Crown Health Enterprise / Oncologist

Report on Opinion - Case 98HDC14182

Complaint

The consumer's general practitioner complained to the Commissioner on behalf of his patient, the consumer, regarding the second Crown Health Enterprise ("CHE") declining to provide radiotherapy treatment to the consumer based on an urgent referral from the first CHE. The complaint is that:

- *In early 1998, the consumer was declined an urgent transfer to the second CHE for required oncology treatment, which was unavailable at the first CHE, because of her blindness.*

The Commissioner extended the investigation to include the oncologist, at the first CHE.

Investigation

The complaint was received by the Commissioner on 24 April 1998. An investigation was undertaken, and information was obtained from:

The Complainant / the Consumer's General Practitioner
The Consumer
The Oncologist from the First Crown Health Enterprise
The Oncologist Director from the Second Crown Health Enterprise
The Oncologist from the Second Crown Health Enterprise ("the second oncologist")
The Oncology Manager from the First Crown Health Enterprise
The Service Leader, Oncology and Haematology, at the First Crown Health Enterprise
The Service Manager at the Second Crown Health Enterprise

Clinical records relating to the care of the consumer were obtained and reviewed. Referral protocols for the first CHE and the second CHE were also obtained and reviewed as part of this investigation.

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Information Gathered During Investigation

The consumer has had a basal cell carcinoma on her right calf for some years which originated from an injury from a bottle brush plant.

The consumer was initially seen by the oncologist at the oncology department at the first public hospital in September 1997, on referral from the complainant. The oncologist's notes showed that he considered the consumer an *"ideal candidate"* for radiotherapy, but the position of the lesion meant it would need to be *"fractionated over six weeks"*. This was because lesions in this area tend to have significant side effects from radiotherapy; often leading to ulceration's which require skin grafts. The oncologist advised the consumer that the first hospital's old machine had been decommissioned, and discussed with her the option of surgery and a skin graft, which would be necessary due to the size of the lesion. The consumer declined this option and agreed to be put on the waiting list for treatment from the new radiotherapy machine as soon as it was operational. In a letter to the Commissioner dated early February 1999, the oncologist states:

> *"Given that these tumours do not metastasise and usually grow quite slowly, I reassured* [the consumer] *that there were no concerns."*

In a letter dated mid-September 1997, the oncologist asked the complainant to:

> *"…*[K]*eep an eye on it* [the lesion] *and if it does show signs of increasing in size, please let me know and I will arrange for alternative treatment."*

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Information Gathered During Investigation, *continued*

In early February 1998, the consumer again saw the oncologist for a review. The oncologist noted that the lesion on the consumer's leg had grown significantly in size and was ulcerating. The oncologist again discussed with the consumer the option of surgical removal, radiotherapy in the other city, or waiting for the first hospital's new radiotherapy machine to be purchased and installed. The consumer again declined surgery. Instead, she decided she wanted to go to the second public hospital for radiotherapy. The oncologist estimated the consumer would need ten minutes of treatment per day, for a period of five to six weeks. In his notes for this visit he stated:

> *"Her husband does not feel that he can accompany her for that length of time and given the fact this lady is registered blind, she will need to be an inpatient in* [the second hospital] *for that period of time."*

The consumer advised the Commissioner she told the oncologist at this point that she had two sons living in that city who would assist her. However, the oncologist did not record this in his notes.

The oncologist referred the consumer to the second oncologist at the oncology department, at the second hospital for radiotherapy, asking in his letter of early February 1998 that this treatment be done *"fairly urgently"*.

After discussion with his senior colleagues the second oncologist wrote to the oncologist in late February 1998 recommending the consumer be treated in her home city, stating that:

> "[B]*ecause of her blindness, general condition and the long fractionation and time needed away from* [her home city] *it may be appropriate for her to be treated with surgery or electron therapy from your linear accelerator.*"

In late January 1998, the second oncologist advised the Commissioner he took into account the consumer's entire situation when considering the treatment requested in the referral and decided that it was more appropriate for her to be treated in her own centre. In addition, the second oncologist knew that the first CHE's new radiotherapy machine, referred to above as the linear accelerator, was on line soon.

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Information Gathered During Investigation, *continued*

The second oncologist and the oncologist further discussed the consumer's case by telephone. The second oncologist indicated, as noted in the oncologist's letter to the Commissioner dated 2 February 1999, that he felt the consumer's:

> *"*[G]*eneral physical condition would make it technically quite difficult to treat this patient who would have difficulty in coping with the side effects whilst away from home, and that she should reconsider other forms of treatment."*

The second oncologist further clarified that when referring to the consumer's *"poor general physical condition"*; it meant that the consumer was very elderly, had poor mobility and was also visually impaired.

The second oncologist further stated there seemed to be no urgency conveyed by the oncologist's referral letter. When the oncologist was asked to explain the words *"fairly urgently"* used twice in his referral letter, he stated that his request was subjective in its urgency. This was because at the time of referral the consumer's lesion was fairly large and he was concerned about it growing further. When the oncologist received the second oncologist's letter declining treatment for the consumer at the second CHE he felt he would be seeing the consumer soon at her next consultation and he could reassess the urgency of her treatment then.

In mid-March 1998 the oncologist saw the consumer and stated in a letter to the complainant dated late March 1998 that:

> "[T]*he purpose of seeing her was to tell her that she had been declined treatment in* [the other centre] *because of her blindness and the difficulties that there would be in accommodating her.*"

The oncologist reported in that same letter that:

> *"*[T]*he Board of* [the first CHE] *approved the housing for our new* [radiotherapy] *machine … it should therefore only be a matter of a couple of months before it is up and operating. I will therefore review* [the consumer] *in 6 weeks time with a view to her being one of the first patients on that machine."*

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Information Gathered During Investigation, ***continued***

The consumer was upset and anxious with the delay in treating her condition. As a result the complainant wrote to the oncologist, and the Minister of Health, concerned that the consumer was being refused treatment because of her blindness.

In the oncologist's response dated late April 1998, to the complainant's letter, he stated that he did not:

> *"*[B]*elieve that this lady has been "denied" treatment because of her disability but rather my* […] *colleagues feel that such a long period in* [the other centre] *would be very difficult for her to cope with."*

The oncologist advised the consumer that her referral to the other centre had been cancelled because of the upcoming installation of the new radiotherapy machine at the first CHE.

The oncologist again stated that the consumer would be at the top of the waiting list to use the first CHE's new radiotherapy machine as soon as it was commissioned. He also noted that the first CHE was no longer referring any skin cancer patients to the other centre because the new radiotherapy machine was so close to being operational. The oncologist advised the Commissioner that by early April 1998 the first CHE had stopped transferring patients to the second CHE where the patients' lesions were not progressing.

In late April 1998 the oncologist spoke to the consumer's husband, as the consumer was unavailable, and assured him she was at the top of the waiting list for treatment on the new machine.

In a letter to the Minister of Health dated late April 1998 the director of the oncology service, at the second hospital stated that the consumer's treatment was never a resource constraint issue or a waiting time issue. It was merely that at the relevant time the other centre was unable to provide superficial x-ray therapy to patients from the region. An arrangement for the treatment for some of those patients who would be disadvantaged was made, but patients were assessed clinically and options for management discussed.

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Information Gathered During Investigation, *continued*

The Director stated that:

> "[The consumer] *was not "declined" rather it was recommended that other options for treatment be discussed with her, given the length of time she would require away from home and away from her normal support systems, a situation made more difficult for her by her blindness. Treatment was not declined, nor was the patient discriminated against because of her visual difficulties."*

Further to this, the consumer was seen regularly by the oncologist in his clinic, with the consumer's lesion being assessed to ensure no problems were occurring. In early May 1998 at a clinic consultation the oncologist stated in her notes:

> *"Comes to clinic today. The lesion on her leg has not grown. I have discussed the issues outlined above once again and we predicted that the machine should be and* [sic] *running by the end of July. I will see her in June."*

In late May 1998, the complainant urgently faxed the oncologist advising that the consumer had developed a resistant bacterial infection in her lesion. The oncologist approved the use of *ciprofloxacin* on a date in late May 1998 to combat the infection.

The oncologist once again advised in a letter dated early June 1998 that he expected patients to be treated on the new radiotherapy machine a few weeks after a date in early June 1998. If the lesion had worsened within the wait period then the options would be discussed with the consumer again.

In early July 1998 the oncologist wrote to the complainant advising that he had "*marked* [the consumer] *up to commence her radiotherapy treatment*", and that the new radiotherapy machine should be operational by mid-July 1998 at the latest.

In early August 1998 the consumer started six weeks (thirty days) of radiotherapy treatment on the first hospital's new radiotherapy machine. The oncologist had previously discussed with her the effects of radiation, including the possibility of radionecrosis, which is death of tissue that has had its ability to heal markedly reduced by radiotherapy.

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Information Gathered During Investigation, ***continued***

During the course of the treatment, the oncologist reports that the consumer:

> *"Developed significant problems with the radiation developing recurrent bacterial infections and a severe radiation reaction requiring the use of multiple courses of antibiotics. She has required district nurse input on a regular basis since."*

In early November 1998 the oncologist saw the consumer and noted (in a letter to the complainant dated early November 1998) that her lesion was not fully healed even though it was six weeks since her treatment. The oncologist was not concerned, given the size of the "*treatment field*" on the consumer's leg, and expected it to heal further in time.

In mid-December 1998 the oncologist again saw the consumer and noted (in a letter to the complainant dated late December 1998) that her lesion was still not healed. Whilst the lesion was becoming smaller, the oncologist expressed concern over the edges of the treatment area, but decided to see the consumer again in March *"given the fact that things seem to be improving"*.

In January 1999 the oncologist advised the Commissioner that the consumer's life was never at risk because of the delay in her treatment and that had there been any urgency due to the consumer's lesion growing, he would have pushed for treatment at the second CHE.

Furthermore, the oncologist believed that the second oncologist's decision not to treat the consumer in the other centre was correct, especially given her treatment progress in her home centre. The consumer's condition had been present for a number of years, and the oncologist stated that there was no risk of developing secondary disease from this.

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Code of Health and Disability Services Consumers' Rights

RIGHT 2
Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

RIGHT 4
Right to Services of an Appropriate Standard

…
3) Every consumer has the right to have services provided in a manner consistent with his or her needs.
…

Opinion: No Breach The Second CHE

In my opinion, the second CHE did not breach Right 2 or Right 4(3) of the Code of Health and Disability Services Consumers' Rights.

Right 2 and Right 4(3)
I am satisfied that the consumer was declined treatment at the second hospital based on a number of medical considerations. I accept that the second oncologist was acting in the consumer's best medical interests when he made decisions regarding her care and treatment. I am also conscious that discussions relating to the consumer's treatment were made in light of a new radiotherapy machine being installed at the first hospital in the near future.

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Opinion: No Breach The Oncologist

In my opinion, the oncologist did not breach Right 4(3) of the Code of Health and Disability Services Consumers' Rights.

The oncologist monitored the consumer's lesion in his clinic on a regular basis. Although he referred the consumer to the second CHE for radiation treatment, due to the first CHE's machine being decommissioned, she was subsequently declined treatment at the second CHE. This was due to a combination of factors including her poor general health and the availability soon of a new treatment machine at the first CHE. In my opinion the oncologist provided the consumer with treatment assessment and information regarding her condition on a regular basis. He ensured that the consumer was placed at the top of the list for receiving treatment once the new treatment machine was installed.

I also note that the consumer's tumour did not progress during the waiting time. The medical opinion expressed by the oncologist and the Oncologist Director at the second CHE was that the delay in treatment did not cause the consumer any physical harm, although unfortunately the delay was upsetting for her and her family.

Other Comments and Actions

While I accept all parties acted in good faith, I am concerned at the lack of co-ordination of services for the consumer. The first CHE believed the consumer should go to the second CHE for treatment due to the delays she would experience at the first CHE, therefore the criteria for admission with the second CHE should have been reviewed prior to referring her. The second CHE has to weigh up all its patients' needs, including those from outside its district. In making the decision that the consumer was not suitable, the second CHE took into account all the information available, but the consumer's local support was not known and was not able to be considered.

I recommend that the first CHE and the second CHE ensure their referral protocols are understood and that complete social and medical details of the patient are included in all referrals.