MEDISEC

Key Provisions of the Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024.

December 2023

We look after you

MEDISEC

Dear Member

Medisec welcomes the launch of The Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024 (the Guide). We acknowledge the extensive work of the Ethics Committee, appointed specifically to review and advise on any required amendments to the Guide, and we congratulate the Committee and its Chairperson, Dr Suzanne Crowe, on the outcome of this important review.

In the overview that follows, we have highlighted some of the key provisions that may impact on your practice and hope that this non-exhaustive summary will help you consider changes in your practice that may be necessary to promote a positive culture of patient safety and protect you from a complaint. The Guide should be read in conjunction with the summary provided.

The Guide comes into effect from 1 January 2024 and follows on from a comprehensive consultation process with members of the public, doctors, and a range of partner organisations, including Medisec. As part of that consultation process, Medisec made submissions on several areas of interest and concern to our members, and we are pleased to see that consideration has been given to those submissions in the updated Guide.

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 are likely to arise over the course of your career. It is evident from the first paragraph of the Guide that the Medical Council has sought to balance its role in protecting the public and promoting and ensuring high standards with its role in supporting doctors to meet those high standards.

The introduction to the Guide states that if you apply the guidance, act in good faith in the interests of patients and respect their will and preferences, you will be in a good position to explain and justify your decisions and actions if a concern is raised about your practice. At Medisec, we have no doubt that the Guide will provide helpful clarifications for the manner in which the patient-doctor relationship should be conducted and is fundamental to patient safety and the delivery of high-quality health care. It is our reference point, used by us on a daily basis, as we assist our members with medico-legal queries.

As well as elaborating on issues featured in earlier editions such as consent, prescribing and conscientious objection, the Guide now includes further guidance on patient safety and open disclosure, continuity of care, and doctors acting as expert witnesses.

If you have any questions about any aspect of the Guide, or if you are faced with a difficult dilemma in relation to your duties, please remember that our team are available to provide advice and support on a 24/7 basis so that while you look after your patients, we can look after you.

Yours sincerely

The Medisec team

Introduction

In preparing the following summary document, we have reviewed the Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024 (the Guide), which is due to come into operation on the 1 January 2024 and compared it to the 8th edition, introduced in 2016, and amended in 2019. We have focused on areas where changes have been made or where additional guidance has been introduced, to provide you with a helpful reference document to complement the Guide itself.

As in previous editions, the term 'you must' is used where there is an absolute duty on you to comply with the guidance that follows, while the term 'you 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. Where the Guide refers to exercising judgement, that means that doctors may reach different conclusions when faced with the same situation.

We strongly recommend that you review the new Guide in full and hope that this overview will be a useful ancillary tool.

1. Patient safety and open disclosure (paragraphs 2 and 4)

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. 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.

2. Protection and welfare of children and young people (paragraph 5)

There remains a duty to comply with national guidelines and legislation for the protection of children. Suspicion of harm necessitating a report to the appropriate authority has been extended in the Guide to include suspicion of psychological abuse or neglect. It was previously stated that you should inform the family before making any such report. The language in the new edition of the Guide has been revised and you are now advised to inform the family, unless you believe that this may endanger the child, you, or your colleagues or that knowledge of the proposed report could impede any investigation.

3. Protection and welfare of adults at risk of abuse (paragraph 6)

The Guide addresses the welfare of all adults at risk of abuse. It states that doctors should be alert to the possibility that adults can be at risk of abuse and should notify the appropriate authorities if they have concerns. The Guide defines abuse as 'what happens when a person's rights and dignity are not respected by another person. It includes physical, emotional, sexual, financial, organisational, institutional, and cyber abuse, or neglect.'

4. Reporting of alleged historic abuse (paragraph 7)

Where patients disclose abuse that took place during childhood, the Guide reiterates your obligations to assess the current risk to your patient and/or to others, refer to the relevant guidance and, where required, report to the appropriate authorities. The Guide now explicitly confirms that your reporting obligation remains even if the patient does not consent. This amendment takes into account caselaw developments since the previous edition of the Guide.

5. Health resources (paragraph 9)

The Guide acknowledges that healthcare resources are finite and places a responsibility on practitioners to use resources sustainably and to identify when a lack of resources is likely to impact on the quality and safety of patient care. You should highlight concerns when a lack of resources poses a risk to patient safety, however, there is no longer a responsibility to engage and advocate with the relevant authorities.

6. Safe environment and premises (paragraph 10)

There is a new section in the Guide dealing with expectations and responsibilities in relation to safe environment and premises. Although previous editions had dealt with practice cleanliness and accessibility, there is now an additional focus on safety in the Guide. If you have control over, or responsibility for, the practice premises, you should take all reasonable steps to ensure that appropriate standards are met. If you do not have control over, or responsibility for, the practice premises, you should raise any concerns with the appropriate person or authority.

7. Health and wellbeing of doctors (paragraph 12)

There is a continued recognition of the need for practitioners to look after themselves, in their own interest but also to sustain safe and effective medical practice. Self-prescribing is discouraged and the Guide introduces a new absolute prohibition on the self-prescription of controlled drugs.

8. Consent, capacity and assisted decision-making (paragraphs 13, 14, 17 and 20)

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.'

The Guide comes less than a year after the full commencement of the Assisted Decision-Making (Capacity) Act 2015 and addresses some of the implications of that Act. In accordance with the legislation, the Guide confirms that where adults are considered not to have decision-making capacity, you 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 in the Guide, 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, you should take all reasonable steps to find out whether a patient has made an Advance Healthcare Directive.

9. Informed consent (paragraph 15)

Informed consent remains one of the key tenets of the Guide. In an acknowledgement of the diversity of the patient population, the Guide states that you should ensure that patients with specific physical, cognitive, neurodiverse, cultural and language needs have access to the supports they require to engage in the consent process. Where there is a language barrier, and where consent is being sought for treatment that may have a significant impact on the patient's health and wellbeing, an interpreter proficient in the patient's language is required to facilitate informed consent. A professional interpreter should be used where practicable. The use of family (in particular of children and young people) and friends should be avoided if at all possible. It is acknowledged that this approach may not be possible in emergency situations.

10. Declining treatment (paragraph 18)

The Guide confirms that every adult with capacity is entitled to decline medical treatment. You must respect a patient's decision to decline treatment even if you disagree with that decision, or you consider it unwise or likely to lead to serious harm to the patient. If you have doubts or concerns about the patient's capacity to decline treatment, you must comply with the provisions of the Assisted Decision-Making (Capacity) Act 2015 or the Mental Health Act 2001.

11. Consent to genetic testing (paragraph 21)

The Guide contains some additional and expanded obligations in relation to genetic testing. Patients must, as part of the process of obtaining informed consent, be offered information about the purpose and potential outcomes of the genetic test and the potential implications for their health or the health of family members. In addition to that obligation, the Guide further states that you should offer more detailed information about an investigation for a condition that, if found to be present, could have serious consequences for the patient's employment, social or personal life.

12. Consent and declining treatment — Children and young people (paragraph 22)

In the Guide, 'child' refers to a person aged under 16 and 'young person' refers to a person aged 16 or 17 years.

The Guide clarifies that a young person can consent to treatment for a mental illness, except where the young person has been admitted under the Mental Health Acts.

The Guide now includes the preface 'in general' in relation to the necessity to obtain parental consent for voluntary psychiatric admission, organ or tissue donation, or participation in medical research and states that it is good practice to seek the assent of the young person in these circumstances.

The language regarding treating a patient under 16 in situations where the patient refuses treatment but the parent(s) or legal guardian consents has been revised. In those circumstances, the Guide now provides that, in general, the doctor may proceed with treatment in the best interests of the child, taking account of the age and maturity of the child, and the urgency of the treatment being proposed. If the treatment is not urgent, it is good practice to allow time for discussion with the child and parent(s) or legal guardian with a view to achieving consensus.

13. Chaperones (paragraph 24)

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.

14. Confidentiality (paragraphs 25 — 30)

The Guide contains some new considerations and obligations in terms of confidentiality. You should protect your patients' privacy and you must ensure that patient information in your control is protected against improper disclosure, access or loss. Capacity legislation comes into consideration again in terms of consent to disclosure, and the Guide confirms that the provisions of the Assisted Decision-Making (Capacity) Act 2015 must be followed where the patient lacks decision-making capacity to consent to disclosure.

The Guide also deals with confidentiality with regard to children and young people and confirms that you have the same duty of confidentiality to children and young people as you have to adults. The Guide states that where a child or young person does not want to share information with their parents, you should usually try to encourage them to involve a parent in such circumstances. If they refuse and you consider it is necessary and in the child's best interests for the information to be shared, you may, depending on the circumstances, consider disclosing information to parents. You should record your discussions and reasons for sharing the information.

The Guide provides for the sharing of confidential information as between the healthcare team where necessary. There are new provisions relating to the sharing of confidential information outside the healthcare team. Before disclosing any identifiable information about patients outside the healthcare team, you must be clear about the purpose of the disclosure and that you have the patient's consent or other legal basis for the disclosure.

Doctors frequently get requests for confidential information from family members or friends of their patients. The Guide addresses this common scenario and acknowledges that people close to a patient, whether family, friends or support persons may, out of concern, request information about the patient. While acknowledging that their concern is understandable, the Guide states that you should not disclose information to them without the patient's consent.

The Guide reiterates that your professional duty of confidentiality remains, even after a patient's death. Doctors are often asked to speak with the family after the death of a patient and the Guide provides that you should be available to speak with the bereaved family if that is what they wish. You should, as far as possible, explain the circumstances of the patient's death to the family in an open and sensitive way unless the patient previously expressed an objection to such information being given.

15. Photographic, video and audio recording (paragraphs 31 and 32)

The Guide contains specific guidance on recordings by a doctor and recordings by a patient. If you make audio, video or photographic recordings of a patient, you must take particular care in relation to the storage and sharing of those recordings. Where you determine that recording is necessary, either for patient care or for education and training purposes, you must explain this to the patient and obtain their consent to both the making and any proposed sharing of a recording. Recordings should be kept confidential as part of the patient's record and you must take all reasonable and required steps to ensure that you follow your professional duty of confidentiality as well as your legal duties regarding data protection.

Many doctors will have encountered a situation whereby a patient wishes to record a consultation and the Guide addresses this for the first time. If a patient wishes to record all or part of a consultation, the Guide states that you should facilitate their request. If you consider that recording could have a negative impact on your consultation, the Guide states that you should explain this to your patient and, if possible, come to agreement.

16. Continuity of care (paragraphs 33 and 40)

The Guide defines continuity of care as 'the provision of healthcare in a coordinated 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.

There is also guidance on cessation of practice, including a direction that you should have plans in place to deal with foreseen and unforeseen cessation of practice.

17. Prescribing and transcribing (paragraphs 34 — 36)

The Guide states that you should only prescribe medication, treatment or therapy when you have adequate knowledge of the patient's condition and believe that such prescription is indicated. You should ensure that any treatment, medication or therapy prescribed for a patient is safe and evidence-based.

There is a new section in the Guide dealing with transcribing of prescriptions, which is defined as the act of transferring a medication order from an original prescription to another type of prescription. Transcribing incurs the same responsibilities as prescribing. The general principles outlined in relation to continuity of care should be followed. The Guide encourages doctors who have any issues or concerns about transcribing an original prescription to liaise with and seek clarification from the original prescribing doctor or member of their team before issuing a prescription.

18. Telemedicine (paragraph 37)

Guidance on telemedicine services has been simplified and streamlined in the Guide. The Guide now simply states that if you provide telemedicine services to patients, you must observe the same standards of conduct and practice as would be expected if treating the patient in-person. If you have a consultation with a patient through an 'out of hours' or 'telemedicine' service, and are not the patient's usual doctor, you must, unless the patient does not consent, provide an update to the patient's general practitioner as soon as possible and include such information as is necessary and appropriate to facilitate continuity of care.

You must be registered in the European Union to practice telemedicine within Ireland.

19. Medical records (paragraphs 38 and 39)

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 that they must be retained for as long as required by law or for 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.

20. Conscientious objection (paragraph 42)

Although the last edition of the Guide was amended to deal with conscientious objection, the considerations listed previously have now become obligations, with the words 'you should' being replaced with 'you must' in several places as set out below. The Guide now provides that if you have a conscientious objection to providing or participating in a lawful procedure, treatment or form of care, you must:

- Inform your employer, colleagues and the patient as soon as possible.
- Inform the patient that they have a right to seek the lawful procedure, treatment or form of care from another doctor.
- Give the patient enough information to enable them to transfer to another doctor to obtain the required treatment.
- Make such arrangements as may be necessary to enable the patient to obtain the required treatment (see transfer of care).
- Not mislead or obstruct a patient's access to the lawful procedure, treatment or form of care based on your conscientious objection.

In addition, there is a further new obligation to provide care, support and follow-up for patients who have had a lawful procedure, treatment or form of care to which you have a conscientious objection.

21. Patients who pose a risk of harm (paragraph 45)

The Guide contains a new paragraph on dealing with patients who pose a risk of harm. If a patient is using violence or threatening to use violence against you, your colleagues or staff, and it is not safe to proceed with an assessment, the patient should be advised that medical care will be provided as soon as it is safe to do so. This new language seems to require that doctors go slightly further in such situations than previous editions, however, the guidance around taking appropriate measures to protect yourself and others remains the same.

22. Expert witnesses (paragraph 53)

Although many doctors have acted as expert witnesses, this was not something that previous editions of the Guide had commented on.

The Guide clarifies that if you are acting as an expert witness in relation to legal proceedings, your first duty is to be of assistance to the relevant court or tribunal in providing an independent expert opinion.

The Guide sets out the following obligations when acting as an expert witness:

- You must be honest and objective in all your spoken and written statements.
- You must make clear the limits of your knowledge and competence.
- You must not act as an expert witness in areas outside your scope of practice, experience and expertise.

The Guide confirms that these obligations override any instructions from the person paying you a professional fee for your expert opinion.

23. Relationships and communication with patients, colleagues and the public (paragraphs 1, 3,11, 49, 55 and 56)

At the outset of the Guide, it is stated that good medical practice depends on doctors working together with patients and colleagues toward shared aims and with mutual respect. The Guide clearly identifies good communication as central to the doctor-patient relationship and essential to the effective functioning of healthcare teams.

When it comes to raising concerns, many of the obligations in previous editions of the Guide remain. You must raise concerns where you believe that patient safety or care is being compromised by the practice of colleagues, or by systems, policies and procedures in the organisation in which you work. There has been a slight update to the language where your concerns are not resolved within the organisation, and the Guide now advises that in such circumstances, you should raise the issue with the relevant regulatory authority or through the applicable notification or disclosure pathways.

There have also been updates and language changes in relation to concerns about colleagues, to include concerns about a colleague's health.

The Guide advises that doctors who have concerns about a colleague's health should encourage them to seek appropriate medical support and to avail of relevant support services. If you are concerned that a colleague may be putting patients at risk or is otherwise unfit to practice, you must escalate those concerns in accordance with the guidance on identifying and raising concerns contained in the Guide.

Where a dispute arises between colleagues, the Guide confirms that this should be addressed appropriately and promptly and should not affect patient care. The Guide repeats guidance from earlier editions, that you should not denigrate a colleague or a colleague's practice.

There is a new section in the Guide dealing with leadership and management for doctors. The Guide states that good leadership is widely recognised as being central to the delivery of safe and effective healthcare. This section also introduces an absolute duty on doctors who identify incidents or risks to patient safety in the healthcare system to take appropriate action to manage these and to make the necessary notifications.

The Guide also addresses online communications with the public and states that you are legally liable for anything you publish on your own social channels and should take this into consideration when posting content or advice publicly. In relation to social media accounts in your private life, the Guide states that it is a matter for you to decide how or whether you use them. The Guide encourages doctors who use social media in their private lives to consider how information or images they post might be viewed by patients or the public if they were to become more widely available.

24. Regulatory requirements (paragraph 60)

The Guide confirms that in order to practise medicine in the Republic of Ireland you must be registered with the Medical Council. You must not practise if you are not registered. The Guide also stipulates that if your registration lapses, you must not practise medicine during the period of being unregistered.

Information that you provide to the Medical Council, whether at initial registration, renewal of registration, or at any other time, including your answers to any questions, must be complete, accurate, honest and up-to-date.

You must comply with any legal requirements to notify the Medical Council of matters that may impact your registration such as relevant medical disabilities, criminal convictions, relevant proceedings and decisions by other regulatory bodies, inside or outside the state, to restrict, not to grant, or to remove your registration.

Conclusion

We hope this short briefing provides a helpful overview of some of the relevant features and changes to the new Guide. We would recommend that all doctors familiarise themselves with its contents and please do not hesitate to contact us if you would like further advice on any aspect of the Guide.

We are updating our risk resources and factsheets to take account of the changes outlined and we will issue further communications and updates to you as we see implementation of the changes in practice.

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