

Nedlac and NIOH Covid-19 Legacy Programme

Ethical dilemmas in the workplace during COVID-19: the occupational medicine perspective

Dr JNR Lapere
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December 2019 to March 2020

Fast acute changes ending in declaration of Disaster

- 31 Dec 2019: Wuhan China- cluster of cases of pneumonia
- 12 January 2020: China publicly shared the genetic sequence of COVID-19
- 13 January 2020: first case outside China (Thailand)
- 22 January 2020: WHO confirms human-to-human transmission in Wuhan
- 11 March 2020: WHO characterises COVID-19 as a pandemic.
- 15 March 2020: SA government declares state of disaster.
- 25 March 2020: 'all businesses shall cease operations, except essential'

Immediate impact

- 1. Uncertainty, ongoing change and fear**
- 2. New and rapidly changing laws and guidelines & corresponding duties**
- 3. Planning within the uncertainty**

Work impacts of 750 days of state of disaster 15-3-2020 till 5 April 2022

1. **Lockdown and Movement Restrictions (27 March 2020)**
2. **Closure of non-essential businesses (March 2020):** essential services, such as healthcare, grocery stores, and critical infrastructure, continue to operate.
3. **Remote work and essential service operations (March-April 2020):** employers implement remote work arrangements and essential service providers adapt operations to comply with H&S regulations.
4. **Financial support measures (April 2020):** financial support measures to assist businesses and workers included the Temporary Employer/Employee Relief Scheme (TERS).
5. **Return-to-work phases (May 2020 onwards):** different lockdown levels + employers plan and implement phased return-to-work strategies.

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Work impacts of 750 days of state of disaster 15-3-2020 till 5 April 2022

6. **Health and safety protocols (throughout):** employers to implement H&S protocols to protect employees , including screenings, sanitization, social distancing, PPE.
7. **Vaccination rollout (February 2021):** employers define vaccination policies and encourage employees to get vaccinated.
8. **Adjustments to HR Policies (ongoing):** HR adapt policies to address remote work, sick leave, screening, dealing with COVID cases at work and employee well-being.
9. **Ongoing adaptation (throughout):** employers to remain adaptable to change, including adjustments to lockdown levels and response measures based on the evolving COVID-19 pandemic.

Legal and Ethical Impacts of COVID-19 on the OMP Practice

What makes up the 'new normal'? 26 Aug 2020

Legal

Tested

1. Common law
2. Constitution
3. 'Old' statutes

Untested & ? Always lawful

1. 'Disaster' regulations/directives
2. 'Guidelines'

Ethical

'In the box'

1. HPCSA rules
2. 'Ethical reasoning'

'Out of the box'

HPCSA: practitioners may be required to **depart from their established procedures**, although this should be done responsibly, reasonably and in the best interest of patients'

OMP: is it really law, which may overrule existing standard?

OMP: do officials have the claimed authority?

OMP: May I depart from the established?

Shift from clinical to pandemic ethics = transitioning from medical ethics to public health ethics

Justice

Healthcare practitioners must treat all individuals and groups in an impartial, fair and just manner

- **Who gets the ventilator?**
- **Can we hold meetings with Chinese businessmen and engineers? May they attend our factories?**
- **Do we stop our staff from traveling to China?**
- **OMP instructions or advise-requests in case:**
 1. **The employer requires PCR testing of asymptomatic close contacts.**
 2. **Employer requires testing of SARS-CoV2-naive employees, such as contractor-employees to be tested prior to being allowed access on site.**
 3. **Employers demand COVID-healed employees to be tested prior to RTW.**

Shift from clinical to pandemic ethics = transitioning from medical ethics to public health ethics

Patient autonomy and self-determination

- Compulsory testing ‘No person who has beenconfirmedsuspected ..., or .in contact with a person who is a carrier of COVID–19, may refuse consent tosubmissionto a medical examination, including ...to the taking of any bodily sample by a person authorised in law to do so’ (DMA regulation).
- **Autopsy specimens (No DMA regulations):** The Minister of Health, Dr Zwelini Mkhize announced during a media briefing on the 5th August 2020 that “...., we now require that all the sudden deaths and those that occur at home must have specimens taken for COVID-19 before a death certificate is issued”. Subsequently, a Circular ...to this effect by the Director-General ...– versus ‘**Regulations relating to surveillance and control of notifiable conditions:** 15 (4) The head of a provincial department **must apply to a High Court for an order to conduct an autopsy** on the body of a patient who has presumably died of a notifiable medical condition,, and only where this is in the interest of public health and is on special request by an interested person.

Shift from clinical to pandemic ethics = transitioning from medical ethics to public health ethics

Confidentiality and the overriding legal obligation to disclosure

- 1. Reporting by HCW of carrier, case, contact? Where OMP identifies that employee has breached employer's COVID-19 rules (e.g. did not report confirmed COVID case in household), should OMP communicate this to the employer?**
- 2. Employers' duty to report: employers ...to submit screening and testing data + names of positive workers + Vulnerable Worker + Daily Symptom Screening + COVID-19 Testing Data + High exposure risk Workplace Contact – tracing + Post Infection Outcomes Data to DOH.....OMP involvement?**

Shift from clinical to pandemic ethics = transitioning from medical ethics to public health ethics

Best interests or well-being of patients (Beneficence and Non-maleficence)

Protecting the doctor's health when patient's best interests may conflict with those of the healthcare practitioner:

- 1. Telehealth**
- 2. Clinical examination after negative C19 test?**
- 3. Refusal to attend to patient (the vulnerable OMP)**

Conflict of OMP duties

1. OMP duties
 1. **Natural** duties owed to all people, whether patients or not, and independent of professional qualifications (no harm, promote the good, be fair and just)
 2. **Moral** duties as **professional**: to provide healthcare, relieve suffering, gain informed consent, respect confidentiality, be truthful.
 3. **Institutional duties** as appointee of an employer must be consistent with ethical and legal duties of healthcare practitioners.
 4. **Legal duties**

Ctd...

Conflict of OMP duties

2. No duty is absolute or can be held without exception irrespective of time, place, or circumstance.
3. Different duties may prescribe opposite decisions and actions where OMP's duties to employees may compete with employers' expectations (conflicts of interest or dual loyalties)
4. During the COVID-19 pandemic, these duties remain and are heightened; society puts a greater expectation on Doctors during this challenging time to fulfil their duties and obligations.

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Conflict of OMP duties

5. Reciprocal obligations to Doctors
 1. Minimizing the risk of infection
 2. Priority access to medical care
 3. Priority access to the Covid-19 vaccine once developed
 4. Assistance to family members
 5. Minimizing the spread of COVID-19 , so as to not overwhelm the health care system.
 6. Leadership and Accountability by management in the both the private and public sector

Conflict of OMP moral duty of care

1. Collective duty of care and dual loyalty

1. Employer's request on testing and communication of information.
2. Employer's reporting duty imputed to OMP.

2. Duty of care to individual

1. How to deal with the severe (high) risk comorbid employee who refuses sick leave because the sick-benefits do not cover her/his expenses
2. Should all employees with co-morbidities be exempted from coming to the workplace?
3. How do we manage employees who, due to the nature of their work, cannot work from home and have co-morbidities? (e.g. cleaners)
4. Is it compulsory that all employees that have co-morbidities come with a Doctor's /Clinic note about their condition and indication whether they are well controlled or not?

Conflict of OMP duty to colleagues and other professionals

Suspected COVID-19 case management by PC providers: acute RTI not tested and RTW with sick certificate ('URTI, Flu')?

Law

1. Healthcare provider must adhere to national guidelines on control of notifiable medical conditions
2. Healthcare provider who diagnoses patient with notifiable condition must report immediately
3. National guideline: Clinical management COVID-19 disease

Ethics

- 12. Professional reputation of colleagues: a practitioner shall not cast reflections on the probity, professional reputation or skill of another person registered under the Act or any other Health Act

versus

- Beneficence (2.3.3): Health care practitioners should act in the best interests of patients even when the interests of the latter conflict with their own personal self-interest.

Conflict of OMP duty to avoid exploitation

The Ivermectin saga

Conflict of OMP's reciprocal duties

Refusal of OMP to deliver service without special HCW PPE supplied by employer as *'the OMP has to have it in any case for own personal use and at own expense'*?

Legal

1. MHSA S 13(3)(b): employer to supply OMP with *'means to perform'*..
2. OHSa-DEL 4 June 2020 No 41 *'...workers must be provided with accredited PPE as per DOH Guidelines..'*
3. DOH Clinical management COVID-19 disease Version & COVID-19 Disease: Infection Prevention and Control Guidelines Version

Our OMP's are (also) heroes

1. During full lock down:
 1. Continuously update health info, including measures at work (space and distance between workers, working from home, access, dealing with cases at work, ventilation, fomite and hand hygiene, ventilation, PPE etc.).
 2. Prepare for re-opening
2. Upon re-opening
 1. Implement
 2. Update info and improve
 3. Deal with new rules for access, case management
 4. Procurement of PPE
 5. Bend the rules for PPE (re-use respirators)

Ctd..

Our OMP's are (also) heroes

3. Vaccine
 1. Update info
 2. Communicate
 3. Sometimes compulsory
 4. Deal with compulsory and refusals

Thank you

SARS-CoV-2 applied Statutes and Bioethics in OH

Lawfulness of certain Disaster Management directions?

SARS-CoV-2 applied Statutes and Bioethics in OH

Lawfulness of instructions by Officials?

SARS-CoV-2 applied Statutes and Bioethics in OH

Employers' authority and dual OMP loyalty?

SARS-CoV-2 applied Statutes and Bioethics in OH

OMP employment conditions and Resources at health establishment?

SARS-CoV-2 applied Statutes and Bioethics in OH

Colleagues & Notifiable Medical Condition compliance?

SARS-CoV-2 applied Statutes and Bioethics in OH

Employees & Notifiable Medical Condition compliance?

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Employer's reporting duty imputed to OMP?

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Vulnerable employee management?