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Let benefits applicants write their own declarations

PERSPECTIVES

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The patient, not the doctor, should have the right and duty to report to the Norwegian Labour and Welfare Administration how their illness affects their ability to work.

The ideal of patient co-determination and autonomy is highly valued in our liberal society. The model works, because it is humanist, effective and rational. *Paternalism*, on the other hand, is based on the view that individuals do not always know what is best for them. In the National Insurance Act and the Norwegian Labour and Welfare Administration (NAV), paternalism also functions as a protective barrier to society's resources: welfare services are primarily designed to help people find work and reduce the growing number of benefits recipients (the so-called 'employment promotion' policy). In consultations related to social insurance issues, doctors therefore overrule patients (1). In my opinion, however, the doctor's statutory duty to document medical reasons for occupational disability for NAV implies a form of paternalism which is functional neither for the doctor, the patient, nor NAV.

The requirement for doctors to document the patient's functional and income-earning capacity rests on an implicit assumption that the patient's voice – in contrast to the doctor's – is not trustworthy or objective. I would like to argue that in principle, benefits applicants are trustworthy and competent to give an account of their general and specific ability to function and (reduced) income-earning capacity. A self-declaration from the patient should be included in cases related to disability benefit and considered valid documentation on par with the GP's medical expertise.

The GP's problem

The authoritative role of Norwegian GPs in matters pertaining to social benefits for their own patients is unique in Europe (2). Writing medical certificates for NAV is a mandatory task for GPs, but is often undertaken in a negatively charged context. Research from Norway, Sweden and the UK shows that GPs frequently perceive their medical expert role as a burden (3) and as a source of conflict with the patient (4–7), and that 'correct' communication with NAV is challenging (8). GPs have little time for or interest in 'paperwork' (9), and they are dissatisfied with the remuneration (the rate corresponds to a mere 40 minutes of work). They find it difficult to assess the patient's functional ability and capacity to work (10, 11), often based on non-specific clinical pictures (12). Inadequate medical certificates are frequently the outcome.

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For NAV, the description of *functional ability* is the 'golden nugget' in a medical certificate. However, the National Insurance Act presupposes that the GPs know how the patients function in their daily lives (13), which they do not and cannot know. This assumption contrasts with the requirement for a verifiable (objective) declaration based on facts and genuine insight. The gap between the wording of the Act and clinical reality is likely to be one explanation for why many medical certificates fail to fulfil the requirements for completeness and verifiability (14–16). Despite all their shortcomings, however, medical certificates remain one of NAV's most important documents in cases related to disability (11, 17).

The patient has no direct voice

In principle, the communication (the medical certificate) in a case related to disability takes place above the patient's head, between the GP/specialist and NAV. The person who writes it (the doctor) has objectively speaking no stake in the outcome of the case. Those who interpret the text and decide the case (the regional NAV office) never meet the patient. The person whom the text concerns (the patient) has no direct say in the text.

How much emphasis NAV places on the doctor's text when making the final assessment will depend on the quality of the doctor's work. The Supreme Court established this in a ruling from 2019 that upheld NAV's rejection of a sickness certification because of insufficient documentation of the patient's unfitness for work (18). In other words, the patient depends on the doctor to be thorough, as well as able to clearly and skilfully communicate not only the patient's perceived reality, but also his or her own professional assessments.

Subjectivity *and* objectivity

Rather than being objective, we know that patients' self-assessments are rooted in the subjective experience of symptoms, in the appraisal that they make of themselves, their environment, their resources and interests. With very few exceptions, the patient is the one who is most capable of presenting us with a picture of their world – it belongs to the patient's linguistic zone, to use the concept coined by the literary scholar Mikhail Bakhtin (19). Including the patient's linguistic zone, thereby lending legitimacy to what is subjective is consistent with a holistic approach to medicine. In addition, the patient should in principle consent to what *can* and *ought to* be included in a medical certificate related to them, as well as state what they do *not* want to be communicated to NAV. In the process leading up to disability benefit, patients are given some opportunity to present themselves to NAV, orally or by completing forms, but this does not count as authoritative documentation. According to the National Insurance Act and in NAV's practice, the doctor's statement is what carries authority, not the patient's.

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In the medical certificate, the GP contributes *his or her own* linguistic universe: information on the diagnosis, prognosis and treatment. To describe the patient's real level of functioning and ability to work, the current system compels the doctor to loan the narrative mainly from the patient's linguistic universe, while passing it off as the doctor's own discourse.

The doctor's credibility is at stake

Item 5.1 in the *Medical certificate – occupationally disabled* says: 'Describe how the general functional capacity is reduced because of illness'. However, how a person functions in daily life cannot be verified by the doctor as an observable fact; it will only reflect the doctor's version of the patient's narrative (to the extent that a narrative has been obtained). This is the hardest item in the medical certificate, since it may give rise to a conflict of roles. Doctors often fail to provide an assessment of functioning, which is understandable, although problematic. Providing a 'medically based assessment of the ability to function and work' and giving an account of the causal relationships involved should therefore not be demanded of the GP. The doctor's professional integrity is under threat when NAV's need for information stretches the boundaries for the doctor's skills.

The problem with medical certificates

According to the Act, occupational disability must be 'clearly the result of illness'. GPs know, however, that an unambiguous medical cause of occupational disability is rare. In a given context, anybody can become ill or disabled. Though, if the doctor includes information on family-related or social burdens, this will not only be irrelevant according to the National Insurance Act, but can also be misinterpreted by NAV and harm the patient's case.

Many doctors resort to a deliberate 'NAV-adapted' rhetoric in matters of social benefits and – in the absence of verifiable medical facts – attempt to convince [NAV] that the patient should have disability benefit (8). Often, this leads to biased and subtle formulations. In my doctoral thesis on the language used in medical certificates, I found that doctors strongly emphasise the patient's symptoms and conditions, apparently based on the principle that the more symptoms and conditions the better, even when they may be unrelated to occupational disability (20). The expert GP reduces the patient to a passive carrier of symptoms and portrays him or her as failed or non-existent as an acting individual – most often without any assessment of functioning (16).

Some medical certificates indicate that the doctor and the patient disagree as to whether occupational disability benefit is justified. This can be expressed indirectly, for example as ironically charged renderings of the patient's statements (10). Or conversely, when the doctor seeks to help the patient obtain disability benefit, the medical certificate may include appeals to the reader to grant the request. In such cases, the benefits applicant can be highlighted as 'worthy', meaning that they have good values that give a high score in NAV (motivation, willingness to work etc.) (17). This rhetoric is consistent with acting as the patient's advocate, but as we have seen, illness as a cause of impaired functioning has the highest value in NAV.

> ***«A deficient declaration entails no consequences for the doctor in the role of expert, since a medical certificate as such is not subject to administrative law»***

Self-contradiction and irrelevant information may appear, concerning both the benefits applicant and his/her family. Medical certificates can contain information which is inadvertently offensive and 'in the name of objectivity' disregards the patient's subjective view (21). Section 8.1 of the National Insurance Act requires medical certification of occupational disability, but does not stipulate that the patient should participate in or consent to how the medical certificate is formulated. The benefits applicant must presume that the doctor communicates the matter exhaustively and correctly. NAV surprisingly rarely returns a medical certificate because of errors or omissions. Instead, the benefits applicant most likely receives a rejection (22). A deficient declaration entails no consequences for the doctor in the role of expert, since a medical certificate as such is not subject to administrative law.

The right to plead your cause

As far as possible, patients should have both the right and duty to represent themselves. As in private insurance cases, a patient self-declaration should be introduced and made subject to the same legal requirements for correctness and verifiability as the medical certificate. As a document, it should have the same legitimacy and force as the doctor's medical information. The patient should be co-author of the declaration in a separate, distinctive format, so that the two texts, the medical certificate and the patient's declaration, *together* form the basis for a decision by NAV. The doctor should not passively *adopt* the patient's perspective, but *relate* to what the patient's declaration says as the patient's own, separate linguistic zone. The doctor can then restrict his/her contribution to providing information on the diagnosis, medical treatment, and prognosis, and commenting on the patient's own narrative where this is medically relevant. Use of a patient self-declaration is permissible in the current system, but should be included in the National Insurance Act to ensure that the patient has this right.

Advantages of strengthening the patient's responsibility

For benefits applicants, the right to and duty of self-representation vis-a-vis NAV will imply that they will be able to select and highlight information on their own health, functioning and ability to work, and limit any information on their private life. This will raise the patient/benefits applicant from a position of passive object to that of a participating, autonomous and responsible subject who has the right to speak directly on their own behalf.

> ***«Use of a patient self-declaration is permissible in the current system, but should be included in the National Insurance Act to ensure that the patient has this right»***

For the doctor, the patient self-declaration is likely to have positive consequences. The doctor can stay within his or her medical competence area and leave it to the patient to describe their symptoms, functioning and ability to work. This is likely to save time, reduce the doctor's stress and 'advocacy' role, and produce fewer conflicts with patients.

Seen from NAV's point of view, the patient self-declaration, separated from the doctor's medical assessment, could entail a more credible and exact description of the loss of functioning. This clear separation of the information sources will eliminate any speculation as to what is the patient's statement and what is the doctor's assessment. The NAV form *Medical certificate – occupationally disabled* should be revised, and in addition, a new format should be prepared and devoted to the patient's self-declaration.

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