



**COVID 19
MEDICOLEGAL AND ETHICAL CONSIDERATIONS**

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Introduction

- **Public Health Measures**
 - **Legislations**
- **Constitution and the Bill of Rights**
- **Occupational and Labour Rights**
 - **Medico-legal issues**
 - **Ethics**

Public Health Measures

- **Declaring a pandemic**

Legislation

- **State of National Disaster**
- **Constitution and the Bill of Rights – Limitations (Section 36 of the Constitution)**

Implications

- **Compulsory Quarantine**
 - **Forced Isolations**
- **Disclosure of Personal Information**
 - **Human Rights Violations**

Constitution and The Bill of Rights

- Confidentiality and the Right to privacy
- The Right to personal medical information
 - The Right to choose,
 - The Right to Freedom of Movement
- Other, Dignity, Access to Health Care, Justice

Occupational and Labour Implications

- **Health and safety**
- **Compensation**
- **Refusal to treat**
- **Forced work or limitations of Leave**
 - **Job Losses and Dismissals**

Health and safety

OHS Act 85, 1993,

General duties:

- **8. (1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.**

Health and safety

Duty to inform

▪ 13. ...every employer shall- (a) as far as is reasonably practicable, cause every employee to be made conversant with the hazards to his health and safety attached to any work which he has to perform,

....;

Health and safety

Duty to protect your own health

- **HCWs also have a duty to protect their own health including following the current public health advice**

COLD Act

- **Temporary Total Disability**
- **Persons Under Investigations (PUI)**
 - **Confirmed Cases**
 - **Permanent Disablement**
 - **Medical Aid**
 - **Death Benefits**

Medicolegal Risks

Caring for patients in challenging circumstances can result in:

- **Lowered standards of care**
 - **Patients Neglect**
- **Possibility of departure from established procedures to care for patients,**
- **Breaches of Confidentiality and other Rights, e.g. privacy**
 - **Prejudices and human rights abuses and violations**

Working outside usual field of practice

Following the World Health Organisation characterising COVID-19 as a pandemic, pressure on services may result in healthcare staff working outside their usual practice or in unfamiliar surroundings.

A National/GVT Call for all hands on Deck

Possible Medical Litigation Cases

- Professional Misconduct
- Clinical /Gross negligence
- Claims for Loss of Life, Disability, Personal Injuries
 - Claims for Neglect and Poor Standards of Care
 - Injustices, Discrimination, Prejudice
 - Human Rights Violations

Standards of Care in Professional Negligence

- **To understand how claims in negligence can arise, some explanation of the legal basis of claims is needed.**
- **Negligence can be described as the failure to exercise reasonable care and skill**
 - **Reasonability Test**

The Obvious

- **Deciding who would be ventilated and/or receive ICU care if demand exceeded resources.**
- **Withdrawal of Ventilation from one patient so that another can be ventilated – unlawful killing.**
- **???? Resuscitations/DNRs**

The Not So Obvious

- Deviation from proven effective treatment methods, in pre-covid-19 times
 - Failure to transfer to appropriate facility for care
 - Mixing of patients in PUI sections.
- Infection of patients at Healthcare facilities or by Health care workers

Immunity from Liability

- **Good faith principle**
- **Providing care under difficult circumstances**
- **Responding to the States'/Government call**
 - **Vicarious Liability**
 - **What about Gross Negligence?**

CORE ETHICAL VALUES AND STANDARDS FOR GOOD PRACTICE

- **Autonomy and Respect for persons**
- **Best interest or well being: Non Maleficence (Primum Non Nocere)**
- **Best interest or well being: Beneficence**
- **Human Rights and (Distributive) Justice**

Code Of Professional Conduct

- HPCSA
- AHPCSA
- SANC

FAQs

- **Do I have to see patients if I don't have PPE? Implications?**
- **What should I do if I am required to undertake duties outside my specialty or expertise?**
 - **Can I decline if I am asked to work beyond my clinical competence? If so, how?**
 - **Is Telehealth the way to go? Challenges?**



QUESTIONS???

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