

Dear Michael,

## **Writing Medical Certificates - submission to the review of the standards for doctors**

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest union in New Zealand and the largest state sector union. We have members in the public service and the wider state sector, including district health boards. We also have members in community organisations and in local government.

As an affiliate of the New Zealand Council of Trade Unions Te Kauae Kaimahi (the CTU) we endorse their submission on this issue.

### **General comments**

The PSA supports the intention to clarify the rules around medical certificates which can be the cause of problems for both employees and employers. While we agree that medical certificates that support a sound process for return to work and provide the information required, we believe that the principles of patient confidentiality and consent, and the principle that certificates should only provide the information necessary, are paramount.

We understand that employers are expressing concern about the standard of medical certificates and we would like to make the following comments on their concerns. The survey of employers conducted by the Employers and Manufacturers Association (Northern) is essentially anecdotal. To provide meaningful evidence would require more in depth study than is reflected here. Nonetheless we now address the three main concerns that are raised in the discussion document.

- That some doctors issue medical certificates without reasonable cause, and that employers have therefore been required to provide paid leave to a staff member who was fit for work.

This is a matter for the professional judgement of doctors, who are best placed to judge whether a patient is too ill to return to work. However, employer concerns may be addressed through the provision of more relevant information (see below).

- That a doctor issued a retrospective certificate saying that a patient was unfit for work at some point in the past, even when the patient has recovered when seen and the doctor was therefore relying on patient comment rather than clinical observation.

The provision of retrospective certificates is less than desirable but can be unavoidable at times. If a patient is ill they will not always be able to attend at a doctor's surgery, either because they are not capable of doing so or because to do so might make the condition worse. Retrospective certificates cannot be legislated against.

- That a medical certificate did not contain sufficient information. This appears to be particularly problematic when the diagnosis related to work-related stress.

There is scope for improvement in the relevance and possibly the quantity of the information provided. It should make clear such things as what tasks may be performed and what supports are required in the workplace. Our responses to the questions deal with this point.

The question of stress is a challenging one, but we are of the view that it is a growing problem in our workplaces and often directly attributable to work. For example, public sector workers have experienced repeated reviews and restructurings in recent years, a trend that does not appear to be declining. Change management can be very stressful for all involved.

Bullying behaviour can also be a common source of workplace stress. A recently completed study commissioned by the PSA found that around 30% of members surveyed had experienced bullying in the previous 6 months. We also know that individual bullies may be unaware of their behaviour or think it acceptable, or that workplace cultures may support bullying behaviour. Either way, change may be hard to effect and the victims of bullying may find it hard to return to work, which means that medical certificates will continue to play an important role in helping individual victims manage their return to work.

## Responses to questions

### **When a certificate is also an activity prescription**

1. Do you agree with the change proposed? If not, why not?

We support this proposed purpose, but it must be based on accurate and relevant information, have the consent of the employee, and be supported by a rehabilitation plan.

### **Making sure that certificates provide all the necessary information**

2. Do you agree with the changes proposed? If not, why not?

Changes to paragraphs 11 and 12 are proposed. We are concerned about dropping the word 'only' in the first paragraph. In conjunction with the words "information required by the receiving agency" this could send a signal that employers can require what information they please. There is a real question about what information is appropriate. An absence of a few days should not result in a request for detailed information, whereas in the case of longer term absences more information is clearly required.

We support the intent of the new sentence at the end of that paragraph relating to ill-health that arose in the workplace but have a concern with the last part of that sentence that reads: "you should seek the patient's permission and include on the certificate both a diagnosis and the workplace factors which the patient believes have contributed to this illness." This emphasis on the 'belief' of the patient removes any responsibility from the doctor to exercise their professional judgement and could create a situation where a patient is exposed to pressure from the employer to justify their 'belief'.

The second of these paragraphs says that if the patient is fit for some duties this should be "recorded in the certificate." On its own this could also leave the employee exposed to employer pressure. There may be a need for some support to enable the employee to perform these duties, or considerations as to the working environment or hours of work. Considerations of this type should be included in the medical certificate.

Paragraph 14 contains additional advice to help doctors respond to requests for more information from employers. We understand the difficulties this creates for doctors and support intent behind the wording. However we do not believe this wording provides sufficient protection for patient privacy and would suggest that the wording of the second sentence be changed to read: "It can be difficult in these circumstances to provide the agency with the information they require, but it is important that the patient's right to privacy is respected."

3. Are there any additional changes required? If so, what are these?

Any changes proposed have been identified above.

4. Is the footnote providing employers and other receiving agencies with advice on how to seek more information from a doctor useful? Is there any other advice that should be included?

We agree that the footnote is useful but GPs might not be in the best position to respond to these requests. The guidance might also remind doctors to seek specialist advice when necessary, for example from occupational specialists.

**Meeting legal standards**

5. Do you agree with the change proposed to paragraph 9? If not, why not?  
We agree with the change proposed.

**The cost of medical certificates**

6. Do you agree with the changes proposed? If not, why not?  
We agree with the changes proposed.

**Other amendments**

7. Do you agree with the changes proposed? If not, why not?  
We agree with the changes proposed.

Yours sincerely,

Glenn Barclay  
**Policy Advisor**