Writing medical certificates

A review of the standards for doctors

Medical Council of New Zealand
Introduction

The writing of medical certificates is often a complicated part of medical practice. It is an area of practice where doctors have responsibilities to a third party, such as an employer, in addition to their primary obligation to care for their patient. In itself this balance of responsibilities can make writing a certificate complicated, and the situation is further complicated because the writing of medical certificates can be done to meet a wide variety of purposes, and is governed by a number of different pieces of legislation.

Under section 118 of the Health Practitioners Competence Assurance Act 2003 the Medical Council of New Zealand (the Council) is responsible for setting “standards of clinical competence, cultural competence and ethical conduct” for doctors. In August 2001 we published a statement on Medical Certification to set the standards that apply when doctors write a medical certificate.

The statement on Medical Certification is intended to outline, in a simple and direct manner, the responsibilities of doctors when completing a certificate. It is intended to help doctors to monitor their own conduct and the conduct of their colleagues. We are also aware that is often referred to by employers and other authorities who are uncertain about the quality of certificates they receive. As part of this review we are aiming to make the resource accessible and useful to doctors and members of the public, and to ensure that the standards outlined are clear, easy to follow and informative.

Council statements also have another important function. They are often used as a standard against which professional conduct is measured. The statement on Medical Certification may be used by the Health Practitioners Disciplinary Tribunal, the Council’s Professional Conduct Committees and the Health and Disability Commissioner in determining whether a doctor has acted inappropriately. The advice it contains therefore needs to establish a clear line in the sand against which conduct can be measured.

The statement on Medical Certification was last reviewed in 2007. The purpose of this consultation is to seek feedback from doctors, patients, employers and others agencies who receive medical certificates on the standards it outlines, and on changes that we are proposing to make.
Executive summary

While the Council believes that the statement on Medical Certification remains useful and relevant, we also think that it could be improved in a number of ways. We are seeking your comments on the proposed changes.

A copy of the statement, with suggested changes tracked, is attached as Appendix A. The most significant changes we are proposing are to:

- Include a new sentence highlighting the role of a medical certificate as an activity prescription, and requiring doctors to balance the risks and benefits to the patient of that activity prescription (refer to paragraph 7 of Appendix A).
- Include a new standard that requires doctors to ensure that certificates meet the standards outlined in any relevant legislation (refer to paragraph 9).
- Shift the emphasis away from what information a doctor can’t include in a certificate, and instead put a greater focus on what they can and should include (paragraph 11).
- Make clear that if a patient is fit for some duties, then a medical certificate should outline what those duties are (paragraph 12).
- Include some advice for doctors on responding to requests for more information from employers and other agencies that receive medical certificates (paragraph 14).
- Include some advice for employers and other agencies that receive medical certificates on how to seek more information to help inform their decision-making (footnote to paragraph 14).
- Make clear that any fees charged for the completion of a certificate must not be excessive or exploitative (paragraph 25).

Consultation process

Please send your comments to Michael Thorn, the Council’s senior policy adviser and researcher by 5 July 2013. You can complete this form and send it to Michael at mthorn@mcnz.org.nz or post it to:

Michael Thorn
Senior policy adviser and researcher
Medical Council of New Zealand
PO Box 11-649
Wellington 6011

Please also feel free to send Michael any other comments or suggestions you have about Medical Certification.

Your comments and submissions will be circulated to members and staff of the Council for consideration. We may also publish a summary and analysis of the responses received (with any details which might identify individual submitters removed).
Discussion

As an initial observation, it is important to acknowledge that medical certificates can sometimes have two quite distinct roles: they are usually intended to satisfy a legal requirement intended to assist a third party determine a person’s eligibility for a benefit; and they are often also an activity prescription intended to help improve a patient’s health and wellbeing.

Legal purpose

There are around 100 different pieces of legislation that include requirements for medical certification, and the specific responsibilities outlined are often framed in slightly different ways and have differing purposes. However, in the majority of cases the legal purpose of a certificate, and the information that must be included, are broadly similar. From a legal perspective they are documents that contain health related information about a person, and are completed for the purpose of helping some other person or agency determine that person’s eligibility for a benefit.

Medical purpose

Medical certificates can also have a key role to play in the treatment of patients. Certificates that detail work capacity do so to ensure that work participation or non participation is consistent with the treatment and health needs of the patient. In this context they can be viewed as an activity prescription and, like all prescribed treatments, there are benefits and risks to be balanced.

Why can doctors find medical certification difficult?

There are a number of factors which can make completing a medical certificate a difficult task for doctors. In particular:

- Doctors have a duty to work in partnership with their patient, and to make that patient’s interest their first concern. Sometimes the patient’s interest (or the patient’s perception of their interest) may appear to conflict with the doctor’s responsibility to provide honest and accurate information to the agency that receives a certificate. Certificates may have financial implications for the patient through benefits, employment and compensation payments and failure to complete a certificate or including certain information may have a negative impact on the patient or the patient’s family. Studies have shown that patient, family and cultural factors may influence how doctors complete certificates.

- There can be a conflict between what is the correct clinical judgement, and what others believe is the correct moral judgement. For example, when a patient with a treatable condition refuses treatment and then seeks a medical certificate to gain a benefit. In such cases making the correct clinical judgement (the patient is not well enough to work) and completing a certificate on that basis may result in what an employer or other agency perceives to be a morally wrong outcome (the patient is entitled to a benefit).

- Doctors are restricted in how much information they can provide to an employer, insurer or government agency. They may only provide the information that is required by the agency, and which the patient consents to being released. This can create difficulties when the third-party has access to some, but not all, the relevant information. One recent example of this difficulty involved a patient who was given a medical certificate by his doctor because of stress that had arisen because of events in his personal life. The patient did not wish his employer to know the

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nature and causes of his illness, and the doctor agreed that the employer was not entitled to this information. The doctor therefore wrote a certificate which simply indicated that the patient was not well enough to work. The patient’s employer subsequently bumped into the patient on the street and formed the view that the patient was fit and well. This incident created tension between the patient and his employer, caused the employer to lose trust in the patient, and resulted in the employer making a complaint to the Council alleging that in issuing the certificate the doctor had acted in bad faith and cost him money.

- It can be difficult for a doctor to make a reasonable assessment when the patient presents after his or her return to health and requests a retrospective certificate. Retrospective certificates are often solely reliant on patient comment rather than on clinical observation. Despite their limitations, however, such certificates are useful in a range of circumstances, such as: where the patient is only asked to provide a certificate after he or she has recovered; when treatment would not have benefited the patient and he or she was not well enough to attend for the purpose of obtaining a certificate at the time of illness; and where the patient was suffering a contagious illness and has been advised not to attend (as occurred on a large scale during the 2010 influenza pandemic).

The current version of the statement attempts to address some of these issues. In particular:

- Paragraph 10 requires that certificates be “accurate and based on clinical observation, with patient comment clearly distinguished from clinical observation”.
- Paragraph 11 attempts to define what information should be disclosed, and how this should be disclosed.
- Paragraph 12 states that comments about fitness to work should only be made once accurate information about the nature of that work is obtained. This paragraph also notes that if the patient is not fit to perform certain duties, this should be clearly stated.
- Paragraph 13 requires that retrospective certificates should be identified as such, and all certificates should record the data of any examination and the time period for treatment.
- Paragraph 14 tries to make clear that employers and other receiving agencies do not have to accept a certificate.

Concerns raised about medical certification

A recent Swedish study\(^2\) found that over half of the GPs surveyed experienced problems with sickness certification at least once per week. The areas identified as being most problematic concerned assessments of functional or work capacity. In particular, around a third of GPs said that they often found it very problematic to assess how a patient’s condition might impact on their work capacity, and around the same number said that they often found it very problematic to provide a long-term prognosis about the future work capacity of a patient on sick leave. Other areas identified as being problematic included handling situations where the GP and the patient had different opinions about the need for sick leave, and managing the multiple responsibilities involved.

A separate research report\(^3\) found that many GPs in the UK experienced problems with sickness certification. More than three quarters (77.4 per cent) stated that they had felt obliged to give sickness certificates for reasons that were not strictly medical.

Patients also appear to have concerns about sickness certification. A British qualitative study\(^4\) found that many patients felt anxious prior to a consultation in which they wanted a sick note, and that this

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anxiety was heightened when they saw a doctor who did not know them or their history. Almost all of these patients expressed the view that they wanted more than just a sick note from the consultation, and that also they wanted to talk about their treatment options and prognosis. Many expressed frustration about doctors who did not spend adequate time with them.

It is also clear that employers often have concerns about medical certificates. Most of the complaints that Council receive on this subject come from employers who are concerned that a doctor has inappropriately issued a medical certificate to an employee. In reviewing the complaints received since November 2010 some strong themes emerged. In particular, each of these complaints included at least one of the following three allegations:

- That a doctor issued a medical certificate without reasonable cause, and that an employer was therefore required to provide paid leave to a staff member who was fit for work.
- That a doctor issued a retrospective certificate saying that a patient was unfit for work at some point in the past, even when the patient has recovered when seen and the doctor was therefore relying on patient comment rather than clinical observation.
- That a medical certificate did not contain sufficient information. This appeared to be particularly problematic when the diagnosis related to work-related stress.

The Council has also been provided with the results of a survey of employers conducted by the Employers and Manufacturers Association (Northern). 277 employers responded to this survey, and the findings included that:

- 70% of employers surveyed were not satisfied with the medical certificates they receive. Specific concerns included:
  - Lack of information.
  - The issuing of retrospective certificates.
- 87% of employers surveyed were concerned that medical certificates do not consider alternative duties.

While employers have been most forthright in offering their views on this subject, it is likely that insurers and government agencies such as ACC, WINZ and the Ministry of Education have similar experiences and concerns. At least one of these agencies has attempted to manage some concerns through internal policies - the Ministry of Education has a policy that it will not accept retrospective medical certificates for the purpose of allowing a student to miss an examination. Other agencies, such as WINZ and the Department of Labour, have published their own advice for doctors.

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Providing better guidance
Some of the tensions and difficulties that arise when writing a medical certificate cannot be addressed through the development of standards. When doctors, patients and employers all have different rights, responsibilities and needs there will always be a potential for conflict and disagreement. In addition, assessing the impact of an illness or condition on a patient’s capacity, or future capacity, is often difficult and precision can be elusive. However, the Council does feel that by strengthening and clarifying some of the expectations outlined in the statement we may be able to mitigate some of these tensions and difficulties. In particular, we feel that there is benefit in providing better advice to doctors around the level of information they can (and should) provide to employers and other receiving agencies.

The specific changes that Council proposes to make to the statement are outlined below.

When a certificate is also an activity prescription
Medical certificates are not just legal documents that allow a patient to seek a benefit, they can also have a key role in the treatment of that patient. The Council proposes to add a new paragraph (after paragraph 6) to the statement to emphasise this role and the duties associated with it as follows:

“In addition to being a legal document, many certificates are also an activity prescription intended to ensure that work or activity participation or non participation are consistent with the treatment and health needs of the patient. As with all prescribed treatments, you and the patient must balance the risks and benefits of the treatment plan, and any alternatives, before agreeing on the best treatment option.”

A further amendment, to paragraph 12 and detailed below, is proposed to ensure that certificates contain all the information necessary to fill this important purpose.

Consultation questions
1. Do you agree with the change proposed? If not, why not?

Making sure that certificates provide all the necessary information
Doctors are restricted in how much information they can provide to an employer, insurer or government agency. They may only provide the information that is required by the agency, and which the patient consents to being released.

The statement currently appears to focus on these restrictions, at the expense of emphasising what information doctors can and should provide to a receiving agency. The Council is proposing to make the following changes to paragraphs 11 and 12 to ensure, as far as possible, that medical certificates contain the information needed by the receiving agency (proposed amendments in **bold**):

“Certificates should only provide the necessary information required by the receiving agency and consented to by the patient. The certificate should not include private or irrelevant information. A diagnosis does not have to be disclosed unless it has direct implications for the receiving agency. However, where the diagnosis relates to ill health that arose in the workplace and the medical certificate is to be received by the patient’s
employer you should seek the patient’s permission and include on the certificate both a diagnosis and the workplace factors which the patient believes have contributed to this illness.

“Any comments on fitness to work should only be made once accurate information about the nature of the patient’s work is obtained. If the patient is fit for some duties this should be recorded in the certificate. Any duties that should not be attempted should also be clearly stated in the certificate.”

The Council further proposes to include additional advice to help doctors to respond to requests for more information from employers and other agencies at paragraph 14, as follows (amendments in bold):

“The receiving agency has the right to accept or reject a certificate. In making its decision, a receiving agency may seek clarification from you about the patient’s health status. It can be difficult in these circumstances to provide the agency with the information they require, while not breaching your patient’s right to privacy. In the absence of patient consent, the Council recommends that you limit any additional comments to your assessment of the patient’s capacity.

We also suggest adding a new footnote to paragraph 14 that provides some advice to the receiving agency about how to approach doctors for additional information, as follows:

“In such circumstances the most useful approach for a receiving agency may be to ask “Do you think the patient is capable of [activity X]?” or “Can you confirm that the patient was unwell enough to be off work, but well enough to [engage in activity Y]?”

Consultation questions
2. Do you agree with the changes proposed? If not, why not?

3. Are any additional changes required? If so, what are these?

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5 For further advice, please refer to the Department of Labour’s Guidance note for general practitioners: Certification of patients complaining of work-related ‘stress’ problems
4. 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?

Meeting legal standards
Some certificates, such as those that are included with applications under the Protection of Personal and Property Rights Act 1988, must meet specific statutory standards. The statement provides some advice on the statutory standards that apply with respect to death certificates and certificates issues under the Mental Health (Compulsory Assessment and Treatment) Act 1992, but generally it relies on the relevant government agencies to issue appropriate guidance on the form and content of certificates. However, we do propose to amend paragraph 9 of the statement as follows, to ensure that certificates meet these statutory requirements (amendments in bold):

“Certificates must meet the standards outlined in relevant legislation and be written legibly, minimising the use of medical terms for easy comprehension.”

Consultation question
5. Do you agree with the change proposed to paragraph 9? If not, why not?

The cost of medical certificates
Paragraph 25 of the statement currently states that:

“Completing a certificate entails investigation and responsibility. Council considers it acceptable to charge for the completion of a certificate. Information about charges must be clearly displayed or given to patients prior to consultation.”

Paragraph 57 of Good Medical Practice, the Council’s set of core standards for doctors, requires that doctors “do not exploit patients’ vulnerability or lack of medical knowledge when making charges for treatment or services”. The Council suggests that a similar standard should also apply to the charges that apply to completing a certificate, where the fee is sometimes paid by a person other than the patient. We propose amending paragraph 25 of Medical Certification to include this additional requirement.

We also propose to delete the sentence which reads “Council considers it acceptable to charge for the completion of a certificate”, because this sentence does not outline a standard or add any additional useful contextual information.
We suggest that paragraph be reworded as follows (amendments in **bold**):

> Completing a certificate entails investigation and responsibility, **however if you charge an additional fee for this service then that fee must be reasonable and should not exploit the vulnerability of lack of medical knowledge of the responsible person or agency. Council considers it acceptable to charge for the completion of a certificate.** Information about charges must be clearly displayed or given to **patients the person paying for the service** prior to consultation.”

**Consultation questions**

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

**Other amendments**

A number of other amendments are proposed. These do not impose new duties, but are intended merely to make Council’s expectations clearer and to align the wording and requirements with those in other Council statements.

These changes include amending paragraph 2 so that the wording is updated to reflect the standards outlined in the recently published edition of *Good Medical Practice*. *Good Medical Practice* outlines the standards that apply to the completion of all reports, documents and evidence – including certificates. Such documents must be completed “promptly, honestly, accurately, objectively and based on clear and relevant evidence.”

We further suggest that paragraph 23 be deleted, and replaced by a new paragraph following paragraph 3. Paragraph 23 states that a doctor cannot complete a certificate for a family member under the Mental Health (Compulsory Assessment and Treatment) Act 1992. The Council’s statement on *Providing care to yourself and those close to you* states that it is never appropriate for a doctor to complete any form of medical certificate for a family member (or some other person close to the doctor). It can be difficult to be objective when providing care to family members at the best of times, and the fact that a patient may benefit financially (or otherwise) from a certificate makes objectivity even more difficult – and may also lead to a perception of bias. We suggest replacing paragraph 23 with a new paragraph that mirrors the requirement of the statement on *Providing care to yourself and those close to you* and which states that:

> “You must not complete a medical certificate for yourself or someone close to you.”

We also suggest that paragraph 5 of the statement, which states that a doctor may be legally challenged and called on to justify a certificate, be deleted and replaced by a new paragraph under the heading *Background* which details how a doctor may be held accountable should his or her conduct not meet the standards outlined in the rest of the resource. This new paragraph is intended to provide more comprehensive and directive advice about a doctor’s accountabilities.

It is also recommended that paragraph 8 be deleted. This paragraph states that doctors who include false or misleading information in a certificate may be subject to disciplinary action. We have recommended deleting this paragraph for two reasons:
1. The expectation that the information contained in certificates is honest and accurate is already outlined in paragraph 2.
2. The new paragraph added under the heading *Background* makes clear that any breach of the standards may result in disciplinary or legal action.

A significant rewording of paragraphs 19-24 is also proposed. These paragraphs discuss some of the requirements of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and the steps that a doctor must take when asked to write a certificate to accompany an application for compulsory assessment under that Act. The Act has not changed, and the obligations on doctors under the Act have not changed, but the Council has attempted to reword this section of the statement to make those obligations more explicit.

The language of the statement has also been amended to ensure that it is as clear and direct as possible. Because the primary audience is the medical profession, who are expected to comply with the standards it outlines, this means replacing terms such as “the doctor” with “you”.

**Consultation questions**

7. Do you agree with the changes proposed? If not, why not?
Appendix A – Statement on medical certification with proposed changes highlighted

Background

01 As a doctor you are expected to sign a variety of medical certificates that range in purpose from confirming sickness to certifying death and are required by agencies including employers, insurers, ACC and government departments.

This statement outlines the standards that you must follow when completing a medical certificate. It may be used by the Health Practitioner’s Disciplinary Tribunal, the Council and the Health and Disability Commissioner as a standard by which your conduct is measured. A certificate you have completed may also be challenged in a New Zealand court and you may be called upon to justify your decisions.

Professional obligations

02 Certificates are legal documents. Any statement a doctor certifies must be honest and made in good faith should be completed promptly, honestly, accurately, objectively and based on clear and relevant evidence.

03 Your obligation is to his or her patient and to the law. Issues like the type of certificate being completed or who initiated, or pays, for the consultation must not influence the doctor’s assessment and findings.

You must not complete a medical certificate for yourself or someone close to you.

Implications of certificates

04 You must be aware that completing a certificate has implications for the patient, as well as themselves yourself, and the agency receiving the certificate.

05 Doctors may be legally challenged and called upon in a New Zealand court to justify their clinical certification.

06 Studies have shown that patient, family and cultural factors may influence how doctors complete certificates. Certificates may have financial implications for the patient and the recipient through benefits, employment and compensation payments and failure to complete a certificate appropriately or including certain information may have a negative impact on the patient, or the patient’s family or the receiving agency. You need to be aware of these influences and recognise that you may be susceptible to them.

In addition to being a legal document, many certificates are also an activity prescription intended to ensure that work or activity participation or non participation are consistent with the treatment and health needs of the patient. As with all prescribed treatments, you and the patient must balance the risks and benefits of the treatment plan, and any alternatives, before agreeing on the best treatment option.

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Completing a certificate may also directly affect the safety and security of others. Certifying a patient to undertake work when he or she is unfit may place the patient or the patient’s colleagues at risk.

Providing misleading or untrue information, either deliberately or negligently, is professional misconduct and may result in disciplinary action.

Content of certificates

Certificates must meet the standards outlined in relevant legislation and be written legibly, minimising the use of medical terms for easy comprehension.

The information disclosed should be accurate and based upon clinical observation, with patient comment clearly distinguished from clinical observation.

Certificates should only provide the necessary information required by the receiving agency and consented to by the patient. The certificate should not include private or irrelevant information. A diagnosis does not have to be disclosed unless it has direct implications for the receiving agency. However, where the diagnosis relates to ill health that arose in the workplace and the medical certificate is to be received by the patient’s employer you should seek the patient’s permission and include on the certificate both a diagnosis and the workplace factors which the patient believes have contributed to this illness.

Any comments on fitness to work should only be made once accurate information about the nature of the patient’s work is obtained. If the patient is fit for some duties this should be recorded in the certificate. Any duties that should not be attempted should also be clearly stated in the certificate.

A certificate should clearly identify the examination date and the time period of treatment (if any). Retrospective certificates should be clearly identified as such.

The receiving agency has the right to accept or reject a certificate. In making its decision, a receiving agency may seek clarification from you about the patient’s health status. It can be difficult in these circumstances to provide the agency with the information they require, while not breaching your patient’s right to privacy. In the absence of patient consent, the Council recommends that you limit any additional comments to your assessment of the patient’s capacity.

Statutory obligations – death

Certifying death is a statutory obligation and service provided to the Registrar of Births, Deaths, & Marriages.

Under section 4 of the Births, Deaths and Marriage Registration Amendment Act 2000 the doctor who attended the patient during the illness, and if satisfied the death was due to natural consequences of that illness, must complete a certificate “immediately after the doctor learns of the death”.

For further advice, please refer to the Department of Labour’s Guidance note for general practitioners: Certification of patients complaining of work-related ‘stress’ problems.

In such circumstances the most useful approach for a receiving agency may be to ask “Do you think the patient is capable of [activity X]?” or “Can you confirm that the patient was unwell enough to be off work, but well enough to [engage in activity Y]?”
17 Another doctor may complete the death certificate if satisfied the death was due to natural consequences of the illness and the doctor who last attended is:

- unavailable - defined under the Act as “dead, unknown, missing, of unsound mind, or unable to act by virtue of a medical condition”;
- unlikely to be able to give a certificate within 24-hours of the death; has not given a certificate and 24-hours has passed since the death;
- not withholding the doctor’s certificate because he or she is not satisfied that the death was due to natural consequences.

18 Before a doctor gives you complete a certificate for the death of a patient who was not under his or her care, the doctor you must give due consideration to the patient’s records and give regard to the circumstances of the patient’s death.

Statutory obligations – mental health

19 Under the Mental Health (Compulsory Assessment and Treatment) Act 1992 a person with a possible mental disorder may be subject to compulsory assessment and treatment. Anyone who believes that a person may be suffering from a mental disorder may fill out an application form asking the Director of Area Mental Health Services for an assessment of that person. Under section 8B of the Act such an application must be accompanied by a medical certificate.

20 A doctor If you are asked to complete a certificate to accompany an application to the Director of Area Mental Health Services you must examine the patient and form a view about whether the patient may be suffering from a mental disorder, if asked to complete a certificate under section 8B of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

21 If the doctor you consider that there are reasonable grounds for believing the patient may be suffering from a mental disorder, the doctor you must issue a certificate.

22 The certificate must state:

- the doctor’s identity
- that you have examined the person
- include the date the person was examined by the doctor
- that you consider that there are reasonable grounds for believing the person may be suffering a mental disorder
- the full particulars of the reasons for that opinion, explaining in what way you believe that the person’s condition may come within the statutory definition of a mental disorder
- that you are not related to the person or to the person requesting the assessment (unless you are the person requesting the assessment)
- and the doctor’s conclusions, with his or her reasons outlined.

23 A doctor cannot complete a medical certificate to accompany an application for compulsory assessment if he or she is related to the individual or the individual applying for assessment.

24 A doctor’s certificate completed under section 8B accompanies an application for compulsory assessment that will be considered by the Director of Area Mental Health. After considering the application and the certificate you completed, the Director of Area Mental Health Services will determine whether a compulsory assessment is necessary. The compulsory assessment will be undertaken by an approved doctor (usually a psychiatrist) in accordance with section 9(3) of the Act.
Charging for certificates
25 Completing a certificate entails investigation and responsibility, however if you charge an additional fee for this service then that fee must be reasonable and should not exploit the vulnerability of lack of medical knowledge of the responsible person or agency. Council considers it acceptable to charge for the completion of a certificate. Information about charges must be clearly displayed or given to the person paying for the service prior to consultation.

Notes
The Ministry of Health’s publication *Guide to Writing Death Certificates* outlines the practicalities of completing death certificates.