

The intricacies and pitfalls regarding a “fit-to-work” contractor certificate

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The hypothetical scenario depicted below is one of many challenges that occupational medical practitioners face when dealing with the issuing and administration of a fit-to-work certificate for a contract worker.

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Introduction

It is legally required by both the Occupational Health and Safety Act and the Mine Health and Safety Act that all employees are fit for the work that they are employed to do. Section 8 of the Occupational Health and Safety Act (Act 85 of 1993) prescribes the “general duties” of employers to their employees. Section 8(1) stipulates that the employer is obligated to provide and maintain a workplace that is safe and without risk to the health of their employees. To ensure that safety in the workplace is maintained, the legislator provides safety regulations in the Act. Some of these regulations require the employee to acquire a fit-to-work certificate. There are a few aspects of fit-to-work which need to be considered, viz. physical, spiritual, and mental health, meaning fit-to-work with the required skills and knowledge for the required time of the working day with the necessary energy.

There is a difference between a fit-to-work medical certificate, and medical surveillance that needs to be clearly understood. The purpose of a medical surveillance programme is to prevent, detect, or even treat occupational diseases, and is regulated under the health regulations of the Occupational Health and Safety Act. The purpose of sending an employee for a fit-to-work medical certificate is to ensure that the employee is indeed physically and mentally healthy to perform the job-specific tasks required in the workplace, and that such an employee will not be a potential hazard or cause a potential threat by not being fit to work. For example, one cannot declare a person with epilepsy fit-to-work on moving or rotating machines or to drive a mobile crane.

Whose job is it anyway?

Before an employee can start the job he is contracted to do within a company, it is the employer’s responsibility to

complete the job risks of their employees by grouping them in similar exposure groups (SEG), for example grouping the job-required risks of welders together. This can be done either on a man job specification template or on the Annexure 3 certificate of fitness regulated under the construction regulations of the Occupational Health and Safety Act. It is not the occupational health practitioner’s responsibility to identify the job specifications, but it is required that the job specifications be made available by the employer on the day of the medical fitness assessment. This will ensure that the employee is declared fit by the occupational health practitioner who performs a risk-based medical examination based on job-specific requirements by the employer.

Current pitfalls in industry regarding the certificate of fitness

The certificate of fitness is for most industries a nuisance activity, costing them money and the employers do not see the benefits thereof. They mostly do this because the certificate of fitness is required by the principal client. Because they did not buy into the health of their employees, little attention is given from whom they obtain the certificate of fitness, just as long as they can pay as little as possible to acquire this certificate to give them access to hazardous plants.

The hypothetical scenario depicted below, is one of many challenges that occupational health and medical practitioners face when dealing with the issuing and administration of a fit-to-work certificate for a contract worker.

Hypothetical scenario

Mr Not Knowing is an insulin-dependent diabetic who is struggling to find employment since he has poorly

controlled diabetes mellitus and the fluctuation of his blood sugar is erratic (more often above the minimum stipulated level to declare him fit-to-work). He has received an offer of employment at B Crane Hire on condition that he presents a “certificate of fitness to work” that meets the minimum regulated fitness standards guidelines. Regrettably, because of his elevated random and fasting blood glucose, obtained at an independent occupational health service provider, Mr Not Knowing could not be employed. Out of sheer desperation, he obtains a certificate of fitness under dubious circumstances, and finds employment whilst his blood glucose is still uncontrolled.

The role of the occupational health practitioner

The newly appointed occupational health nursing practitioner, Sr Know Most at BC&L Construction is tasked with reviewing fit-to-work medical certificates obtained at an external, independent service provider and to give feedback to management in the Safety Health and Environment, Risk, and Quality (SHERQ) meetings and decision-making processes. Her sole mandate was to do the fit-to-work medical assessments and reviews.

On the third morning of Sr Know Most’s employment, she was summoned to the site of an accident on the plant to render medical assistance to the injured. On arrival, she found that a 160-ton mobile crane from B Crane Hire had crashed through a building under construction, resulting to one fatality and one disabling injury. After emergency care and stabilisation of the injured at the accident site, Sr Know Most insisted that she be included in the incident investigation.

Root cause analysis

The client, BC&L Construction, decided to use the root cause analysis method for incident investigation and acceded to Sr Know Most’s request to include her as a member of the investigating team. When investigating the timeline leading up to the event and the evidence obtained, it was found that “The content of the Safety Files” had been audited and approved by the safety manager employed by BC&L.

1. The fit-to-work certificates are required to be part of the safety files.
2. There is no system in place by BC&L to verify the validity of the certificate of fitness.
3. Medical fit-to-work certificates are accepted together with the Annexure 3 certificate, irrespective of who issued the certificate, or considering the health and safety hazards of the tasks at hand.
4. Some contractors expect their workers to present a fit-to-work certificate prior to their appointment. This opened the door for Mr Not Knowing to present a falsified fit-to-work medical certificate to BC&L without verification of the issuer and authentication of the certificate.
5. It was also discovered that certain contractors do not make use of a medical service provider based on quality and competency, but on pricing.

6. Whilst examining the files, it was discovered that only a few workers had valid Annexure 3 medical certificates of fitness and that the Annexure 3s were not completed by the employers prior to being signed off by the occupational health practitioners.

The root cause of the incident that led to the fatal accident was identified as the loophole where an unfit contractor was allowed to work on-site with a falsified fit-to-work certificate.

Implementation of control systems

After this tragic and avoidable incident, top management of BC&L Construction implemented a system involving all members of the Health, Safety, Environmental, Risk and Quality departments to establish a sound Section 37 (2) Occupational Health and Safety Act appointment for contractors. This system includes quality control of all documents within the health and safety file but considering the incident of Mr Not Knowing, specific attention was given to the fit-to-work certificate, including the competency of the person making the assessment on the legality of the certificate of fitness.

In reviewing their control systems, BC&L Construction considered the definition of a competent person as per the Construction Regulations of the Occupational Health and Safety Act. Having the required knowledge, training and experience in the specific field, results in a competent employee. By so doing they broadened their decision-making process as to who would be responsible to assess the validity of the fit-to-work certificates for all contractors allowed on-site. They concluded that Sr Know Most is the only one who could be declared competent, fulfilling the definition of having the required knowledge, training, experience, and qualifications specific to the issuing of a fit-to-work medical certificate. She was therefore included in the legal appointment process as being responsible for the assessment of all fit-to-work medical certificates. Her job description was changed to include her in all incident and accident investigations where compromised health could be a cause of an incident or accident. To improve her inputs, management scheduled her for a Root Cause Analysis course. Sr Know Most was given the authority as the final decision maker for access control concerning the fit-to-work certificate.

Functions of the occupational health practitioner

As part of her new legal appointment responsibilities, Sr Know Most implemented the following controls to avoid future incidents that could result from poor fit-to-work medical certificate management:

1. The medical service provider needs to conform to certain minimum requirements stipulated by BC&L Construction before their fit-to-work certificate would be accepted:

- a. The registered occupational health practitioner must have a valid annual practising certificate with SANC that includes a qualification in occupational health.
 - b. The registered occupational health medical practitioner as well as the diagnostic radiographer must have a valid annual practising certificate with Health Professions Council South Africa (HPCSA) that includes a qualification in occupational health for the medical practitioner.
 - c. All screening tests done by the medical service provider must be supported with proof of competency with a valid qualification. Examples are a certificate in vision screening, spirometry, audiometry with proof that the audiometrist has been entered onto the register of audiometrists in terms of the Occupational Health and Safety Act, 1993.
 - d. Proof that the necessary refresher courses have been done.
2. In conjunction with the consultant occupational health medical practitioner, Sr Know Most must establish minimum medical standards for fit-to-work that are communicated to all approved service providers who are then expected to conform to these standards when issuing the fit-to-work certificates for any contractor performing work at BC&L Construction.
 3. An audit tool was developed to audit all short-listed medical service providers to be entered into the approved service provider management system for fit-to-work certificates.
 4. A systematic review of all current certificates of fitness available in contractor files was done to establish a short list of medical service providers to eliminate those who do not conform to the minimum requirements of an eligible occupational medical service provider.
 5. The short-listed medical service providers were notified that they will be audited, and the audit tool was distributed to them.
 6. After auditing the service providers, Sr Know Most communicated the outcome of the audits to management. Management then established a list of approved service providers of whose fit-to-work medical certificates would be accepted by BC&L Construction. This list was distributed to all approved medical service providers and contractors performing work for BC&L Construction.
 7. All contractors were informed that they should complete the Annexure 3s before booking their appointments for medical examinations in order for the occupational health practitioner to sign the Annexure 3 considering all health and safety hazards involved in the tasks at hand.

Conclusion

In reaching a conclusion to the scenario presented above, allowing contractors to decide for themselves based on price as to who they use to obtain a fit-to-work certificate can lead to non-compliant and substandard medical examinations being performed. Taking the cheap option can result in being cheated. Falsification of fit-to-work medical certificates can only be eliminated when proper controls are in place by the client on whose site work is performed. In order to manage the health and safety hazards caused by the person entering the site, the fit-to-work certificate must be issued according to the hazards of the tasks at hand as indicated in Annexure 3. Annexure 3 shall consider all workplace hazards and PPE required whilst evaluating the medical outcomes of the examination before the occupational health practitioner can issue the Annexure 3 fitness certificate.

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