



The Legal Impact of the Doctor's Note

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In some circumstances, the doctor's note is one of the most powerful things in the world. To a child that really, really doesn't want to take that test today, a doctor's note is worth its weight in gold. But why? In part, it's because physicians remain the most trusted professionals even in our ever-more cynical society. But it's also because, in some circumstances, the law gives the "doctor's note" significant weight in determining whether the doctor's patient is entitled to some legal right or can be excused from a legal duty. Clearly, this is a responsibility physicians should take seriously and overwhelmingly, physicians do. But few have likely stopped to think about the rules applicable to these golden notes, particularly in the context of the COVID-19 pandemic.

There are many contexts in which physicians are asked to give opinions that may have legal weight. Some of the more serious include a criminal defendant's competency to stand trial, or whether an elderly patient is capable of making his or her own financial decisions. However, in this article, the term "doctor's note" is used to describe a less formal situation, in which a patient (or a patient's parent or guardian) asks you to write a "note" to someone, usually an employer or other government official, explaining the patient's medical condition and why he or she can't do something he or she is supposed to do (e.g., go to work or serve on a jury) or why he/she is entitled to some legal benefit.

All physician communications to third parties, including doctor's notes, must be truthful, and made with the patient's knowledge and authorization, to satisfy the applicable legal and ethical standards.

Doctor's notes are essentially communications to a third party about the condition of a patient, and this type of communication must meet certain legal and ethical standards. It's worth noting at the outset that nothing obligates a physician to provide a doctor's note in any situation. Courts have held that healthcare providers have no obligation to respond to requests for information or volunteer negative information; however, if they choose to speak, they cannot misrepresent the facts.¹ Therefore, if you choose to provide a doctor's note when requested, the following are legal principles to keep in mind.

The Wyoming Medical Practice Act and the American Medical Association's Code of Medical Ethics

Several provisions of the Wyoming Medical Practice Act's definition of "unprofessional conduct" are relevant to the issue of doctor's notes. The Act's definition has a catchall provision,² stating that "unprofessional or dishonorable conduct" includes but is not limited to:

- Engaging in any conduct or practice that is harmful or dangerous to the health of a patient or the public;³
- Engaging in conduct intended to or likely to deceive, defraud or harm the public;⁴
- Using any false, fraudulent or deceptive statement in any document connected with the practice of medicine including the intentional falsification or fraudulent alteration of a patient or healthcare facility record;⁵
- Engaging in conduct that relates adversely to the practice of medicine;⁶
- Using or engaging in fraud or deceit to obtain third party reimbursement;⁷

Similarly, the American Medical Association's Code of Medical Ethics speaks to the need to be candid and honest in all professional interactions, which is highly relevant to the issue of doctor's notes. Under the code's Principles of Medical Ethics, number 2, a physician shall "be honest in all professional interactions."⁸ Likewise, the AMA's Medical Ethics Opinion 5.05 – Confidentiality, states that "physician[s] should not reveal confidential information without the express consent of the patient, subject to certain exceptions which are ethically justified because of overriding considerations ... [w]hen the disclosure of confidential information is required by law or court order, physicians generally should notify the patient."

These principals can be applied through common sense to the majority of doctor's notes requested and provided by Wyoming. In the run-of-the-mill situation in which a patient requests a doctor's note to excuse a work absence or a school absence, the physician's obligation (if the physician chooses to provide the note) is simply to provide the relevant information accurately and truthfully. In some cases, a physician may be tempted to color the facts to the


patient's advantage—after all, there may seem to be little harm in a patient being able to take an extra day off work, or a student an extra day off school. However, this information may be needed to make decisions about whether someone can work safely, or return to school without spreading infectious disease, and it is easy to see how any misrepresentation, however seemingly harmless, could be considered a practice dangerous to the health of a patient or the public, and trigger a Wyoming Board of Medicine complaint.

Health Insurance Portability and Accountability Act (HIPAA)

Although it may seem counterintuitive, doctor's notes are, in essence, disclosures of a patient's protected health information (PHI) to a third party, and HIPAA's Privacy Rule and Security standards apply to the disclosure. Physicians should thus ensure that they have considered whether the disclosure has been duly authorized by the patient under HIPAA, or the disclosure falls within the scope of an exception to HIPAA's general rule prohibiting PHI disclosures. The federal Department of Health and Human Services (HHS) reinforces this general rule, stating on its "Employers and Health Information in the Workplace" webpage that, "Your employer can ask you for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance ... However, if your employer asks your healthcare provider directly for information about you, your provider cannot give your employer the information without your authorization unless other laws require them to do so."⁹ Again, it may seem like overkill to require a HIPAA-compliant authorization from a patient who has requested a doctor's note; however, if the information provided

isn't to the patient's liking, it can lead to a complaint to the Office of Civil Rights (the agency that enforces HIPAA). Given that penalties for HIPAA violations can include fines ranging from \$100 to \$50,000, it is worth crossing that extra "t" to be sure.

Conclusion

As stated above, physicians aren't obligated to provide doctor's notes in any situation (short of a subpoena or court order), but take on a significant responsibility if they do. While it may be difficult to resist the insistent patient's request for a doctor's note, Wyoming physicians should consider that, if they do so, they are bound by the same rules that apply to any other communication about the patient's condition. The simplest rules remain the best—when communicating with third parties about a patient's condition, make sure the communication is accurate and truthful, and ensure you've got the patient's consent in writing before doing so (in the form of a HIPAA-compliant authorization). 

¹Kadlec Medical Center v. Lakeview Anesthesia Associates, 527 F.3d 412 (5th Cir. 2008)

²Wyo. Stat. §33-26-402(a)(xxvii)

³Wyo. Stat. §33-26-402(a)(xxvii)(D)

⁴Wyo. Stat. §33-26-402(a)(xxvii)(E)

⁵Wyo. Stat. §33-26-402(a)(xxvii)(F)

⁶Wyo. Stat. §33-26-402(a)(xxvii)(K). This subsection primarily relates to domestic abuse and sex crimes, but the language in the initial portion of the subsection is very broad and could be construed to cover a host of issues.

⁷Wyo. Stat. §33-26-402(a)(xxvii)(T)

⁸American Medical Association, Publications & Newsletters, AMA Principles of Medical Ethics (<https://www.ama-assn.org/about/publications-newsletters/ama-principles-medical-ethics>) (last visited November 10, 2020)

⁹Department of Health and Human Services, Employers and Health Information in the Workplace (<https://www.hhs.gov/hipaa/for-individuals/employers-health-information-workplace/index.html>) (last visited November 10, 2020)



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