


Sara Bird

MBBS, MFM(clin), FRACGP,
is Medicolegal Adviser, MDA
National. sbird@mdanational.
com.au

A fraudulent certificate

Case histories are based on actual medical negligence claims or medicolegal referrals, however certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved. General practitioners frequently receive requests from patients for sickness certificates and, on occasion, are placed under pressure by a patient to provide the certificate that has been requested. At the same time, certificates certifying illness are a common source of complaints against GPs. This article provides some guidance for GPs about writing certificates certifying illness.

Case history

The patient, 23 years of age, had attended the general practitioner infrequently over a period of several years for various minor ailments. The GP had not seen the patient since December 2005. On 5 November 2006, the GP received a facsimile from the local council stating:

'Dear Dr Martin

Re: Mr Nick Evans

Please find attached document sent to our office by our employee. If this document is not from you, could we please have a fax stating that the document was not prepared and signed by Dr Martin.

Thank you for your assistance in this matter.

Yours sincerely

A Miller'

Attached to the facsimile was the following letter:

'6 October 2006

Martin Medical Centre

Dear Sir

It has come to my attention that following a recent surgical procedure your employee, Mr Nick Evans, has been suffering from severe migraines and slight lower back pain. I believe these complications are the result of a sub Ural himatoemer picked up on a CSI scan your employee had today.

Mr Evans will be unfit for work for at least the next 2 months.

If you require me to fill out any further paperwork, please feel free to pass it on to Mr Evans or email it to me at hmartinmedicalcentre@gmail.com.

Kind regards

Dr H Martin dmv, bm'

The GP was concerned that he may be breaching the patient's confidentiality in providing information to the employer and sought assistance from his medical defence organisation. The GP was advised that it was not a breach of the patient's confidentiality if the GP confirmed that the certificate was a forgery. No further information about the patient should be provided to the employer in the absence of the patient's consent. The GP also wanted to know if he should contact the patient about the fraudulent certificate and if he should terminate the doctor-patient relationship. The GP was advised that there was no obligation to inform the patient and that, in the circumstances, it was unlikely that the patient would attend the practice again.

Discussion

General practitioners frequently contact their medical defence organisation for advice about sickness certificates. The three most common concerns are:

- advice about how to deal with a patient who is demanding a sickness certificate that the GP is uncomfortable about providing
- the GP is contacted by an employer and asked to verify the accuracy of a sickness certificate. This may occur in circumstances in which the employer is concerned that the certificate has been altered in some way by the employee/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.

- a complaint to the medical board from an employer or other agency about the accuracy of a sickness certificate provided by the GP.

Risk management strategies

The Australian Medical Association's position statement on Certificates Certifying Illness (1998) states:

1. Confidentiality and the doctor-patient relationship

The basis of the doctor-patient relationship is trust and confidentiality. Doctors trust their patients and protect their right to confidentiality. Patients trust their doctors regarding medical care and expect confidentiality. Doctors are not the agents of employers.

A certificate certifying illness may be issued where a patient's state of health necessitates time away from the workplace. This may be because the employee cannot work or should not work.

2. Purpose

The purpose of this position statement is to clarify the responsibilities of medical practitioners, employers and employees regarding certificates certifying illness ('sickness certificates').

3. Application

This position statement is not intended to apply to workers compensation schemes, life insurance, accident compensation, superannuation, or other legislative schemes that have their own regulatory mechanisms. It is confined to certification of illness for purposes of sick leave and with applications for carer's leave. The general principles regarding procedures dealing with confidentiality apply to all medical certificates.

4. Alternatives to sick leave

Employer organisations and employee organisations should work toward a system which recognises the many legitimate reasons, unrelated to their health, why an employee may require absence from work. Both groups should recognise that, for most employees, sick leave is currently the only way to take short unexpected absences from work. Other means should be developed to enable employees to take this type of leave.

5. The Responsibilities of medical practitioners

Medical certificates are legal documents. Medical practitioners who deliberately issue a false, misleading or inaccurate certificate could face disciplinary action under the relevant medical practitioners' Act (or its equivalent). Medical practitioners may also expose themselves to civil or criminal legal action. Medical practitioners can assist their patients by displaying a notice to this effect in their waiting rooms.

6. The responsibilities of employees

Employees have a responsibility to consult their medical practitioner in a timely manner when requesting a medical certificate. Employees also have a responsibility to present the reasons for requesting a certificate in a way that enables the doctor to make an accurate assessment of their eligibility for a certificate.

At the time the certificate is issued, it is the responsibility of the employee to ensure that the employer's requirements for leave have been met.

7. The responsibilities of employers

Employers should recognise the right of employees to keep details of their medical condition confidential. Employers should not expect to see a diagnosis on the certificate. Employers should also recognise that the certification by the medical practitioner of an employee's unfitness for work is sufficient.

Employers may, in reasonable circumstances and with the employee's written permission, seek further information from the medical practitioner who issued a certificate.

The employer has a responsibility to inform the employee of the requirements for sick leave.

8. Certificate requirements

8.1 The usual requirements for a medical certificate are:

8.1.1 Name and address of the medical practitioner issuing the certificate

8.1.2 Name of the patient

8.1.3 Date on which the certificate was issued

8.1.4 Date(s) on which the patient is or was unfit for work

8.1.5 Supplementary information of assistance to the employee in obtaining the appropriate

leave especially where there is a discrepancy in the period for which the certificate is issued and the date of the certificate.

8.2 A diagnosis is not usually required. If it is a legal requirement for a diagnosis to be provided medical practitioners should inform the patient if they have written their diagnosis on the certificate.

8.3 The certificate should be written so that a nonmedical person is able to read and understand it. The certificate should be written on stationery designed specifically for this purpose.

8.4 Medical practitioners have a responsibility to obtain and note sufficient factual information through history and examination to issue a certificate certifying unfitness for work.

8.5 Medical practitioners should not inadvertently reveal confidential patient information. Stationery used for certification may inadvertently reveal the nature of the employee's medical condition, for example by reference to the medical practitioner's medical specialty, eg. psychiatry, oncology, gynaecology.

9. Date of certificate

9.1 Certificates must be dated on the day on which they were written. Under no circumstances can this be breached.

There may be medical conditions which enable the medical practitioner to certify that a period of illness occurred prior to the date of examination. Medical practitioners need to give careful consideration to the circumstances before issuing a certificate certifying a period of illness prior to the date of examination, particularly in relation to patients with a minor short illness which is not demonstrable on the day of examination and add supplementary remarks, where appropriate, to explain any discrepancy.

9.2 If a medical practitioner cannot demonstrate any clinical evidence of the condition with which the patient claims to have suffered, the practitioner should consider completing a letter of support.¹

Conflict of interest: none.

Reference

1. Australian Medical Association. Certificates Certifying Illness, 1998.

afp CORRESPONDENCE email: afp@racgp.org.au