

## Incapacity to work certification

GPs are often asked by their patients to provide certificates for (a) their employers or (b) the Department of Employment Affairs and Social Protection (DEASP) in relation to their fitness to work. Although many of the issues addressed in this article will also apply to occupational health physicians, this article focuses on GPs providing certificates of incapacity to work for their own patients and identifies notable differences between employer and DEASP certificates.

Whilst the GP's primary function in relation to sick certificates is to determine whether or not their patient is fit to work, many other challenging issues frequently arise for GPs, such as how long the certificate should issue for, and whether to disclose the nature of the illness, injury or medical condition.

The Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9<sup>th</sup> Edition, 2024 (available on the Medical Council website) provides specific guidance on this topic. Paragraph 52 of the Guide states:

*In issuing certificates, reports and other formal documents, you must be accurate and make sure the document is legible. You must also include your Medical Council registration number. You should only sign a certificate, report or document for a patient following a review of the patient's condition.*

### What steps must a doctor take on foot of a request for a certificate of incapacity to work?

The Medical Council Ethical Guide provides clear guidance that a sick certificate should only issue following a review of the patient. Based on that assessment of the patient, the GP must exercise his/her clinical judgment to determine whether their patient is fit to work. A sick certificate should only issue if the GP is satisfied that the patient is not fit to work.

Where the GP is satisfied that the patient is capable of working, a sick certificate should not issue. If the patient disagrees, the GP should explain their ethical obligation to only provide accurate certificates. It is advisable to maintain detailed notes of such discussions on the patient's chart.

There are a number of notable differences between employer and DEASP certificates which are identified below.

#### (a) Employer certificates

Where the GP is uncertain or has some doubt about whether the patient is fit to work, or more commonly fit to return to work, it can be entirely appropriate to refer the patient for appropriate specialist input. In such circumstances, the GP should consider whether certifying a patient unfit to work is in their best interests and the likely impact (positive or negative) on the patient's condition. It should also be borne in mind that the patient's employer can and often will have their employee independently examined particularly where the employee has been out of work for an extended period.

#### (b) DEASP certificates

In the context of DEASP certificates, where the GP is uncertain about the patient's fitness to work he/she can apply to have the patient examined by a DEASP medical officer / assessor without the necessity to explain this course of action to the patient and risk damaging the doctor/patient relationship. This is done by way of an MR4 form which is confidential to the GP and the Department.

Where the patient has been certified unfit to work (usually for a prolonged period) and a second opinion has been sought from the medical officer / assessor in relation to their fitness to return to work, the GP should

continue to provide a DEASP certificate until the medical officer / assessor declares their opinion. It should also be borne in mind that DEASP will frequently seek to have any patient on long term benefits independently assessed for continuing eligibility.

Finally, it is important to remember that DEASP guidelines allow patients who have been hospitalised to receive a DEASP certificate from their GP based on a pro forma hospital letter which provides details of the patient's condition and period of hospital stay. Where the patient remains an in-patient, a relative may bring this hospital letter to the patient's GP and, in such instances, the DEASP certificate can be provided to a relative or spouse.

### **What details should be provided on a sick certificate?**

If the GP has decided that the patient is unfit to work, the next issue to consider is what information to include when completing the sick certificate. Given the often very sensitive nature of the information held by a GP, the starting point must always be that confidential patient information should not be disclosed to a third party unless there is a reason for its disclosure and then only with the patient's consent or some other lawful basis.

#### **(a) Employer certificates**

Employers are entitled to expect their employees will work when they are fit to do so. The system of illness certification protects the employer by ensuring employees provide objective evidence of their incapacity to work based on an assessment by their treating doctor. However, this protection for employers does not extend to an entitlement to know their employee's confidential medical information. Therefore the only obligation on a doctor when completing a sick certificate for an employer is to state whether the patient is fit or not for work. The patient's specific consent should be obtained if disclosing the cause of the incapacity for work. Of course some patients will have no issue with their illness or condition being stated on the sick certificate but others may want, and are entitled to keep this information confidential. Whilst some employers may understandably want additional information, the employer has the option of having the employee assessed by their own occupational health physician or other specialist if required.

#### **(b) DEASP certificates**

By contrast, DEASP certification requires the GP to state the cause of the incapacity for work including the relevant ICD10 Code where appropriate. There is an exception to this requirement in cases where stating the illness could affect the patient's health or where the patient could suffer distress / injury as a result of the illness being revealed.

The patient's confidential information is disclosed on the basis of the patient's express consent as the new DEASP guidelines require the patient to provide written consent to the GP for the release of their information to DEASP in order to accept and evaluate a claim for social welfare benefits. The new Patient Data Consent Form can be found at appendix (iii) of the DEASP's Guide to Medical Certification under Social Welfare Legislation, updated in January 2019, which was circulated to GPs.

### **How long should the patient be certified unfit for work?**

It is of course a matter for the GP's clinical judgement to determine how long a patient is likely to remain unfit to work. However, there are notable differences between sick certificates for employers and DEASP certificates.

#### **(a) Employer certificates**

There is no one set of accepted rules for providing sick certificates for employers. Invariably the contract of employment and/or employer policies will stipulate what is required of the employee when unfit to work. Most employers require regular sick certificates for short term illnesses, often weekly, but are willing to accept less frequent sick certificates on a monthly or six-monthly basis for longer term illnesses particularly

where the employee has also been assessed by the employer's own doctor. It is the GP's duty to act in the patient's best interests and if necessary, issue weekly sick certificates.

(b) DEASP certificates

Until recently, DEASP required GPs to issue weekly DEASP certificates for patients who were unfit to work for more than a week. In the case of long terms illnesses lasting in excess of 6 months, the GP could (with DEASP's agreement) issue longer certificates of 4 weeks or 6 months duration as appropriate. A Final Certificate was expected to issue once the patient was considered fit to resume work.

In January 2019, DEASP wrote to all GPs with guidelines in relation to its new system of social welfare certification and its introduction of the concept of 'closed certification'. This new system provides defined average periods of expected recovery and return to work for common medical conditions and common surgical procedures. The GP is therefore expected to utilise their clinical judgment in tandem with the closed certification guidelines and the patient's type of work in order to issue a single certificate for the entire duration of the patient's expected recovery period. If incapacity lasts beyond the period stated on the initial certificate, a further assessment and certificate is required. Essentially, the new system involves a shift in emphasis away from regular certification of illness towards one time certification of expected fitness to return to work.

**What about specific work tasks or activities?**

GPs are also frequently asked for an opinion on whether a patient is capable of certain work tasks or activities. If the specific assessment or request is beyond the GP's expertise, the employer should be directed to seek an opinion instead from an independent occupational health physician. Where the GP is sufficiently expert to respond, our advice is to utilise a form of words such as the below.

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*"I am not aware of a physical or mental health problem that would prevent X from undertaking appropriate work / appropriate physical tasks. Employers should consider obtaining advice from occupational health professionals should further details be required to determine suitability for specific work roles".*

If you have any queries in relation to sick certificates, you should contact Medisec or seek advice from DEASP.

"The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice".