Notice

Explanatory leaflet about the necessary steps in the case of inability to take an examination due to illness

I. Basic information

1. Withdrawal prior to the start of the examination
   Non-appearance for an examination is regarded as an effective withdrawal provided that students are not obliged to repeat an examination or that they are not obliged to take an examination for the first time on a pre-determined examination date. If students withdraw from a mandatory examination on a pre-determined examination date or from a repeat examination for medical reasons, they have to immediately give notice of the illness or the respective medical reasons in writing, and they have to substantiate them by means of an informal application for extension of the deadline with a medical certificate (for requirements for medical certificates see Section II. below). The medical certificate must be issued on the basis of a medical examination which definitely has to be carried out on the day of the missed examination. In this context, “in writing” means that the students have to address a letter to Kempten University which has been dated and signed by them. Notification by e-mail or fax in no case constitutes such required notification in writing nor is it be possible to make such notification by telephone. The obligation of “immediacy” is fulfilled if the application and the medical certificate are received by Kempten University no later than on the third day after the examination date.

2. Start of an examination
   An examination is regarded as having started when the examination task has been handed out. Once students have started taking an examination (i.e. once they have received the examination task), the examination will definitely be marked.

3. Inability to take an examination occurring during an examination
   Students can withdraw from an examination during the examination for medical reasons. Any inability to take an examination which occurs during an examination has to be reported to the examination supervisors or invigilators immediately, and this always has to be entered into the examination records. Without such an entry no effective withdrawal from an ongoing examination can be confirmed even if the examinees see a phy-
sician afterwards who then certifies their inability to take an examination. In this context, it needs to be pointed out that the responsibility to prove that they declared with sufficient clarity that they want to have the examination cancelled rests with the examinees notwithstanding their obligation to give notice of and to substantiate the reasons. In this case, the students immediately have to see a physician and make the required application for acceptance of their withdrawal from the examination. “Immediately” means “without undue delay”. This means that the students are obliged to see a physician on the day of the examination. Outside office hours or if the student’s own physician is unavailable, the students are obliged to see the physician’s substitute or the emergency medical service so that the medical certificate can be issued immediately. Retrospective medical certificates will not be accepted.

Therefore, assertion of the inability to take an examination is excluded if students finish writing an examination. Consequently, those students who take an examination although they are aware of their illness, bear the sole risk of failure.

4. Legal consequences of non-acceptance of the inability to take an examination

If the inability to take an examination is not accepted, the examination is regarded as taken and – if applicable – as “nicht bestanden (failed)”. Regardless of the underlying facts, any assessment as “nicht ausreichend (insufficient)” gives rise to the stipulated legal consequences (e.g. counting towards the maximum number of examination attempts or initiation of the deadlines for repeating an examination).

II. Details that have to be included in the medical certificate

The Examination Committee or – if applicable – the Examination Board has to decide about the question of whether sufficient reasons for withdrawal from an examination have been submitted and substantiated. For this, the medical certificates submitted by the examinees have to make it sufficiently clear which impact the illness-related impairment has on the examinee’s capability in the examination, the latter, furthermore, having to be referred to in concrete terms (cf. Court Order issued by the High Administrative Court of Bavaria [BayVGH] of 22nd March 2012, reference number 7 ZB 11.2859). Consequently, it is not sufficient if the attending physician certifies the student’s inability to take an examination.

By resolution of 12th December 2016, the Examination Board of Kempten University determined that the medical certificate has to include the following details:

The current physical, mental and / or psychological dysfunctions that are related to the illness and that are, at the same time, relevant for the examination have to be described from a medical perspective in such a concrete and understandable way that the examination bodies are in a position to decide whether the student actually was incapable of
taking the examination on the day of the examination. The medical certificate has to conclusively indicate the obstacles to taking the examination (e.g. mandatory bed rest; objective inability to take the examination without considerable complaints or without an exacerbation of the signs and symptoms of the illness, etc.) It is not necessary that the medical certificate includes a medical diagnosis. At the end of the medical certificate, the physician shall state whether he/she considers the examinee to be incapable of taking the examination from a medical point of view.

In addition, a medical certificate will only be accepted if it includes the date of the medical examination on which the medical certificate is based, the beginning of the illness, a prognosis regarding the duration of the illness, an exact description of the physical and / or mental dysfunctions (symptoms), the impact of the impairment on the examinee’s capability, the physician’s signature and the stamp of the physician’s practice.

Consequently, an ordinary certificate of inability to work (the so-called “gelber Schein [yellow certificate]”) does not meet the requirements.

According to the established practice of the Federal Administrative Court of Germany (BVerwG), an illness resulting in the inability to take an examination shall, furthermore, only exist if the impairment of the examinee’s capability is not only caused by a psychogenic reaction to the examination situation (examination nerves, examination psychosis without clinical significance) or a so called long-term condition (a chronic, irreversible illness).

A psychogenic reaction manifests itself during stressful situations, such as examinations, which all examinees suffering from “examination nerves” are subjected to more or less intensively and which, consequently, have to be tolerated (judgment of the BVerwG dated 06th July 1979 – reference number VII C 26.76).

A long-term condition does not result in an inability to take an examination entitling the examinee to withdraw from the examination, either. Such long-term conditions characterize the examinee’s capacity as personality-related features. Therefore, unlike other cases of illness-related impairment of performance, their consequences determine the examinee’s normal performance profile. The basic principle of equality applying to examination rules and regulations which is enshrined in Article 3 Paragraph 1 of the German Basic Law (GG), therefore, does not allow an examination result affected by the consequences of a long-term condition to be disregarded (decision of the BVerwG of 13th December 1985 – reference number 7 B 210/85).

In cases in which an examination psychosis cannot be excluded or in which a long-term condition has to be taken into consideration, this fact must be mentioned in the medical certificate.
III. Students’ responsibility to cooperate

The responsibility to prove the existence of an inability to take an examination is borne by the students. Thus, a notification in writing or an application for acceptance of a withdrawal from an examination, respectively, together with the medical certificate (both in the original) have to be submitted to the Student Office of Kempten University immediately. Documents have to be provided at the earliest date which is both possible and reasonable for the student. It is “reasonable” to send the medical certificate to Kempten University by post on the same day of the medical examination (but no later than on the following day). All letters, applications and medical certificates have to be submitted in the original.

In addition, an informal application for extension of the deadline has to be submitted to the Student Office (if necessary). Submission/presentation of the medical certificate alone does not bring about an extension of the deadline!

Within the scope of the students’ responsibility to cooperate in the examination procedure, they are, furthermore, obliged to try and bring the attending physician – after having been released from medical confidentiality – to provide the minimum details mentioned in Section II. above when issuing the medical certificate. If such details are missing and if, therefore, no decision about the inability to take an examination can be made, the consequences of this shall be borne by the students.

Generally, medical certificates issued by private physicians are accepted. In justified cases (e.g. repeated withdrawal from the same examination for medical reasons), the Examination Committee can demand the submission of a medical certificate issued by a medical officer – even if this is not explicitly provided in the relevant examination regulations.

The cost of the certificated required has to be borne by the students. Given that the students bear the responsibility to prove receipt, it is recommended that the documents be sent by registered letter with proof of delivery or be submitted in person at Kempten University against certificate of receipt. Notification by telephone or e-mail shall in no case be sufficient.

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