NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi

to the

Medical Council of New Zealand

Review of the Standards for Doctors
Writing Medical Certificates

P O Box 6645
Wellington
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Summary of recommendations and issues

1.1. We support the Medical Council's proposal to strengthen advice in its statement on medical certification for doctors.

1.2. Patient confidentiality, privacy considerations and professional obligations must not be compromised in pursuit of changes and patients must consent to the release of information before it is disclosed to an employer or third party.

1.3. We support the provision of information which will help employers understand if a worker's ill- health has arisen in the workplace whilst recognising patient-doctor confidentiality.

1.4. We support advice around activity prescription which is managed as part of a comprehensive rehabilitation plan. In some instances, activity prescription may be better provided by a GP referral to an occupational specialist who can advise on the work and capacity context.

1.5. Information gathering based on factors including knowledge of patient, patient statements and clinical observation must be assessed when issuing medical certificates. A degree of trust and flexibility is required where a clinical observation is not immediately available and a medical certificate issued retrospectively.

1.6. Requests for additional information from an employer or third party must be disclosed and discussed with the patient and they must consent before there can be disclosure of any information.

1.7. Information about the cost of a medical certificate should be transparent and costs should be reasonable.

1.8. We support other changes proposed in the statement on medical certification which provides greater clarity on accountabilities and disciplinary action and professional obligations such as the requirements of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

1.9. A review should be undertaken of various medical certification requirements in the '100 pieces of legislation.'

1.10. Similarly, all agency forms which require medical information/certification from doctors should be reviewed to see whether they are fit for purpose and clear.

1.11. We support greater promotion of information on work-related stress to increase the understanding and management of this important health condition.

1.12. The statement on medical certificates could help achieve consistent and clear standards amongst other health practitioners who may be authorised to provide medical certificates.

2. Introduction

2.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 340,000 members, the CTU is one of the largest democratic organisations in New Zealand.

2.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

2.3. The CTU welcomes the opportunity to comment on the review of the Medical Council of New Zealand (the Medical Council) statement on medical certification. The CTU endorses the submissions of FIRST Union and the New Zealand Public Service Association and acknowledge the New Zealand Nurses Organisation's letter endorsing the recommendations of the review.

2.4. The CTU broadly supports the Medical Council's proposal to clarify expectations on the purpose and content of medical certificates.

2.5. We believe there must be a balance between benefit and risk when considering options for a worker who is unable to return to full duties due to illness or injury. A return to work in a limited capacity may assist rehabilitation but if the return to work needs to be undertaken on a gradual process this needs to be developed and managed carefully.

2.6. The review cites employer concerns regarding the quality of medical certificates, and perceptions that general practitioners (GPs) issuing medical certificates when people are not sick or injured. The nature of the employer's evidence is anecdotal. We urge caution in developing policy without objective evidence.

General comments

2.7. We provide responses to some of the specific questions raised in the consultation document on the review below. We also wish to make some general points.

Evidence and problem

2.8. The consultation document cites concerns from employers including the results of a survey conducted by EMA (Northern) in 2010. The consultation document also highlights issues raised by GPs and patients in regards to medical certifications in other jurisdictions (UK and Sweden).

2.9. Whilst issues raised internationally in regards to medical certification may resonate in the New Zealand context, the Medical Council's review lacks balance and input from doctors and patients. There is little or no evidence to support the employer's concerns.

2.10. The usage of sick leave by New Zealand workers is low internationally.[1] Many workers go into work when sick due to work demands. This means that large numbers of workers are at work suffering from an illness with consequences for productivity and infection control.

[1] New Zealand has less generous provisions in regard to sick leave entitlements in law compared to other OECD countries. The 2009 National Employers Wage and Salary Earners Survey reported that the average number of sick days taken in the preceding 12 months was 4.6 days. There is no evidence that New Zealand workers are taking too much sick leave or abusing sick leave entitlements.

2.11. The consultation document notes employer concerns regarding GPs providing retrospective medical certificates when workers may not have been sick or injured and that retrospective medical certificates are often based on patient statements rather than clinical observation. This concern is not properly evidence-based. The EMA survey indicates that 92 % of respondents held suspicions that a medical certificate was wrongfully issued to a worker when they were not sick or injured - respondents did not have substantive evidence to support these allegations.

2.12. Depending on the type of illness (for example, infectious diseases such as a stomach bug) it may be impractical and unreasonable to expect a person to obtain a medical certificate immediately upon getting sick for the sake of "clinical observation". This problem has been exacerbated by the legal requirement which allows employers to require a medical certificate after only one day of sick leave. 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 may be required.

2.13. If there are problems with sick leave and absenteeism amongst workers this should be managed by effective management practices and policies.

2.14. A medical certificate that is issued regardless of whether it is retrospective or not requires a robust information gathering exercise including a GP's knowledge of the patient, understanding of symptoms, clinical expertise and information provided by the patient particularly where a clinical observation may not be conducted immediately given the nature of the health problem. A degree of trust and flexibility is required where a clinical observation is not immediately available and a medical certificate issued retrospectively.

2.15. The Medical Council's review recognises some of the tensions that can arise when managing these factors and the difficulties GPs can be placed under when balancing information provision, ethics, obligations, relationships and clinical expertise.

2.16. The CTU is concerned that employer concerns and some of the proposed changes portray doctors in a negative light. Employer concerns include

suspicions that medical certificates are being issued without reasonable cause; GPs are incorrectly issuing retrospective certificates; and medical certificates do not contain sufficient information.

2.17. The CTU acknowledges the professionalism, honesty and trustworthiness of the health workforce and the challenges in managing medical certification. To imply GPs are failing in their jobs in terms of providing quality and reliable medical certification undermines their role in the health system and attacks their integrity.

Privacy considerations

2.18. A concern raised in the consultation document by employers relates to insufficient information and the desire for more information on the medical problem itself.

2.19. While medical certificates serve a legal and medical purpose, the confidentiality of medical information and privacy considerations of patients must not be compromised in any advice that is developed for general practitioners either on the content of medical certificates or the way in which they should be written. Much of workers' medical information is not the concern of their employers and these boundaries must not be transgressed.

2.20. Any changes to advice for GPs in the Medical Council's statement on medical certification must ensure that patients and the professional obligations of a GP towards a patient are maintained first and foremost and that patients maintain the right to consent to any medical information that is provided to third parties.

Role and purpose of medical certificates

2.21. The consultation document discusses two distinct roles on the purpose of medical certificates including for legal and medical purposes such as the treatment of patients.

2.22. While we recognise the role medical certificates play in assisting third parties to determine a person's eligibility for a benefit, it is unclear as to what these

requirements are and which of the 100 pieces of legislation that include requirements for medical certification apply .

2.23. To fully understand the impact of any changes to the statement on medical certification it would be useful to conduct a review and identify the different pieces of legislation, the requirements of a medical certification for each piece of legislation and responsibilities of each party. However, this exercise may be outside of Medical Council's role and may require a cross-agency approach.

2.24. The design of forms from various agencies which require medical certification can impact on a GP's ability to clearly identify and disclose relevant information to third parties. It may be timely to discuss the design of these forms with relevant agencies such as ACC to ensure the forms are appropriate and applicable.

2.25. Furthermore, the ACC's research project on early return to work for injured workers conducted in 2009 -2012 (better@work) found the intervention of a "co-ordinator" was useful in acting as a conduit between different parties (e.g. GPs, employers, ACC, patients), identifying suitable duties for injured workers and support required to help them safely stay in the workplace. The findings of the research also showed that the co-ordinators played an educative role with employers on how to manage return to work, the range of duties in different workplace settings etc. The research project also looked at certification practices for GPs for ACC forms. We encourage the Medical Council to discuss the findings of the research project with ACC including certification processes and the use of co-ordinators as a conduit between parties and as educators.

2.26. The consultation document states that there is advice for doctors on the Work and Income New Zealand (Ministry of Social Development) and Department Labour (now Ministry of Business Innovation and Employment) websites. But this information is difficult to access on the websites. It may be useful to identify and seek ways of promoting this information so it is more accessible.

2.27. There appears to be a lack of understanding of the purpose and role of medical certificates and the rights and obligations of parties. Providing information about the purpose of medical certificates, what medical certificates contain, what it means, how it is applied, roles and responsibilities could help provide clarity, promote understanding of the role and purpose of medical certificates and manage expectations.

2.28. There must be a balance between potential benefit and risk when considering options for a worker who is sick and unable to complete full duties. There may be other instances where a person could work in a limited capacity with benefits for both the worker and employer.

2.29. Although information in medical certificates pertaining to a worker's ability to return to work and conduct limited duties is useful, the CTU holds concerns regarding the level of advice that is being sought by employers and third parties. A return to work in a limited capacity for a worker must be managed properly and contingent upon a rehabilitation plan.

2.30. In some circumstances a GP may believe that a worker could return to work in a limited capacity but the design of the limited work may be outside of the doctor's expertise, scope of practice and knowledge field. In this instance, the GP should refer the worker to an appropriate occupational health expert.

2.31. A referral to a health and safety or occupational expert safeguards the GP from providing advice on matters outside of their expertise and the worker from negative outcomes. For example, there may be a recommendation by a GP for a worker to return to work in a limited capacity and do "light work/duties" for a few hours per day. However, "light work/duties" can be interpreted in several different ways in the workplace and some light duties could still be harmful.

2.32. The consultation document notes employer concerns regarding work related stress problems. The Health & Safety in Employment Act 1992 (HSE Act) makes explicit that employers have an obligation to provide a safe, secure work environment. The HSE Act specifically identifies stress as a workplace hazard.

2.33. There is a wealth of information available in relation to work related stress. The Ministry of Business Innovation and Employment ('MBIE') website has a range of information on what is work-related stress, stressors or causes and how to manage work-related stress. Greater promotion of information in relation to work-related stress could increase the understanding and management of such issues.

2.34. Finally, we also note that increasingly health practitioners other than GPs are authorised to provide medical certificates e.g. Nurses. Therefore, the Medical Council's statement on medical certificates may be applicable to other health practitioners and we recommend consultation with these groups on how consistent standards can be achieved across different disciplines.

3. Responses to questions in the consultation document

3.1. Below are responses to questions raised in the consultation document. Some of the responses follow matters raised above.

1. When a certificate is also an activity prescription: **Do you agree with the changes proposed?** We support the role of medical certificates in the treatment and health needs of workers as long as this is managed properly and there is an agreed rehabilitation plan.

2. Making sure that certificates provide all necessary information: **Do you agree with the changes proposed?** The CTU is concerned by the amount of information sought by employers and third parties in medical certificates. Maintaining patient confidentiality and privacy is an ethical and legal requirement. We do not support the deletion of the word "only" in the first line of paragraph 11. We do, however, support other changes in paragraph 11 as this will help employers understand if a worker's ill-health has arisen in the workplace. The employer's responsibilities are to ensure they provide a safe and healthy workplace for workers and this requires addressing work-related health and safety issues promptly.

3. 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?

If additional information is requested by an employer or third party, the reasons why the additional information is being requested must be disclosed to the patient first, the request must be discussed with the patient and information consented to by the patient before being released.
If there are specific questions from employers or third parties regarding a patient's work capacity, the involvement of an occupational specialist may be required depending on the nature of the patient's work and other workplace factors. A GP is not an occupational health expert and these roles should not be confused. We urge strong caution where additional information is requested of a GP in relation to a worker's work capacity by an employer or third parties. Guidance which blurs these boundaries is unhelpful.

4. Meeting legal standards:

Do you agree with the changes proposed to paragraph 9?

We support the changes proposed in paragraph 9, however, we reiterate our comment made above regarding the design of forms which may not be easy to follow or practical for GPs when completing forms. It may be useful to examine all forms where medical information/certification may be required from GPs and identify whether these are practical and if there is sufficient guidance from agencies to GPs on these forms.

5. The cost of medical certificates:

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

The cost of a medical certificate should be clearly displayed for anyone who might pay for the cost including patients, employers and other third parties.

6. Other amendments:

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

We support other changes proposed in the statement including reflecting professional obligations outlined in standards of the latest edition of *Good Medical Practice* and the statement on *Providing care to yourself and those close to you;* clearer advice on doctor's accountabilities and disciplinary action; and advice on obligations in respect of the requirements of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

4. Conclusion

4.1. The CTU broadly supports changes aimed at strengthening and clarifying the Medical Council's statement on medical certification. However, we urge caution and changes based on robust evidence.

4.2. We believe further work and consultation is required particularly from GPs and consumer input before a final statement is agreed upon.

4.3. The CTU welcomes further opportunities to provide input into the Medical Council's review of the Standards for Doctors (writing medical certificates).