A summary of relevant medical and treatment history
- Medication and medication changes
- Any planned follow-up by the discharging service
- Action required by primary care/community services (if involved)
- Action required by the receiving GP clearly documented.

In addition, the Guide places an obligation on the doctor who orders diagnostic tests or investigations to follow up on the results to ensure these investigations have taken place, results are followed up and appropriate action taken, including communication to the GP.

Medical records (paragraphs 38 and 39 of the Guide)

The Guide reiterates the absolute duty to keep accurate and up-to-date medical records either on paper or in electronic form. The Guide addresses the practice of recording notes retrospectively and states that retrospective notes are acceptable in circumstances where it was not possible for the doctor to record the notes at the time of the event. In these circumstances you must document:

- That it is a retrospective entry
- The date and/ or event that it relates to
- The date/ time the retrospective note was made.

The Guide makes it clear that clinical notes contained in the medical record must not be altered. If it is necessary to amend a clinical note, a new entry should be made.

There is a new paragraph dealing with retention of medical records which states they must be retained for as long as required by law or as long as they remain clinically relevant.

The Guide also refers to the HSE Code of Practice for Healthcare Records Management, which includes a suggested

schedule for retention of different categories of healthcare record, acknowledging that it is not applicable to all settings.

Chaperones (paragraph 24 of the Guide)

A chaperone can act as a safeguard for both the doctor and the patient during an intimate examination. Where previous editions had mandated offering a chaperone to be present for intimate examinations, the Guide now states that you should ask the patient if they would like a chaperone to be present and record their wishes. The Guide sets out what constitutes an intimate examination, including examinations of the breasts, genitalia and rectum. Consent for intimate examinations must be documented in the patient's medical record.

Consent, capacity and assisted decision-making (paragraphs 13, 14, 17 and 20 of the Guide)

The Guide reaffirms that consent is a fundamental ethical and legal requirement in medical practice and is based on respect for patient autonomy. The language used in relation to consent in the Guide is broadly similar to previous editions but has been expanded in some areas. In emergency situations, for example, the guidance remains that you should provide such treatments as are immediately necessary to save a patient's life or prevent serious harm to their health, and now adds "unless you are aware of a valid and applicable advance refusal of such treatment".

In accordance with the Assisted Decision-Making (Capacity) Act 2015, the Guide confirms that where adults are considered not to have decision-making capacity, doctors must seek and listen to their views and involve them in decisions about their healthcare to the extent that they are willing and able to be involved.

Where a person lacks capacity to make their own decision, the Guide sets out a long list of obligations including giving effect, as far as is practicable, to the patient's past will and preferences, considering their beliefs and values and considering the views of any person named by the patient as a person to be consulted and any decision-making supporter or person with legal authority to act on behalf of the patient. Doctors must also consider the likelihood of the patient ever recovering capacity and must ensure that decisions they make are proportionate to the significance and urgency of the situation and as limited in duration as possible in the circumstances.

There is specific guidance in relation to advance healthcare planning, recognising that an Advance Healthcare Directive is a legally binding document in accordance with the Assisted Decision-Making (Capacity) Act 2015 and reflecting the language of that Act. The Guide states that where a patient is assessed as lacking decision-making capacity, doctors should take all reasonable steps to find out if a patient has made an Advance Healthcare Directive.

The Guide is essential reading for all doctors, who should review it in full and familiarise themselves with the content. Doctors with specific queries on any aspect of the Guide should contact their indemnifiers for further assistance.

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