

MISUSE OF MEDICAL CERTIFICATES (MCs) – WHO IS TO BLAME – DOCTOR OR PATIENT?

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Registered medical practitioners are responsible for the preparation and issuance of many documents related to the health of a person. Among the many important health related documents, given by a practicing doctor, the most common ones have to be the medical report and the medical leave certificate which is commonly known as the MC. Medical Leave entitles the person receiving the leave certificate to legitimately stay away from work. The general principle in giving medical leave is that, the leave applicant is suffering from an illness and that a registered medical practitioner had deemed it serious enough to warrant recuperation. In some countries medical or unpaid leave is given to an employee to care for a sick family member or to care for a new son or daughter.

Sick leave is a necessary benefit for all employees. If an employer didn't offer sick leave, they would accelerate health problems and the spread of illness, thereby lowering productivity and morale. Despite the pressure for perfect attendance to improve customer service and efficiency, employees need equitable sick leave programs for security and overall high performance. The contract of employment between the employer and an employee should normally spell out the details of leave entitlement. The Employment Act 1955 is applicable to employees at the lower income level and such; this could be regarded in law as the minimum standard for everyone. The Employment Act 1955 lays down that an employee, upon commencement of employment, is entitled to 14 days paid sick leave. This increases to 18 days when the person has worked for two years or more, and 22 days when the employee has worked for five years or more. If hospitalisation is necessary, then irrespective of the period of service, an employee would be entitled to 60 days' paid leave.

Though the process of examining and certifying the medical fitness of a person to work or not should be a simple process, it is often fraught with many hidden dangers. *Debra A Dunsten, Lecturer in Clinical Psychology, New South Wales, wrote in the Australian Family Physician -* Many doctors experience negative emotions when conducting a medical examination. When multiple factors are influencing the patient's request for an MC, doctors can feel torn between the desire to 'advocate' for their patient, and their legal responsibility to objectively 'judge' the patient's level of work disability. The priority for most doctors is to maintain a good relationship with their patients, so that even if the doctor disagrees with a patient's request for extended time off work, many will acquiesce in order to avoid confrontation or damage to rapport. By supporting their patients' desires and/or expectations, many GPs believe they are acting in the patient's best interest. However, when long term work absence is the result, this may not be the case.

The provisions in the Employment act and the contractual agreement by the employers to grant medical leave is to ensure that an employee is in a fit state of health to carry out his duties efficiently. Though medical leave is taken by those who are unable to work as a result of a medical condition most of the time, there has also been substantial misuse. Employees are often noted to obtain medical leave in order to attend to personal chores or bypass the official channels in an organization to get leave sanctioned. There also have been many instances when MCs are obtained by untruth to extend the period of public holidays or their annual leave. Statistics tend to

indicate that the abuse of medical leave is probably widespread in Malaysia. This is a serious cause for concern as sick leave abuse translates into lost dollars and an inefficient industry.

According to the Malaysian Employers Federation, Malaysian employees in the private sector took an average of 4.2 days of medical leave in 2007, which is higher than the average in other countries. In the UK, for example, the average was just 0.9 days. The Federation estimated that it could cost employers RM2.7 billion a year for employees' outpatient treatment. An MEF survey of 202 companies revealed that, on average, 3.95 days of sick leave (with no hospitalization) were taken per employee in all industries in 2007. An estimated 19.18 million days of sick leave were taken in 2007. (Source : "Malaysians taking too much sick leave", NST, 10 Dec 2008)

There has also been frequent misuse of the MCs especially in the courts. Lawyers and some clients have had the audacity to predict that they will not be able in court as they will be ill on that particular day. The courts have taken strong objection to these manipulative behaviors, to dictate that the common MC's will not be accepted for non attendance in courts and a special MC with detailed information was required to be submitted. There has been much debate recently about the authenticity of the 'medical leave' which has been used to explain the non-availability of politicians recently. These actions have further jeopardized the reputation of the MC.

The Code of Professional Conduct of the Malaysian Medical Council (MMC) Section 2.1.4 of deals with abuse of professional privileges in respect of certification.

'Registered practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give particulars, notification, reports and other documents of a kindred character, signed by them in their professional capacity for subsequent use either in the Courts or for administrative purpose.

Any registered practitioner who shall be proved to the satisfaction of the Council to have signed or given under his name and authority any such certificate, notification, report or document of a kindred character, which is untrue, misleading or improper will be liable to disciplinary punishment.'

The MC like all other medical document is an important document and medical practitioners and must ensure that these documents always only state the true facts. Doctors have been and will be pressured from time to time to provide documents to support certain requests of the patients which may not be factual. Inaccuracies while providing MC's, has landed many medical practitioners in trouble, and thus it is absolutely essential to verify the facts before giving any medical certificate.