



Sickness certificates

To write or not to write

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Case histories are based on actual medical negligence claims. However, certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

General practitioners frequently complete sickness certificates on behalf of their patients. At the same time, sickness certificates are a common source of complaints against GPs. Every year, medical boards receive numerous complaints from employers, insurers and courts regarding the quality, accuracy and truthfulness of certificates. This article provides some guidance for GPs on how to write (and not to write) sickness certificates.



Case history

Mr Brian Smith was a 59 year old man who had attended Dr Bourke's general practice for over 20 years. Mr Smith and Dr Bourke both shared a love of marathon running and often discussed their running adventures. Over the years, Dr Bourke had treated Mr Smith for hypertension and various minor illnesses and injuries.

More recently, Mr Smith had been diagnosed with noninsulin dependant diabetes mellitus (NIDDM) but this had been well controlled with diet and exercise. Mr Smith had worked for the local council for almost 40 years. During this time, he had accumulated sick leave in excess of 11 months. Mr Smith advised Dr Bourke that unless he actually took this sick leave, it would be 'lost' and he would not be paid for it. Mr Smith told Dr Bourke that he planned to retire within the next couple of years and that he would like to get a sickness certificate for some time off -- in fact, he'd like about 10 months off work. The patient suggested that since he now had diabetes, Dr Bourke could put that illness on the sickness certificate. According to Mr Smith, his boss knew what was happening. He told Dr Bourke that the council's personnel department had suggested that he see his GP and get a sickness certificate because it was the best way to 'manage the books' and was 'quite straightforward'. Dr Bourke duly completed the sickness certificate stating that the patient had diabetes and would not attend work for the next 10 months.

A few months later, Dr Bourke was pleased to hear that his long time patient was going on a marathon run down the coast. Mr Smith hoped to raise funds for a diabetic clinic at the local hospital and there was a photo and story about the trip on the front page of the local newspaper. Dr Bourke made a mental note to send a donation. Three weeks later, Dr Bourke received a letter from the Medical Board enclosing a complaint from Mr Smith's employer. The employer had seen the article in the local newspaper and had sent a letter of complaint to the Medical Board alleging that Dr Bourke had deliberately issued a fraudulent sickness certificate.

Medicolegal issues

In this case, while Dr Bourke felt he was acting in the best interests of his patient and also the employer, it was apparent that the employer did not share the view that the sickness certificate was the best way to 'manage the books'.

Dr Bourke sent a contrite response to the Medical Board stating that he did not write anything deliberately untruthful on the certificate - the patient did have diabetes. Dr Bourke felt it was in the patient's best interests to have his sick leave paid out before his retirement and he genuinely believed at the time of writing the certificate that it was not detrimental to Mr Smith's employer. However, Dr Bourke acknowledged that he was probably influenced in writing the certificate by the longstanding doctor-patient relationship and his genuine affection for Mr Smith. Dr Bourke conceded that: if it was a patient that he had known less well, he would probably have told the patient that they were asking him to do something which was 'illegal', was against his principles and that he didn't see why the patient's personnel depart-

ment should expect him to comply with their wishes. Dr Bourke concluded his response to the Medical Board by stating that since receiving the complaint, he had reviewed the Medical Board's Sickness Certificate Policy and that in future he would comply with this policy.

The Medical Board considered Dr Bourke's response and determined that: in the circumstances, disciplinary action in the form of 'counselling' was appropriate. No restrictions were placed on Dr Bourke's practice, however, Dr Bourke was reminded that in some circumstances practitioners may face disciplinary proceedings in the form of a medical tribunal or even civil or criminal proceedings arising out of the issuing of false, misleading or inaccurate medical certificates.

Discussion

General practitioners frequently receive requests from patients for sickness certificates and, on occasion, are placed under subtle (and not so subtle) pressure by a patient to provide the certificate that has been requested. In these cases, GPs may face a conflict between their desire to act in a way that is beneficial to their patient and their responsibility to the community or third party/employer. Sickness certificates are legal documents. Every year, medical boards receive numerous complaints from employers, insurers and the courts regarding the quality, accuracy and truthfulness of sickness certificates.

Probably the most common advice given by medical defence organisations in relation to sickness certificates is: 'Just say no'. For instance, the patient who says she was unwell last week and must have a sickness certificate stating that she was seen by the GP one week earlier (or she will lose her job) requires a polite but firm refusal. Under no circumstances should a certificate be 'backdated' in this manner. That is, a sickness certificate (or any other certificate) should always include the date that it was actually written, regardless of the date on which the consultation occurred or the date of

the patient's absence from work. In this instance, it may be appropriate to provide a certificate stating that the patient had a history of illness one week earlier but the date on the certificate should be the date that the certificate was written.

Another issue arising out of the writing of sickness certificates is whether a GP can advise an employer whether a sickness certificate provided by the GP is bonafide without breaching the patient's confidentiality. The context is generally a concern on the part of the employer that the certificate has been altered in some way by the patient. In this situation it is not a breach of the patient's confidentiality if the GP confirms the accuracy or otherwise of the certificate the GP has issued.

No further information about the patient should be provided to the employer (eg. the date the patient did attend the practice) without the consent of the patient.

Risk management strategies

The New South Wales Medical Board's Sickness Certificate Policy provides useful guidance for GPs on how to write sickness certificates.¹ According to this policy, doctors are advised to consider the following points when a patient requests a sickness certificate:

- The certificate should be legible, written on the doctor's letterhead and should not contain abbreviations or medical jargon
- The certificate should be based on facts known to the doctor. The certificate may include information provided by the patient but any medical statements must be based upon the doctor's own observations or must indicate the factual basis of those statements
- The certificate should:
 - indicate the date on which the examination took place
 - indicate the degree of incapacity of the patient
 - indicate the date on which the doctor considers the patient likely

- to be able to return to work, and
- be addressed to the party requiring the certificate as evidence of illness, eg. employer, insurer, magistrate
- Under no circumstances should the examination date:
 - be backdated or dated forward to correspond with an existing or proposed absence from work
 - be other than the date on which the patient attended the doctor and at which consultation a genuine medical condition was observed or was considered, in the doctor's judgment, to have been suffered in the recent past
 - cater for days off work for holiday or special needs
- A certificate may be issued by a doctor subsequent to a patient taking sick leave. However, the certificate must:
 - state the date of the examination
 - clearly indicate whether it is based upon observations of symptoms during the examination or upon information provided by the patient which the doctor deems to be true, and
 - cover the period during which the doctor believes the illness would have incapacitated the patient
- When issuing a sickness certificate, doctors should consider whether or not an injured or partially incapacitated patient could return to work with altered duties. The general nature of duties that should not be attempted should be noted on the certificate. Arrangements regarding altered duties are matters for negotiation between the patient and the employer
- Patient rights to confidentiality must be respected; a diagnosis should not be included in a certificate without the patient's consent. (Note: certain employers, eg. state instrumentalities, insist on this information)
- Patients may request doctors to withhold information regarding their diagnosis. In such cases it should be made clear to the patient that the information provided on the certificate may

not be sufficient to attract sick leave and that an employer has the ultimate right to accept or reject a certificate

- Signing a false certificate may result in the doctor facing a charge of negligence or fraud. Furthermore, the issuing of a deliberately false, incorrect or misleading certificate may lead to a complaint of unsatisfactory professional conduct or professional misconduct under the relevant Medical Practice Act.

SUMMARY OF IMPORTANT POINTS

- Sickness certificates are legal documents. General practitioners may face disciplinary proceedings, or even civil or criminal action if they issue a false, misleading or incorrect sickness certificate.
- Never backdate a sickness certificate. Always record the actual date that the certificate was written and the date of the consultation – even if the certificate refers to a different period of absence from work.

Conflict of interest: none declared.

Reference

1. NSW Medical Board Sickness Certificate Policy: www.nswmb.org.au/sickness.htm

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