



## THE SOUTH AFRICAN MEDICAL ASSOCIATION

### **SAMA Guide to Doctors for issuing medical Certificates and letters for COVID-19 related employer and employee requests**

The multiple changes in workplace limitations, directives and rules during the COVID-19 epidemic have confused employers, employees and health practitioners alike.

SAMA would like to clarify the responsibilities and duties of member doctors during this time with respect to testing, quarantine conditions and isolation with a focus on the employed patient and requirements of health and labour law.

Labour Guidance published on 29 April 2020<sup>1</sup>, however, requires that employers identify vulnerable and high risk employees and the current Level 3 Lockdown regulations (which are under intense scrutiny and debate) also require that employers identify staff with co-morbidities and vulnerabilities which qualify them to work from home where possible.

This, and the publication of guidance by the Department of Health to clarify the specific conditions which would render an employee vulnerable to severe COVID-19 infection, has resulted in some employees requesting staff and their medical doctors to complete tick-box forms stating the specific conditions from which the employee suffers so that decisions can be made about the employees work arrangements.

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<sup>1</sup> Department Of Employment And Labour. 29 April 2020. Covid-19 Occupational Health And Safety Measures In Workplaces Covid-19 (C19 Ohs. Directive By The Minister Of Employment And Labour In Terms Of Regulation 10 (8) Of The Regulations Issued By The Minister Of Cooperative Governance And Traditional Affairs In Terms Of Section 27 (2) Of The Disaster Management Act, 2002 (Act No. 57 Of 2002).

This is presenting a challenge to patient confidentiality in many instances.

## **1. Ethical and legal Considerations**

### **Doctor – patient Confidentiality**

The National Health Act makes it an offence for Doctors to disclose patients' information without their consent, except in certain circumstances. This right to confidentiality means more than simply refraining from divulging information – Doctors are also responsible for ensuring that all records containing patient information are kept securely.

Sections 14, 15 and 16 of the Act are pertinent with regards to confidentiality. In particular, sections 15 and 16 describe how patient information may be disclosed by a healthcare worker “for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interests of the user”.

The HPCSA views confidentiality as central to the doctor–patient relationship and a core aspect of the trust that holds the relationship together.

The HPCSA's Confidentiality: Protecting and Providing Information (2008), lists the key principles:

1. Patients have a right to expect that information about them will be held in confidence by health care practitioners. Confidentiality is central to trust between practitioners and patients. Without assurances about confidentiality, patients may be reluctant to give practitioners the information they need in order to provide good care.
2. Where health care practitioners are asked to provide information about patients, they should:
  - Seek the consent of patients to disclosure of information wherever possible, whether or not the patients can be identified from the disclosure; Comprehensive information must be made available to patients with regard to the potential for a breach of confidentiality with ICD10 coding.
  - Anonymise data where unidentifiable data will serve the purpose;
  - Keep disclosures to the minimum necessary.
3. Health care practitioners must always be prepared to justify their decisions in accordance with these guidelines.

### **Disclosures**

There are circumstances – including a statutory duty to share certain information, such as reporting notifiable diseases – when Doctors may have to disclose or allow access

to information within a patient's medical record. Not all these circumstances require Doctors to obtain the patient's consent.

Consent must be obtained from the patient if access to their record has been requested by the HPCSA, an insurance company, employer or people involved in legal proceedings.

If no such authority is forthcoming from the patient, no disclosure can be made.

## **2. Medical Certificates for Vulnerable Employees for special considerations in the workplace**

The Department of Health has issued guidance on identifying and managing employees at high risk of disease<sup>2</sup>.

The major categories include:

1. 60 years and older
2. One or more of the underlying commonly encountered chronic medical conditions (of any age) particularly if not well controlled:
  - chronic lung disease: moderate to severe asthma, chronic obstructive pulmonary disease (COPD), bronchiectasis, idiopathic pulmonary fibrosis, active TB and post-tuberculous lung disease (PTLD)
  - diabetes (poorly controlled) or with late complications
  - moderate/severe hypertension (poorly controlled) or with target organ damage
  - serious heart conditions: heart failure, coronary artery disease, cardiomyopathies, pulmonary hypertension; congenital heart disease
  - chronic kidney disease being treated with dialysis
  - chronic liver disease including cirrhosis
3. Severe obesity (body mass index [BMI] of 40 or higher)
4. Immunocompromised as a result of cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, prolonged use of corticosteroids and other immune weakening medications
5. >28 weeks pregnant (and especially with any of co-morbidities listed above)

In relation to these vulnerable employees, the Department of Health Guidance requires that:

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<sup>2</sup> National Department of Health. 18 May 2020. Clinical management of suspected or confirmed COVID-19 disease Version 4. Available at <https://www.nicd.ac.za/wp-content/uploads/2020/05/Clinical-management-of-suspected-or-confirmed-COVID-19-Version-4.pdf>

- The employee should be assessed by his/her treating doctor, or, in the event that a worker cannot afford such costs, the employee should be assessed by a doctor, at the expense of the employer (noting the doctor-employee confidentiality) and preferably one who has insight into the workplace and its processes.
- The doctor should provide a confidential note to the employer, indicating the presence of any of the above conditions, without specifying the diagnosis. Should the employee have a condition not listed above, which in the opinion of the doctor renders this employee vulnerable a motivation would be necessary.

**Note: The treating doctor should refrain from commenting on the employee's fitness to work.**

**The ability and situation in the workplace and special allowances which need to be made are the responsibility of the Employer.**

The doctor should ensure that the employee's health condition is fully optimized (the guidance makes some recommendations – but this will be on a per patient basis).

### **3. Suggested format of medical certificates declaring patients' high risk conditions to an employer:**

Similar to normal medical certificates, all the required details need to be in place, other than the time period for which the patient is considered to be sick.

The Ethical Rules of Conduct for Practitioners registered under the Health Professions Act of 1974, specifies the requirements for a valid certificate of illness. Rule 16 of the Act reads:

#### “16. Certificates and reports

(1) A practitioner shall grant a certificate of illness only if such certificate contains the following information –

- a) the name, address and qualification of such practitioner;
- b) the name of the patient;
- c) the employment number of the patient (if applicable);
- d) the date and time of the examination;
- e) whether the certificate is being issued as a result of personal observations by such practitioner during an examination, or as a result of information which has been received from the patient and which is based on acceptable medical grounds;
- f) a description of the illness, disorder or malady in layman's terminology with the informed consent of the patient: Provided that if such patient is not prepared to give such consent, the practitioner shall merely specify that, in his or her opinion based on an examination of such patient, such patient is unfit to work;

- g) whether the patient is totally indisposed for duty or whether such patient is able to perform less strenuous duties in the work situation;
- h) the exact period of recommended sick leave; (not appropriate in the case of COVID certificates)
- i) the date of issue of the certificate of illness; and
- j) the initial and surname in block letters and the registration number of the practitioner who issued the certificate.

(2) A certificate of illness referred to in sub-rule (1) shall be signed by a practitioner next to his or her initials and surname printed in block letters.

(3) If pre-printed stationery is used, a practitioner shall delete words which are not applicable.

(4) A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself.”