

Thank you for agreeing to provide your expert clinical advice to ACC. This document helps you understand what is expected of you when you are asked to provide an opinion on an ACC claim.

ACC's role is to ensure that people in New Zealand receive the rehabilitation they need to return to work or everyday life after injury. This isn't a role that we perform alone, but one that we carry out in partnership with you. As a health practitioner, you play an important role in assisting ACC to fairly administer the Accident Compensation Scheme (the Scheme) by advising on issues related to cover and entitlement.

The role of a health practitioner is to provide clinical expertise to ACC. When asked to provide your opinion on a claim, ACC will provide you with copies of clinical records and any relevant reports from other providers. You will usually be asked specific questions. You may be asked to physically examine the injured person or to provide an opinion based "on the papers". Your report will form an important part of ACC's decision making process.

1. The role of clinical evidence for ACC

Where necessary, ACC uses clinical evidence to determine whether

- an accident caused the injury
- the client is eligible for specific entitlements, such as treatment, weekly compensation or home help. Suspension or revocation of such entitlements leads to a significant number of disputes.

2. ACC's expectations of health practitioners

Your role is to provide an impartial opinion to ACC in keeping with professional requirements for honest, accurate, objective reports that are delivered promptly and are based on relevant information.

In preparing your opinion you should take account of the High Court's expectations of an expert witness (see **Appendix 1**), alongside the Medical Council of New Zealand's professional standards and guidelines.

a) Qualifications

You should give opinions only on matters within your area of expertise. If you do not consider yourself suitably qualified to provide the advice, you should notify the person at ACC who requested the advice.

b) Impartiality

It is essential that your advice is free from bias or any appearance of bias. The test for bias is whether there is any risk, or perceivable risk, that the health practitioner might unfairly favour or disfavour the injured person they were asked to provide advice about. This means that your professional opinion

should be based only on relevant information rather than any favourable or unfavourable outcome for the client.

Any personal connection with the injured person must be disclosed to ACC at the time advice is sought.

You must not allow your personal interests, or the financial interests of either ACC, or the client, to affect your assessment, opinion or recommendations. Your opinion should not be influenced by who funded the assessment.

c) Accuracy of information

Your advice must be honest, accurate and objective. You should not speculate or base recommendations on information about which you are aware is insufficient or flawed. If you are not satisfied that a clinical opinion can be accurate, based on all the information provided in the file, you must clearly state this in the report. You may choose to recommend further methods of investigation if appropriate (eg medical tests, x-rays).

If you feel further information or explanation is required, it should be sought from the person at ACC who requested the advice. Information sought from/provided by the client, should be recorded as such in your advice.

If you consider that physical examination is necessary to provide a considered opinion, you need to raise it with ACC immediately.

When providing clinical advice to ACC it is also important you have a clear understanding of the relevant legal test you should be applying (ie the balance of probability).

d) Consultation and peer review

It is acceptable to discuss issues with a professional colleague, provided the colleague has no connection to the claim and no identifying details are revealed. Where input of this nature helps to form your opinion, it should be referenced in your report, including the qualifications of the colleague.

e) Privacy and confidentiality

Privacy is a core focus area for ACC. ACC's privacy policy, publicly available on its website, sets out the principles used by ACC to collect, use, disclose and store personal and health-related information. You should manage personal information carefully and respectfully.

3. Client rights

The *ACC Code of Claimants' Rights* provides certain rights for injured persons. As an advisor to ACC, you are required to observe those rights, just as you are required to comply with patients' rights under the *Code of Health and Disability Services Consumers' Rights*.

The client's rights in the ACC Code are:

Right 1	You have the right to be treated with dignity and respect.
Right 2	You have the right to be treated fairly, and to have your views considered.
Right 3	You have the right to have your culture, values, and beliefs respected.
Right 4	You have the right to a support person or persons.
Right 5	You have the right to effective communication.
Right 6	You have the right to be fully informed.
Right 7	You have the right to have your privacy respected.
Right 8	You have the right to complain.

4. Expert evidence at review or in Court

If you are required to give expert evidence at a review hearing or at a Court appeal, keep in mind that your duty as an expert witness is to the Reviewer or Court. While you are expected to maintain your opinion as originally given, you are entitled to reconsider and take on different views when new information justifies that.

As a potential expert witness, you may be in a position of giving evidence for a review hearing or before the Court. To give the Reviewer or Court confidence that your opinion is objective and expert, you should adhere to certain rules of conduct agreeing that you are not an advocate for any party and have an overriding duty to assist the Reviewer or Court impartially within your area of expertise.

5. Client access to information about details of external advisors

ACC occasionally receives client requests for information about the identity and contact details of external health practitioners.

Information requests relating to decisions made about a client are generally considered to be information about that individual, and subject to the Privacy Act.

ACC has a legal obligation to either answer such information requests directly or transfer them to the health practitioner concerned.

Typically a request that is only for the identity of a health practitioner would be answered directly, and requests for more detailed information about the client would be transferred to the health practitioner.

Contact the Privacy Officer (Privacy.Officer@acc.co.nz) if you have any concerns or queries about information access requests.

6. References

- Office of the Health & Disability Commissioner – Guidelines for Independent Advisors
- Medical Council of New Zealand – Non-treating doctors performing medical assessments of patients for third parties
- Medical Council of New Zealand - Good Medical Practice, June 2016.

Appendix 1: Expectations of an expert witness

Schedule 4 Code of conduct for expert witnesses¹

Duty to the court

- 1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
- 2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

- 3 In any evidence given by an expert witness, the expert witness must—
 - a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it:
 - b) state the expert witness' qualifications as an expert:
 - c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:
 - d) state the facts and assumptions on which the opinions of the expert witness are based:
 - e) state the reasons for the opinions given by the expert witness:
 - f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:
 - g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
- 4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
- 5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

- 6 An expert witness must comply with any direction of the court to—
 - a) confer with another expert witness:
 - b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:
 - c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
- 7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

¹ High Court Rules 2016 <http://legislation.govt.nz/regulation/public/2016/0225/latest/whole.html>