



Construction regulations and the Medical Certificate of Fitness

BACKGROUND

The promulgation of the amended Construction Regulations in 2014¹ introduced the need to issue construction workers with medical certificates of fitness (MCoFs) based on the jobs in which they were employed. Regulation 7(8) of the Construction Regulations states: "A contractor must ensure that all his or her employees have a valid medical certificate of fitness specific to the construction work to be performed and issued by an occupational health practitioner in the form of Annexure 3". The intention of Annexure 3 (Fig. 1) is to ensure that a worker is certified as medically fit, based on the understanding of the tasks the he or she is required to perform relevant to the job requirements, the exposures he or she might encounter in the workplace, and the personal protective equipment required. If the intention of the legislator is embraced, then medical surveillance activities would be job-specific, moving away from the broad-brush approach where anything and everything is included in the medical examination. This is of benefit to both the worker (ensuring that the correct aspects of his or her health are monitored) and the employer (providing cost-effective medical examinations with the assurance that the correct testing is implemented to monitor workers' health).

Members of the South African Society of Occupational Health Nursing Practitioners (SASOHN) experienced challenges with the implementation of Annexure 3, stemming from employers and safety officers in the construction sector appearing not to understand the

intent of the document. The result was that many of the issued MCoFs were rejected by the construction sector. Two of the main challenges were:

1. Employers insisted that an occupational medical practitioner (OMP) should complete Annexure 3, and rejected those completed by occupational health nurse practitioners (OHNPs); and
2. Employers only accepted a MCoF in the format of the published Annexure 3, rejecting other amended formats submitted by occupational health practitioners (OHPs), which were developed to accommodate the need to record if an employee was deemed unfit or fit for work, but with restrictions.

The major concern arose from item 2. Annexure 3 in its original published format did not allow for a worker to be certified as 'fit with restrictions' (e.g. needing to regularly check blood pressure) nor could a worker be certified as 'unfit' (not medically fit to perform tasks) for the job profile presented. Where an OHP amended Annexure 3 to indicate a restriction on the worker's scope of work due to his or her medical condition, it was found that the MCoF was rejected by the employer.

The concern raised regarding item 1 was that the OHNPs were unable to conduct the medical examination. These concerns were raised with the Department of Labour (DoL) through the Occupational Health Forum. Communication with the DoL resulted in clarification for OHPs.

Annexure 3

OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993CONSTRUCTION REGULATIONS, 2014

Medical Certificate of Fitness

Name of Employee _____ ID Number _____ Co Number _____

* Occupation <small>e.g. General worker, Welder, Bricklayer, Steel fixer, Mobile crane operator, etc</small>	* Possible Exposure <small>e.g. Noise, Heat, Fall risk, Confined spaces, etc</small>	* Job Specific Requirements <small>e.g. Operating mobile crane, Digging trenches, Erecting formwork and support work etc</small>	* Protective Clothing <small>e.g. Dust respirator, Welding gloves, etc</small>

*** The Employer to complete the information in the spaces marked with an * before sending the Employee for a medical examination**

Declaration by the Medical Examiner:
I certify that I have, by examination and testing, using the above criteria specified by the employer, satisfied myself that the abovementioned employee is fit to perform the duties as described by the employer in the matrix above.

Occupational Medicine Practitioner / Occupational Health Nursing Practitioner: _____

Signature _____ Practice Number _____ Date _____

Address _____

This Medical Certificate of Fitness is valid for one year from date issued

Figure 1. Annexure 3 of the Occupational Health and Safety Act (Act No. 85 of 1993)



On 2 June 2017, a Construction Regulation Guideline² was published, which clarified that, for the purpose of the regulation, an OHP refers to either a doctor or nurse with additional qualifications in occupational health. For a doctor or nurse to be recognised as an OHP, the following criteria must be met:

1. A doctor should be registered and in good standing with the Health Professions Council of South Africa (HPCSA), and have a tertiary qualification in occupational health/medicine registered as an additional qualification with the HPCSA, or be registered as a specialist in Occupational Medicine with the HPCSA.
2. A nurse should be registered and in good standing with the South African Nursing Council (SANC), and have a tertiary qualification in Occupational Health Nursing approved by and registered with the SANC.

This updated guideline addressed the issue of who could conduct the medical assessment for the purpose of completing Annexure 3.

To clarify the concerns raised with regard to the acceptance and rejection of the MCoF in an amended format of Annexure 3, SASOHN received written communication on 4 June 2018 from Mr Phumudzo Maphaha, representing the DoL. According to this communication, OHPs can use similar forms to Annexure 3 on the condition that:

1. A MCoF should meet all the requirements as stated in Annexure 3;
2. The health and safety of employees and any affected persons must be promoted; and
3. No prejudice may be practiced against employees and any affected persons.

An example of an amended format of Annexure 3 which

accommodates the ability to reflect required restrictions or limitations on work based on the employees' health, and which could be used by OHPs, is provided on the Journal website: www.occhealth.co.za. The format of Annexure 3, as described in the Construction Regulation No. 84 of 2014, can be changed as long as it includes the minimum information as specified in Annexure 3. This allows the OHP to amend Annexure 3 to include the need to apply restrictions to work or to certify a worker as unfit for the proposed work.

SASOHN members are encouraged to report all cases where a MCoF is rejected, and to address any related queries, to the National Office (office@sasohn.co.za).

REFERENCES

1. South Africa. Department of Labour. 2014. Occupational Health and Safety Act, 1993 (Act No. 85 of 1993). Construction Regulations, 2014. Government Gazette No. 37305:84 7 Feb.
2. South Africa. Department of Labour. 2017. Occupational Health and Safety Act, 1993 (Act No. 85 of 1993). Construction Regulations, 2014. Government Gazette No. 40883:489 2 Jun.

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