



## *Medical Council of New Zealand*

# Non-Treating Doctors Performing Medical Assessments of Patients for Third Parties

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*Doctors who are employed by a third party to perform medical assessments of patients are required to maintain a professional standard of care within the framework of the assessing relationship and are expected to meet the standards of practice outlined in this statement.*

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### **Introduction**

1. Medical assessments for third parties are a common feature in medical practice. The purpose of a medical assessment varies depending upon the role of the third party. Examples include assessment for employment suitability, and eligibility for health services or compensation. Medical assessments may be performed by the patient's own doctor or by a non-treating doctor.
2. In some circumstances the patient's own doctor will be asked to provide a medical assessment of the patient for a third party. Insurance companies and employers tend to use this form of assessment. Non-treating doctors may be employed or contracted when the third party requires an independent assessment or second opinion. Examples include expert advisors (used in legal proceedings), doctors employed by organisations like ACC, insurance companies or the patient's employers.
3. An assessment by a doctor may take several forms that include a consultation with the patient, possibly a physical examination or a file review of the patient's medical history.

### **Performing medical assessments**

4. If a doctor who is asked to perform a medical assessment does not consider him or herself suitably qualified, or identifies that a conflict of interest exists, the doctor must decline the referral. An explanation does not have to be provided to the third party.
5. If the third party considers a physical examination is not required the assessing doctor must be satisfied (and be able to justify) that he or she has all the information necessary without performing a physical examination or speaking with the patient, before providing an accurate professional opinion or recommendation.

### **The role of the non-treating doctor**

6. The role of the non-treating doctor is to perform a medical assessment and provide an impartial medical opinion. The recipient of the medical opinion is the third party who has employed or contracted the non-treating doctor. As the title indicates, the non-treating doctor does not provide any form of treatment to the patient.

### **The non-treating doctor and patient relationship – the professional standard of care within the framework of the assessing relationship**

7. The basis of the relationship between the patient and assessing doctor is not the same as an established doctor-patient relationship, however the doctor is still required to maintain a professional standard of care within the framework of the assessing relationship. The Council requires that non-treating doctors adhere to the principles in the Code of Health and Disability Services Consumers' Rights.
8. As such, the patient should be treated with respect, be free from coercion, discrimination, harassment and exploitation. If there is a meeting with the patient, the non-treating doctor is required to respect the patient's dignity and ensure that he or she communicates with the patient in a manner that enables the patient to understand the information provided and the role of the non-treating doctor.

### **Effective communication and consent**

9. The Council has identified some recurring problems in medical assessments performed by non-treating doctors. The common issue is poor communication with the patient. This leads to unmet expectations, misunderstandings and confusion about the non-treating doctor's duty of care to the patient. The following information must be clearly communicated to the patient by the non-treating doctor:
  - If the non-treating doctor is required to consult the patient he or she must ensure the patient understands the purpose of the medical assessment and the non-treating doctor's role. Although the patient will usually be informed of this by the third party before visiting the non-treating doctor, it is the responsibility of the non-treating doctor to confirm this and if necessary, provide any further explanation. This explanation should include discussion about the differences between the non-treating doctor's role and the patient's own doctor.
  - The non-treating doctor must explain what will happen during the assessment and also ensure that the patient is aware of what he or she is doing throughout the consultation. This includes explaining the scope of the consultation and any tests that the assessment may require.
  - As with any health service, informed consent must be obtained before any service is provided. The non-treating doctor should ensure the patient understands that any aspect of the medical assessment may be included in the report to the third party. If the patient does not consent to this the assessment

shall not proceed. The patient also has the right to withdraw from the assessment at any time. In either of these circumstances the non-treating doctor should record in his or her report to the third party at what point the assessment was terminated and why.

- The non-treating doctor must explain and ensure that the patient understands what will happen after the consultation. Specifically, the non-treating doctor should ensure the patient understands that the report will be the property of the third party. A request for a copy of the report and any further communication should be directed through the third party.

### **Recording a consultation**

10. A patient may want to record the consultation by video or audio tape. Arrangements should be made prior to the consultation and with the consent of the doctor. The Council recommends that third parties make the arrangements with the patient and doctor and if the doctor selected to perform the medical assessment does not consent to recording the consultation, an alternative doctor is located.<sup>i</sup>

### **Reports for the third party**

11. Once the medical assessment has been completed it is standard practice for the doctor who performed the assessment to provide a written report to the third party with his or her medical opinion. The report must be accurate and objective. The doctor should not speculate or base recommendations on insufficient or flawed evidence and if he or she is not satisfied that a medical opinion can be accurate, based on the information provided in the file, he or she must clearly state this in the report. The doctor may choose to recommend further methods of investigation if appropriate (i.e. medical tests, x-rays etc).
12. If the non-treating doctor has been provided with any documentation or information from the third party this should be listed as part of the report. This ensures that all the information available to the non-treating doctor is recorded and can be referred to again if there are any issues or questions in the future.
13. If the third party has requested that the non-treating doctor make recommendations (e.g. suitability for an employment position) the recommendations must not compromise the patient's safety. The non-treating doctor is contracted to make a medical judgement and the third party's decision will be influenced by the medical opinion. The Council does not accept that making recommendations is a step back from implementing them. Therefore the non-treating doctor has some responsibility for the outcome by ensuring his or her professional opinion and recommendation are appropriate to protect or enhance the patient's health.
14. It is inappropriate for the assessment report to include comments on any policy or legislation pertaining to the third party because it is not relevant to the non-treating doctor's role.

15. If the non-treating doctor becomes aware of another medical condition as a result of the assessment the doctor should inform the patient and refer the patient back to his or her own doctor (the patient's general practitioner/specialist) for further investigation.

### **Medical Assessments by the patient's own doctor**

16. In some circumstances the patient's doctor will be requested to perform a medical assessment that would otherwise be performed by a non-treating doctor. This is usually because the patient lives in an isolated area where a non-treating doctor is unavailable. It is imperative that the doctor clearly explains the difference in his or her role in this circumstance, so that the patient understands that the usual dynamics of the doctor-patient relationship are different.
17. Doctors must ensure that any medical assessment of a current patient to a third party is based on objective and clinical findings.
18. When the patient's own doctor is requested to perform a medical assessment for a third party on a current patient, the doctor has the same duty and requirements to report all of the relevant findings accurately to the third party.

### **File assessments by non-treating doctors**

19. A non-treating doctor may be employed or contracted to perform a medical assessment based solely on information in the patient's file. As with any other form of medical assessment the non-treating doctor must be satisfied that he or she has all the information necessary and a physical examination is not required before providing an accurate professional opinion or recommendation.
20. The Council reminds non-treating doctors in this role that the documented findings of another doctor have been based on physical examinations and direct communication with the patient. If a non-treating doctor performing a file medical assessment concludes that the documented cause of a medical condition or diagnosis is incorrect, the non-treating doctor needs to be confident that his or her conclusion can be supported with clinical evidence and is based on all the necessary information. It is not acceptable to include such conclusions in the report to the third party unless the non-treating doctor is confident that consulting with the patient or the patient's own doctor is not necessary.

### **Financial influences for the non-treating doctors**

21. A doctor must not allow the financial interests of either the patient or the third party to influence the medical assessment of the patient, the medical opinion or recommendations.

## Review of medical assessment opinions

22. Any challenge by a patient or representative of the patient to an opinion in a medical assessment report should be done through the third party.
23. In past cases, the Health and Disability Commissioner has concluded that a non-treating doctor is not providing a health service to the patient. Instead, the service is provided to the third party. As a result the Commissioner is likely to refer any complaint to the third party in the first instance because the Commissioner's jurisdiction is restricted to services provided directly to a patient by a health provider.

### Notes:

- The Medical Council of New Zealand has released guidelines on medical certification that outline the general requirements and duties of a doctor when signing any form of certificate or medical report. This is available from the Council's website ([www.mcnz.org.nz](http://www.mcnz.org.nz)), or the office.
- A doctor who performs a medical assessment is not responsible for the actions of the third party. The only responsibility the doctor has is to competently perform a medical assessment within the scope identified by the third party, and provide a professional, ethical report based on his or her impartial medical assessment.
- There are several publications available from the Internet and some occupational groups that may assist doctors to understand the role of the independent or third party assessment. Both the Australasian and the United Kingdom Faculties of Occupational Medicine have released guidelines on this issue - guidelines are available on [www.racp.edu.au/afom/](http://www.racp.edu.au/afom/) or [www.facocmed.ac.uk](http://www.facocmed.ac.uk)

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<sup>i</sup> Jackson v ACC (Wellington District Court, Decision No. 168/2002 dated 25 June 2002). A doctor has the "privilege" to decide in what lawful way a medical examination will be conducted and the patient also has the "privilege" to ask for a tape-recorded consultation. It is then a question of balancing the reasonableness of the exercise of the mutual privileges. In this particular case the doctor had not put forward any worthy arguments to refuse to tape the consultation and given the patient's perception of her dealings with ACC and specialists appointed by it, her request to tape the examination was a reasonable exercise of her privilege to do so.