Examination but sick? What can I do?
Handout of Student Services and International Office (Hauptabteilung 4)

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What should you do if you fall ill shortly before an examination or while writing your thesis? The cooperation of students during the examination phase is of considerable importance and relevance in case they become ill. For example, medical certificates submitted late cannot be taken into account in principle, with sometimes serious consequences that may lead to the final failure of the examination.

The purpose of this handout is to inform students about what they should do in case of illness during an examination and what should be considered. This information is in line with current case law regarding the right to examination and is based to a large extent on the principle of equal opportunities.

Inability to take an examination due to illness

In an examination, the students’ real knowledge and skills are to be tested. All students should have the same prerequisites for taking the examination. This results from the principle of equal treatment under Art. 3 para. 1 of the Basic Law of the Federal Republic of Germany [Grundgesetz]. On examination days, students’ ability to perform can be acutely reduced in different ways and

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at different intensities, so that the same prerequisites and comparability between students are no longer ensured. In the event of severe reduction in performance, the student concerned should therefore be given the opportunity to withdraw from the examination due to his or her inability to take the examination. However, such a withdrawal from an examination always raises the question of equal opportunities. This is because students who successfully withdraw from an examination are given a new chance at a later date and may thus be given preference over other students. Therefore **a withdrawal is only possible in exceptional cases.**

The requirements to be fulfilled for the approval of a withdrawal due to illness, the proof of such illness and the most important points to be considered are described below.

**Definition of illness/disease**

An illness or a disease always leads to an inability to take an examination if there is a **significant** impairment due to an illness related disorder.\(^2\) This disorder can affect both the physical and mental condition.

**Relevance of illness/disease**

**Personal illness**

In principle, an illness is only relevant with regard to examinations if it causes personal, physical or psychological suffering, i.e. if it directly affects the student.\(^3\) Illnesses of close relatives, family emergencies or other justified reasons do not initially constitute an inability to take part in the examination, however a withdrawal is possible in individual cases due to these circumstances (e.g. death of a close relative just before the examination).

**Significance of illness**

Furthermore, a disease/illness must exceed a certain **threshold of discomfort**. A distinction must be made between serious impairments and less serious impairments. Conditions in which the student merely feels "weak" or "unfit" are therefore not relevant. Self-determined illnesses such as "sniffles" or "coughs", which obviously do not give rise to the expectation of any significant loss of performance, are not taken into account for an inability to take an examination. The performance of students also depends on moods and daily form; however, this has no relevance and is not taken into account either in the assessment or in the question of inability to take an examination. Furthermore, circumstances associated with examination nerves and stress do not reach the threshold of significance leading to inability to take an examination. In the same way, tension and the resulting lack of concentration are usually in the risk area of the students and must be accepted\(^4\). For example, feverish colds, which mean a **significant** restriction with regard to the examination performance, have to be evaluated differently.


\(^3\)cf. Niehues/Fischer/Jeremias, Prüfungsrecht, 6th edition, margin no. 250.

Inability to take an examination due to personal responsibility

Also irrelevant are those cases in which the student himself is responsible for the disease/illness, for example because he or she treats himself or herself with medication or sedatives without medical advice and as a result suffers from physical and psychological restrictions.

The same also applies in all cases in which the student has to allow his/her disadvantage (e.g. too little sleep or drug consumption) to be attributed to himself/herself. If the student is aware of the possible consequences of the health impairments due to his or her behaviour and takes on the risk of failure, this is subject to the case of a risk decision attributable to him or her, so that such an illness is not to be observed in terms of the right examination. This also includes gross negligence\(^5\) ignorance of such effects. A student cannot therefore claim not to have known or underestimated the effects of various substances ingested.

Mental diseases

In rare cases, mental illnesses (e.g. depression, depressive mood) represent an inability to take an examination, which justifies withdrawal from the examination. On the one hand, the symptoms usually persist over a longer period of time, so that in these cases it is often to be assumed that the patient is suffering from what is known as chronic illness (for more information on chronic illnesses, see below). On the other hand, the acute psychological distress has to reach a certain disease category. In any case, proof must be provided in the form of a specialist medical certificate. In case of a considerable burden around the examination, affected students should contact, for example, their medical specialist, the psychological counselling centre of the Studierendenwerk or the outpatient psychological centre of the Westpfalzkliniken. Any (further) medical certificate has to be issued by a medical specialist.

Particularly in the case of physical illnesses or psychological stress, it is necessary to examine the case individually. The most common reason for a refusal to withdraw from an examination due to psychological stress is the time factor. When reporting the potential inability to take an examination, the first possible time at which it was reasonable for the student to recognise the inability to take an examination must be chosen (cf. item "Without undue delay"). This means that the inability to take the examination has to be declared as soon as possible.

In the case of long-term psychological treatment or an inpatient stay, the student's ability to study should be verified. An immediate notification to the Examination Office allows to verify whether there is a possibility to suspend the right of examination with regard to the examination concerned.

Mere examination nerves or stress must be clearly distinguished from mental illness. This does not in itself constitute a recognised reason for accepting the inability to take an examination due to illness. Rather, examination nerves are attributed to the risk area of the individual student,

\(^5\) This lack of knowledge is deemed gross negligence if the student should have realised that the substances ingested lead to a reduction in performance.
since every student is more or less exposed to it. Examination nerves is an expression of personal efficiency and thus precisely no illness, but belongs to the examination process.

Proof of inability to take an examination

Without undue delay

It is of enormous importance for students to communicate a medical condition "without undue delay" and this should be given special attention. From a legal perspective, this strict requirement is intended to rule out the possibility that students might try to obtain a further examination by trying to claim the existence of known circumstances that would justify a withdrawal in the event they fail the examination. In other words, asserting an illness only after the (poor) test result has become known is deemed unacceptable.

Circumstances justifying an inability to take an examination shall be always reported without undue delay. Without undue delay in this respect is "acting without culpable delay". Within the framework of their duty to cooperate, students are required to report at the earliest possible point in time the inability to take an examination at which they could reasonably have done so. In this way, TUK is able to conduct further clarification of the facts in a meaningful manner and by doing so abusive acceptance of benefits is prevented. If symptoms exist that make a visit to the doctor on the day of the examination impossible, it is reasonable for the students to inform the Examinations Office of the inability to take the examination by e-mail or telephone. If the student is not able to do so, relatives, friends or roommates may also inform the Examination Office. It is also reasonable for the students to go to the medical on-call service on days on which there are usually no office hours (especially Wednesday or Friday afternoons, Saturdays). Waiting until the next working day can no longer be deemed "without undue delay".

Example 1: A student suffers from a gastrointestinal infection on the day of the examination, and leaving the house is not possible. It is deemed reasonable to notify the Examination Office by e-mail or telephone on the day of the examination. A doctor must be consulted as soon as the illness permits.

Example 2: The student’s practitioner does not offer consultation hours on the day of the examination. The student is required to see the locum or the medical on-call service. Waiting until the next day or working day can lead to missed deadlines.

In the event of an inability to perform during the processing period of a term paper, a draft or a final paper, such inability has to be proven and such proof must be submitted without undue delay. Only then, if necessary, can an extension of the processing time be granted. A submission of the medical certificates before the deadline can only be considered if the inability to perform is given at this time.

6 cf. Niehues/Fischer/Jeremias, loc. cit., margin no. 282, with further references, e.g. BVerwG judgement of 13 May 1998 6 C 12.98.
7 https://www.kv-rlp.de/patienten/aerztlicher-bereitschaftsdienst/
Medical certificate

The inability to take the examination must in principle be determined on the day of the examination by a qualified expert. Circumstances rendering it impossible to personally see a doctor on the day of the examination will be assessed on a case-by-case basis. In no case is such an impossibility given, if the treating physician could not be reached. Within the scope of their duty to cooperate, students are obliged to consult the locum or the medical on-call service (see also above).

The medical certificate has to indicate the circumstances that led to the acute inability to take the examination. TUK must be able to assess whether the student’s ability to perform are actually impaired by the circumstances described. For example, it is quite possible to take an oral examination despite a broken writing arm. The legal question as to whether a person is unable to take an examination is decided by TUK and not by the treating physician. In addition, TUK has the option of compensating the reported circumstances, if necessary in the form of compensation for disadvantages.

Medical certificates dated back will not be accepted as proof of inability to take an examination. In exceptional and very well-founded cases, it is possible to deviate from this, but this requires a conclusive and comprehensible explanation.

It is recommended to use the form (https://www.uni-kl.de/pruefungsangelegenheiten/krankmeldung/) provided by TUK. The doctor may also issue his own medical certificate to establish credibility. It is important that the medical findings are also stated. These are the basis for the assessment of TUK as to whether there is an inability to take an examination or not. The physician has to describe the symptoms and the effects on the ability to perform in sufficient detail to enable TUK to assess them without further questions. It is generally not necessary to specify the diagnosis. In individual cases, this may be appropriate if it describes the symptoms comprehensively. However, the diagnosis may only be provided with the student’s consent. Therefore, the medical certificate should always be submitted to TUK by the students themselves and not by the doctor. In summary, the medical certificate has to include the following information:

1. Duration of the illness;
2. Appointments for medical treatment;
3. The nature and extent of the illness, stating the facts established by the doctor on the basis of his own perception (findings, not the diagnosis), and
4. the effect of the illness on the examination concerned.

Therefore a certificate confirming inability to work cannot be used to prove inability to take an examination.

\(^a\)cf. Niehues/Fischer/Jeremias, Prüfungsrecht, 6th edition, margin no. 278, with further references, e.g. BVerwG decision of 6 August 1996 – 6 B 17.96.
Official medical certificate

Official medical certificates are only required in exceptional cases, e.g. in cases of suspected misuse of medical certificates or repeated submission of a medical certificate for the same examination. The students concerned are requested by TUK in writing to submit an official medical certificate. The official medical certificate is subject to a charge. Further information can be found on the website of the relevant health authority.\(^9\)

Chronic disease

In principle, chronic illnesses do not constitute relevant illnesses to be taken into account under examination regulations. As personality-related characteristics, they shape the student’s capabilities and therefore, in contrast to other illness-related reductions in the ability to perform, determine the normal ability to perform\(^10\). Thus, the student’s normal ability to perform is shown. Although the circumstances of a reduction in ability to perform may occur in phases during chronic illnesses and be correspondingly more severe at different times and thus lead to a reduction in ability to perform, it is precisely not important whether stages of the development of the illness can also be determined\(^11\). It is also irrelevant whether it is apparent to the students at the time of the examination whether the effects of the illness are severe\(^12\).

Examples of chronic illnesses in case law are:

- Attention deficit / hyperactivity disorder (ADS/ADHS).\(^13\)
- Rheumatic diseases.\(^14\)
- Allergies.

Among the psychological illnesses, which are classified as chronic illnesses that cannot be taken into account with respect to examination regulations, is for example

- the bipolar affective disorder.\(^15\)

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10 cf. Higher Administrative Court (Oberverwaltungsgericht - OVG) NW, decision of 28 April 2010 – 14 A 546/10 - juris margin no. 7

11 cf. Higher Administrative Court (Oberverwaltungsgericht - OVG) NW, decision of 28 April 2010 – loc. cit., margin no. 10

12 cf. Higher Administrative Court (Oberverwaltungsgericht - OVG) NW, decision of 28 April 2010 – loc. cit., margin no. 10

13 Administrative Court (Verwaltungsgericht - VG) Freiburg, decision of 30 August 2007 – 2 K 1667/07 – juris


15 Higher Administrative Court (Oberverwaltungsgericht - OVG) NW, judgement of 8 June 2010 – 14 A 1735/09.
• the biphasic endogenous psychosis.\textsuperscript{16}

• the atypical personality disorder.\textsuperscript{17} (ICD-10:F 69\textsuperscript{18}).

Again, it depends on the individual case. Students concerned should contact the Examination Office without undue delay.

**Conclusion and further information**

Diseases must be taken seriously and reported immediately so that their effects on the examination procedure can be taken into account.

If you have any questions on how to deal with illnesses during examinations, please contact the relevant working group in the Examination Office or in the Distance Learning Department.

\textsuperscript{16} BVerwG decision of 13 December 1985 – 7 B 210/85.

\textsuperscript{17} VG Frankfurt, judgement of 21 May 2003 - 12 E 3312/01 - juris, margin no. 29.

\textsuperscript{18} International Statistical Classification Of Diseases (http://www.icd-code.de/)