COVID-19 PANDEMIC and the MEDICO-LEGAL CONSULTANT

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COVID-19 has direct implications to those specialists doing musculo-skeletal assessments of claimants after workers compensation injuries, motor vehicle accidents, occupational liability claims as well as Comcare and Military Compensation.

The "at risk" demographic is:

1. Persons over 70 years of age;
2. Co-morbidities such as diabetes, cardio-pulmonary disease or;
3. Immunosuppressed individuals eg on chemotherapy.

Most musculo-skeletal Assessors are Senior Consultants and face-to-face interviews and examinations put them and the claimants, themselves, at risk.

What is the Corona Virus?

Corona Virus is common in animals such as bats, camels and civets and it is rare for Corona virus to infect humans. Corona virus has also caused MERS (Middle East Respiratory Syndrome). Under the microscope, the viruses look like they are covered with pointed structures that surround them like a Corona or crown.

The source of COVID-19 is likely to have been linked to a wet market in Wuhan, China with symptoms usually seen within 14 days such as a cough, fever, shortness of breath and ultimately respiratory failure, kidney failure or death.

Why is COVID-19 so contagious?

This virus is more readily transferrable than the SARS epidemic of 2003. A carrier may be asymptomatic but pass it onto close contacts, therefore the need for social distancing eg. domestic isolation is mandatory after overseas travel for 14 days. Severe cases show increased levels of plasma cytokine levels eg, interleukin (IL 1 & 10), TNF-alpha: tumour necrosis factor alpha, compared with carriers or less symptomatic patients. It was noted that the virus is highly contagious and spreads quickly in aged care facilities and low level care facilities like rehab centres and centres for children with multiple disabilities.

All patients and claimants should thus be screened before assessment:

1. Certificate from GP showing no current URTI;

2. At risk to be tested:
    a. if they have been overseas in the last 14 days prior to symptoms; or
    b. if they've had close contact with a confirmed case; or
    c. if they have a fever more than 38 degrees or a history of acute respiratory infection (cough, sore throat, short of breath); or
    d. In NSW if they live in a community with a local transmission or live in remote Aboriginal communities; or
    e. If referred by GP or PHU.
3. Temperature screening at the rooms;
4. Masks, gloves and hand sanitisers for both claimants and Assessors;
5. Wiping surfaces such as desk tops, counters, chairs, arm rests and pens before and after each patient;
6. Antiseptic wiping of repetitively used instruments such as goniometers, tape measures, dynamometers and tendon hammers between all patients.

<u>In patient assessment</u>

Occasionally, WPI assessments have to be done in nursing homes and retirement villages. Such settings require extra PPE (personal protection equipment) such as gloves, goggles, surgical gowns as well as N95/P2 masks.

<u>Droplet precautions</u> include standard mask, gloves, goggles and gown for suspected low risk contact (short time).

<u>Airborne precautions</u> include N95 mask, gloves, goggles and gown, if there is productive cough or confirmed case.

<u>Assessments</u>

While some can be done "on the papers" based on a consensus of clinical notes and relevant investigations, most require one on one interaction, for example, psychological assessments, ENT, most GIT (that have had gastroscopy, endoscopic biopsy and colonoscopy) can be achieved by teleconference. Others, such as scarring, could be assessed by Skype.

<u>Skype/ZOOM</u>

While asymmetry, eg, spinal motion, shoulder elevation, wasting and active range of motion of joints can be assessed visually on Skype, both parties (Insurer and Plaintiff's solicitors) would have to be in agreement where there are claims that require expedition and avoidance of undue prolongation of the medicolegal process, for example, claimants that need their claim resolved due to increased post-traumatic stress disorder and advancing co-morbidities, pleomorphic dyscrasias or malignancy.

Unduly prolonged older assessments since the date of injury produce very anxious claimants and deteriorating depressive disorders, particularly with the probability of loss of wages and unemployment, difficulty with sleeping associated with fatigue the following day and with interpersonal relationships and prolonged impaction of the injuries on their ADLs, for example, household chores, home maintenance and recreations is distressing to claimants and may require expeditious review.

Current SIRA Guidelines (23 March 2020) notes that Skype/ZOOM assessments can proceed if all the parties are informed of the option and both parties consent as well as the claimant.

Medical Assessors cannot proceed to Skype or video conferencing without contacting the Case Manager or DRO and without consent of the parties.

Preliminary assessment by Statutory Bodies such as SIRA can be facilitated by doing preliminary screening and the Assessor can obtain relevant history before the date of consultation.

For paper assessments to proceed, the parties must be informed of the option and must consent. This option cannot proceed without these options without consulting the Case Manager or DRO nor without the consent of the parties.

Telephone assessments are not acceptable as it is not possible to confirm the identity, privacy and confidentiality of the claimant over the phone.

Review Panel Assessments by teleconference for WCC or SIRA (MAA) are still currently proceeding. If further assessment is required, it can proceed if both Medical Assessors are available and elect to proceed. If both Medical Assessors are not available, the appointment will be deferred for later Panel Review.

The AOA (Australian Orthopaedic Association), in their document regarding non-urgent elective surgeries, published on AOA COVID-19 Information Hub, advised all non-urgent elective surgery in public and private hospitals has been ceased and that only Level 1 surgery, for example, emergency trauma or life threatening conditions such as a malignant condition, are permissible.

It noted that 10% of deaths in Italy are health workers and that four health workers in a Melbourne Private Hospital tested positive overnight (25 March 2020) , forcing co-workers into isolation.

In summary, critical surgery, which is essentially life and limb saving surgery, can proceed.

Nosocomial Spread

For those musculo-skeletal specialists still in hospital practice, who also do WPI assessments, care has to be taken to seek if there has been URTI, pre-op, recent travel history from overseas or immunocompromised patients that may necessitate the need for full PPE. It may mean social distancing at work, de-segregation in OPC (outpatient clinic) and the use of alternatives in claimant assessment.

These are:

1. Telehealth;
2. E-health Exchange with GPs and physios;
3. Home visits by video conference (Skype or remote monitoring eg, wound care), range of motion of joint replacement, follow up x-rays and scans;
4. Avoiding unnecessary OPD visits;
5. On-line educational programs, eg exercise programs at home, avoidance of gym work and crowded exercises classes;
6. Assistive devices for use at home such as lumbar rolls, therabands, pulleys, light weights exercises, hamstring stretching, quads drill etc;
7. Teaching/continuing IME training/peer review, teaching at bio-skills labs and bio-simulation techniques and Cadava workshops will require extra protective gear. Continuing IME training will probably require WEBINARS, currently available for the AMLC (Australian Medicolegal College) rather than large group tutorials. Peer review is done by submitting IME reports to colleagues for review, giving 5 CPD points for 3-4 reviews and 3 points for the Reviewer for each IME report. Because of cancellation of annual meetings, such as RACS, AOA, AOA-RACS-AMLC Combined Medico-legal conferences, CPD modification will be required.

Workers Compensation Commission

AMS e-Bulletin No. 101 March 2020, from Judge Gerard Phillips, expresses concern about workers having to travel distances to AMS assessments and then travel home, particularly by public transport. Current directives are for travel by private transport, eg, family car, Uber and taxi, to avoid contact with the general public.

At present, AMS face to face medical assessments have been suspended. This could partially be alleviated by claimants travelling by private transport, for eg family car, Uber and taxi to minimise contact with the general public. Facilitation by Insurer or the Statutory Bodies, eg WCC, could help address these concerns.

In the meantime, briefs allocated should be retained until they can be re-listed. A refresher fee for reviewing the file at that time may be considered.

Cruise ships

A public health study of COVID-19 outbreaks on the Diamond Princess Ship in Japan and the Grand Prince Ship in California showed Corona Virus can survive on surfaces for up to 17 days. The virus was identified on a variety of surfaces in cabins of both symptomatic and asymptomatic passengers up to 17 days after cabins were vacated, but before disinfection procedures had been conducted. Some studies have shown COVID can usually last up to 3 days on plastic and stainless steel, with the amount of virus left on these surfaces decreasing over time. It is noted that over 45% of infections were asymptomatic when tested, partially explaining

the “high attack rate” of the virus among passengers and crew. Between the two ships, there were more than 800 total COVID-19 cases including 10 deaths.

Closer to home, Ruby Princess passengers who had disembarked in Sydney have been followed up and some have tested positive to Corona virus. The sicker passengers were transferred immediately to hospital. It does seem the longer COVID-19 positive passengers and crew stay on board cruise liners, that endemic numbers rise, despite weeks of self-isolation in cabins and repetitive cleaning and hand washing/sanitisers. Travellers from overseas, particularly Asia, Europe and the USA, have the compulsory 14 day self-isolation at home before being able to travel for WPI assessment.

Screening on arrival from overseas would include temperature checks, swabbing for corona virus and droplet blood testing to determine who should be quarantined at a designated centre eg, hotel, or isolated at home.

The messages for Senior Medico-Legal Consultants is:

1. Avoid “conferences at sea”;
2. Avoid unscreened recently returned overseas travellers;
3. Frequent wiping of surfaces such as door knobs, desk tops, bathrooms, PCs, hand rails etc;
4. Avoid patient crowding in the waiting room (1.5 metres distancing);
5. Current WCC advice is only one IME consultant and one claimant in the consulting room.
6. The Interpreter should be linked by telephone for the IME review;
7. Clean equipment after each patient;
8. Practice face-to-face distancing during interviewing;
9. Provide sanitisers in the reception area, consulting room and antiseptic wash in WC.

The Federal government has emphasised social distancing, self-quarantine and frequent hand washing which has started to flatten the curve of viral virulence in the community and avoid the expediential rise in infection rates that is seen in Northern Italy and Spain.

At present, logistics for obtaining adequate protective gear has been gradually overcome as is early screening.

A successful anti-viral treatment is not yet available although trials have been done with anti-malarials such as Plaquenil and there may be a place for a SARS type vaccine in the future. It has been urged by the Federal Government that older Australians have the recently made available flu vaccine.

In summary, the majority of disputes lodged with the WCC will require an AMS either in person or via video/ZOOM. Where the worker has passed away, assessment can be made “on the papers”.

The current procedure is:

1. Matter referred to Arbitrator:
    a. Resolved
    b. Determined
    c. AMS Assessment
    d. Remit to Registrar to be held on pending list
2. Attempt to narrow the evidence to the issues between the parties.
3. Refer for AMS Assessment by video or in person.
4. In person assessment with claimant alone as noted above, interpreter attending by telephone.
5. Minimal time period with sanitising precautions as noted above.

At present, video/ZOOM conferencing is being utilised for IME assessments, provided the parties are in agreement. If these arrangements are satisfactory, WPI assessments can be made. If there is subsequent need for face to face determination, such reviews can be postponed until the COVID PANDEMIC “is over”, with the above precautions still in place.

It is suggested that at the end of the ZOOM reports, a note is made that the report and assessment was made possible by video conferencing as a result of the COVID PANDEMIC.