



Non-treating doctors performing medical assessments of patients for third parties

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.

Introduction

1. Medical assessments for third parties fall within the definition of the practice of medicine¹ and are a common feature of 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. You may perform medical assessments as the patient's own doctor (also referred to as the treating doctor) or as a non-treating doctor.
2. In some circumstances you may be asked as the patient's own doctor to provide a medical assessment of the patient for a third party. Insurance companies and employers tend to use this form of assessment. You may also be employed or contracted as a non-treating doctor when a 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. As a non-treating doctor your assessment may take several forms, including a consultation with the patient, physical examination or a file review of the patient's medical history.

The role of the non-treating doctor

4. As a non-treating doctor your role is to perform a medical assessment and provide an impartial medical opinion to the third party who has employed or contracted you. As the title indicates, your role does not include providing any form of treatment to the patient.
5. Decisions made by a third party will be influenced by your opinion and this may affect the outcome for the patient. Therefore the Council considers that in making a recommendation you have a responsibility to ensure that your professional opinion and recommendations are accurate, objective and based on all the available evidence.

Performing medical assessments

6. If you do not consider yourself suitably qualified to conduct an assessment, or identify a conflict of interest, you must decline the referral. You do not have to provide the third party with an explanation.
7. If the third party considers that a physical examination is not required, you must be satisfied (and be able to justify) that you have all the information necessary to make an accurate assessment without performing a physical examination or speaking with the patient.

¹ As defined by the Council pursuant to sections 11 and 12 of the Health Practitioners Competence Assurance Act 2003. A copy of the definition of the practice of medicine can be found at www.mcnz.org.nz under Resources >> Medical Registration >> Definition of the practice of medicine.

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

8. The basis of the relationship between the patient and you as an assessing doctor is not the same as that within an established doctor-patient relationship (even when you are also the patient's usual doctor), however patients being assessed are often vulnerable and you are still required to maintain a professional standard of care. The Council requires that non-treating doctors adhere to the principles in the Code of Health and Disability Services Consumers' Rights.
9. As such, you should treat the patient with respect, and ensure that they are free from coercion, discrimination, harassment and exploitation. If there is a meeting with the patient, you are required to respect the patient's dignity and communicate with the patient in a manner that enables him or her to understand the information provided and your role.

Effective communication and consent

10. 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 responsibility to the patient. Therefore, if you are required to consult the patient:
 - You must ensure he or she understands the purpose of the medical assessment and your role. Although the patient will usually be informed of this by the third party before seeing you, you should confirm this and, if necessary, provide further explanation. This explanation should include discussion about the differences between your role and the role of the patient's own doctor.

- You must explain what will happen during the assessment and also ensure that the patient is aware of what you are doing throughout the consultation. This includes explaining the scope of the consultation and any tests that the assessment may require.
- You must obtain the patient's informed consent. You should ensure the patient understands that any aspect of the medical assessment may be included in the report to the third party. You should not proceed with the assessment if the patient does not provide his or her consent. You should also advise the patient that he or she has the right to withdraw from the assessment at any time, and inform him or her of any relevant policy held by the third party in relation to withdrawal of consent and the process he or she should follow to organise another assessment with a different doctor. In either of these circumstances you should record in your report to the third party at what point the assessment was terminated and why.
- You must explain and ensure that the patient understands what will happen after the consultation. Specifically, you must ensure the patient understands that the report will be the property of the third party. Any questions or requests for information should be directed through the third party.

Recording a consultation

11. A patient may want to record the consultation by video or audio tape. You should consider such a request carefully and, if you do not consent, ask the third-party to arrange for another doctor to conduct the assessment².

Reports for the third party

12. 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. You should not speculate or base recommendations on insufficient or flawed evidence

² *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.

and if you are not satisfied that a medical opinion can be accurate, based on all the information provided in the file, you must clearly state this in the report. You may choose to recommend further methods of investigation if appropriate (i.e. medical tests, x-rays etc).

13. If you have been provided with any documentation or information from the third party this should be listed as part of your report. This ensures that this information can be referred to again if there are any issues or questions in the future.
14. If the third party has requested that you make recommendations (such as suitability for an employment position) these recommendations must not compromise the patient's safety.
15. It is the role of the third party to make the decisions for which they sought your advice. This includes decisions about eligibility for compensation and other benefits, and compliance with legislation. You should therefore restrict your comments to an assessment of medical issues.
16. The results of any tests or investigations you have ordered should be copied to the patient's usual doctor.
17. If you become aware of another medical condition as a result of your assessment, you should inform the patient and refer him or her back to his or her usual doctor for further investigation. You should notify the patient's usual doctor in writing. You should not notify the third-party unless your finding is relevant to their enquiries.

Medical assessments by the patient's usual doctor

18. In some circumstances you may be asked as the patient's usual doctor 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 or in instances where it would be inappropriate to refer to an unknown treating doctor (such as where the patient has experienced sexual abuse). In this situation you should clearly explain the difference in your role, so that the patient understands that the usual dynamics of the doctor-patient relationship are different.
19. You must ensure that any medical assessment of a current patient for a third party is accurate, objective and based on all the available evidence.

File assessments by non-treating doctors

20. You may be employed or contracted as a non-treating doctor to perform a medical assessment based solely on information in the patient's file. In such circumstances, and as with any other form of medical assessment, you must be satisfied that you have all the information necessary and a physical examination is not required before providing your professional opinion or recommendation.
21. You should remember that the documented findings of another health practitioner have been based on physical examinations and direct communication with the patient. If you conclude that the documented cause of a medical condition or diagnosis is incorrect, you need to be confident that your conclusion can be supported with relevant 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 you are confident and can justify that consulting with the patient or the health practitioner who made the initial diagnosis is not necessary.

Financial influences for the non-treating doctors

22. You must not allow the financial interests of either the patient or the third party to influence your assessment, opinion or recommendations.

Review of medical assessment opinions

23. The Health and Disability Commissioner has concluded that complaints about the contents of an assessment report and complaints about purely paper-based reviews are usually not within the Commissioner's jurisdiction. The Commissioner cannot look into complaints about these matters, and you should direct such complaints directly to the third party, as the party best placed to address these concerns.
24. Concerns about the conduct of a non-treating doctor during a face-to-face assessment may fall within the Health and Disability Commissioner's jurisdiction, and such concerns should be directed to the Commissioner's office. However, concerns about a non-treating doctor providing an opinion on a matter outside his or her scope of practice, or a non-treating doctor's competence should be directed to the third party or the Medical Council.

Other relevant resources:

- The Medical Council of New Zealand has released a statement on *Medical certification* that outlines 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).
- There are several publications available from 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/ or www.facocmed.ac.uk.
- The NZMA Code of Ethics
- The Code of Health and Disability Services Consumers' Code of Rights

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This statement is scheduled for review by December 2015. Legislative changes may make this statement obsolete before this review date.