

General Practitioner, Dr C

Nurse, Ms D

A Report by the

Health and Disability Commissioner

(Case 01HDC02915)



Health and Disability Commissioner

Parties involved

Ms A	Consumer's mother / Complainant
Mr B	Consumer
Dr C	General Practitioner / Provider
Ms D	Nurse / Provider

Complaint

On 5 March 2001 the Commissioner received a complaint from Ms A about the services provided to her son, Mr B, by Dr C and Ms D, practice nurse, at a medical centre on 20 February 2001. The complaint is that:

- *On 20 February 2001 [Dr C] did not obtain consent from either [Mr B] or his mother, [Ms A], before treating [Mr B] with a tetanus toxoid immunisation injection for his open wound.*
- *On 20 February 2001 nurse [Ms D] did not check for herself that either [Mr B] or his mother, [Ms A], consented to the administering of a tetanus toxoid immunisation for his open wound before she injected [Mr B].*

An investigation was commenced on 16 March 2001.

Information reviewed

- During the course of this investigation I reviewed information from Ms A, Mr B, Dr C, Ms D and the medical centre.
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Information gathered during investigation

On 20 February 2001, Mr B, aged 14, received a cut under his left eye and a swollen face during an incident at his school. A school staff member took Mr B to a medical centre where he had previously attended as a patient. Dr C and Ms D saw Mr B in the casualty area of the medical centre.

Dr C

Dr C is a long-term locum who was contracted by [the medical centre] for a fixed term period from 30 January 2001 to 3 February 2002.

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When Mr B presented at the medical centre on 20 February 2001 with a facial wound, Dr C was called by Ms D to assess and clean Mr B's wound. Dr C applied Steristrips to the wound and prescribed Panadol for pain and an antibiotic, Synermox. An x-ray was also ordered. The x-ray was taken on 21 February 2001. This indicated soft tissue swelling about the eye, but no fracture. Mr B had not been immunised against tetanus for over 10 years. It was Dr C's professional opinion that Mr B needed immunisation against tetanus because of the risk of contamination to the open wound, and the severe adverse consequences for Mr B if he contracted tetanus. Tetanus vaccine is combined in the one ampoule with diphtheria vaccine, referred to as "Td vac".

Dr C advised me that "tetanus has an incubation period of 4 to 21 days, usually about 7 days and symptoms may occur as soon as day one following exposure". Dr C said because there is a general risk of non-return of patients for necessary follow-up treatment, it is his standard practice to administer tetanus prophylaxis (prophylaxis refers to any means taken to prevent disease) before a patient leaves the premises on the day of consultation.

Dr C advised me that he explained to Mr B that because of his "dirty" wound he was at risk for tetanus and therefore required a vaccine for tetanus prevention. Dr C noted that he asked Mr B if his parents could be contacted. Mr B replied that his mother was out of town and unable to be contacted. Dr C noted that at no stage did Mr B say that his mother did not wish him to be immunised against tetanus. Ms D confirmed this.

Dr C said that Mr B then asked if the injection would hurt, and the nurse said "yes". Dr C said that he informed Mr B that he was receiving a dose of diphtheria with the tetanus vaccine, as is standard practice. Dr C also stated that it was his usual practice to inform patients that the injection would hurt a little bit, and may be accompanied by a little bit of swelling and, in rare cases, headache and high temperatures.

Dr C also noted that Mr B's medical file showed that although he had not been immunised against tetanus for a long time, he did have the early child immunisations without any side effects. The medical notes did not say that Mr B had any allergies to vaccines. The computer notes at the medical centre showed that immunisation was not taken in 1996, but no reasons were given as to why. Dr C advised that there was no documentation in the file notes that his mother did not want him to have immunisations. Dr C also noted that usually, where a parent requests that immunisations not be given in the future, this is "clearly identified" on the file.

Dr C said that in his opinion Mr B understood his situation. He did not object to receiving the tetanus vaccine and, after being given the information about the vaccine, he asked if it would hurt. Although Dr C noted Mr B was only 14 years old, he stated that Mr B gave no indication that he did not understand.

Ms D

Ms D is a practice nurse employed at the medical centre on a part-time basis. She is employed jointly by the three practitioners who run the medical centre.

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Ms D confirmed that she was present throughout Mr B's examination and treatment, and advised me as follows:

“[Dr C] asked [Mr B] about his tetanus status. [Mr B] shrugged his shoulders and said he wasn't sure. I asked him if he had an immunisation in form one but he said he couldn't remember. I asked him if he was sick that day when the immunisations took place but he said he wasn't sure. His paper file showed [Mr B] had had all his baby immunisations but not his form one. There was nothing to say that his mother did not want him to continue with his immunisations, nor did it say that [Mr B] had any allergies.

[Mr B] was asked how we could get in touch with his mother but he said she was out of town. I asked [Mr B] if his father could be contacted but that wasn't an option either. [Dr C] decided to give the immunisation due to the possibility of the wound being contaminated.

Before giving the immunisation [Mr B] asked me if it would hurt and I said yes.

I did not hear [Mr B] say that his mother did not want him to have further immunisation and know that had this been the case I would have certainly not proceeded.”

Ms D said she also told Mr B it would hurt “deep down” in the muscle for a “good while after”, and that there might be some redness and headache. Ms D could not remember if on this occasion she explained to Mr B that he was also being immunised against diphtheria, which comes in the same injection ampoule, but it was her usual practice to explain this.

Mr B

Mr B said he was “fine about being taken to the doctor”. When he arrived at the medical centre the nurse wiped the blood off his wound and Dr C, after introducing himself, asked when he had his last immunisation injections. Mr B said that he told Dr C, “last time when I was a baby probably because my Mum's not into that sort of thing, she's into homeopathic stuff”. Dr C then asked “why?” and Mr B replied that he was “not sure and that [Dr C] would have to ask [his mother]”.

Mr B said the nurse then came in while Dr C was there and gave him the tetanus injection. He also received a couple of Panadol for the pain. Mr B confirmed that he asked if the injection hurt and that Ms D had said that it would.

Mr B said he felt sure that Dr C heard him say he would have to ask his mother, because Dr C was sitting only a metre away from him at his computer, facing him, and after he said that his mother was not into that sort of thing, Dr C had asked why. Mr B said he “did not know what to decide for himself”, and he felt that Dr C should have telephoned his mother to find out.

Mr B later said that he knew that he was receiving an injection to “fight off tetanus” and understood that tetanus was a “disease” which “was not a good thing” to have because “you

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get real sick”. However, Mr B said neither Dr C nor Ms D gave him this information about tetanus, he “just knew”.

Ms A

Ms A advised me that she felt that Dr C had not respected her rights as a mother. She stated that Dr C could easily have telephoned her and asked for clarification about what Mr B had told him, especially after Mr B had said, “you’ll have to ask Mum”.

Ms A was concerned that Mr B had a history of allergies, and had not had previous immunisations. Ms A noted that her son has allergy reactions for five to six months of the year, which “is an issue and I would have been able to emphasise this, which is another reason why I would not have consented”. She felt that Dr C should have checked the notes and realised this.

Code of Health and Disability Services Consumers’ Rights

The following Rights in the Code of Health and Disability Services Consumers’ Rights are applicable to this complaint:

RIGHT 6

Right to be Fully Informed

1) *Every consumer has the right to the information that a reasonable consumer, in that consumer’s circumstances, would expect to receive, including –*

...

b) *An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option*

RIGHT 7

Right to Make an Informed Choice and Give Informed Consent

1) *Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise.*

2) *Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.*

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Opinion: No breach – Dr C

I considered two questions in Mr B’s case. First, whether Dr C and Ms D fully informed Mr B about his condition and treatment options, under Right 6 of Code; and secondly, whether Mr B was “competent” to consent to the treatment he received, and gave his informed consent, under Rights 7(1) and 7(2) of the Code.

Right 6(1)(b)

Mr B had the right to all the information that a reasonable consumer, in his circumstances, would expect to receive. In my opinion, a reasonable young person in Mr B’s situation would want to know all the conditions the vaccines covered, why they were deemed necessary, and the side effects.

Dr C told Mr B, in the presence of Ms D, that because he had an open wound he was at risk of tetanus and needed to have the tetanus vaccine injection to “fight off tetanus”. Mr B understood that tetanus was a “disease” which “was not a good thing” to have because “you get real sick”. Mr B also understood that in order to receive the vaccine he would have an injection that would “hurt”. Dr C informed Mr B that he would receive a dose of diphtheria with the tetanus vaccine, as is his standard practice.

It is not clear whether Dr C informed Mr B of the risk of headache, swelling and high temperatures, which can occasionally occur in response to the injection. However, I accept that it is his usual practice to do so. I also note that Ms D, in the presence of Dr C, informed Mr B that the immunisation injection would hurt “deep down” in the muscle for a “good while after”, and that there might be some redness and headache.

I am satisfied that Dr C adequately ensured that Mr B was provided with all the essential information – about his condition and the proposed tetanus vaccine treatment and its side effects – that a reasonable consumer would expect in these circumstances. Accordingly, in my opinion Dr C did not breach Right 6(1)(b) of the Code.

Rights 7(1) and 7(2)

Under Right 7(1) of the Code, Mr B had a right to have services provided to him only if he made an informed choice and gave his informed consent. Under Right 7(2), there is a presumption that a person of any age is competent to consent to health care procedures unless there are reasonable grounds to believe otherwise.

The common law concerning consent by minors (persons below the legal age of majority) to medical treatment is well established as a “competency based” assessment: *Gillick v West Norfolk and Wisbech Area Health Authority*. This means that Mr B’s ability to consent to receiving an immunisation against tetanus is not determined on the basis of his age alone. Rather, Dr C was under a duty to consider whether Mr B was able to make an informed choice and give informed consent to the tetanus and diphtheria immunisation.

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The question whether Mr B was competent to consent is a question of fact. In assessing Mr B's ability or competence, other factors such as his ability to understand the information given to him about the risks of his condition and the consequences of any decision, as well as the relative seriousness of the situation, are all relevant.

As noted above, Mr B received all the essential information about his condition and the proposed tetanus vaccine treatment that a reasonable consumer in his circumstances would expect. He was informed that he was at risk from tetanus because of his facial laceration. He was informed that he needed a tetanus vaccine, because he had had no tetanus vaccine for over 10 years. Mr B was also informed that the tetanus vaccine was combined with a diphtheria vaccine. And he was informed of the possible side effects of the vaccine.

Mr B was 14 years old at the time of this incident. A young person of that age is well able to understand basic medical information and give consent to a vaccine injection. There is no evidence that Mr B did not understand any of the information that Dr C provided to him. Mr B understood that he was receiving an injection to "fight off tetanus" and that tetanus was a "disease" which "was not a good thing" to have because "you get real sick". Mr B knew that the injection would hurt, after Ms D told him so. Although Mr B stated that his mother was not "into" immunisation injections, he advised Dr C that his mother was out of town and unable to be contacted. Mr B told Dr C that his mother was not "into" immunisation injections because she was into "homeopathic stuff", and Dr C asked why. Mr B responded that he was "not sure and that [Dr C] would have to ask [his mother]". It is not clear whether Mr B meant that Dr C would have to ask his mother for permission for the injection, or whether he was informing Dr C that he would have to ask his mother why she was "into" homeopathic remedies.

In all the circumstances, I am satisfied that Mr B was competent to give his informed consent to the tetanus vaccine injection, and did give his informed consent to the vaccination. Accordingly, in my opinion Dr C did not breach Right 7(1) or Right 7(2) of the Code.

Opinion: No breach – Ms D

Right 6(1)(b)

Ms D was present with Dr C and Mr B for the duration of the consultation, including when Dr C informed Mr B of his need for vaccination, the composition of the vaccination, and the side effects of the vaccination. Although Ms D cannot specifically recall whether Mr B was informed that he would receive the vaccine against diphtheria in combination with the vaccination for tetanus, it is her, and Dr C's, standard practice to do so. Ms D specifically informed Mr B that the immunisation injection would hurt "deep down" in the muscle for a "good while after", and that there might be some redness and headache.

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I am satisfied that Mr B did receive all the essential information about his condition and the proposed tetanus vaccine that a reasonable consumer would expect in his circumstances, from both Ms D and Dr C, before Ms D administered the injection. Accordingly, in my opinion Ms D did not breach Right 6(1)(b) of the Code.

Rights 7(1) and 7(2)

As stated above, it is my opinion that on the facts of the case Mr B was competent to give his informed consent to the tetanus vaccine injection, and that he did in fact give his informed consent before Ms D gave him the vaccination. Accordingly, in my opinion Ms D did not breach Right 7(1) or 7(2) of the Code by administering the tetanus vaccine to Mr B.

Other comment

A doctor from the medical centre advised me that all the staff involved in immunisation at the centre are now more aware of the possibility that such an event can occur, and are “even more careful than before”. The doctor stated that the practice nurses at the centre organised a meeting of their own peer review group to discuss the matter, to raise their own awareness and to discuss ways of avoiding any similar incidents in the future.

Actions

- A copy of this opinion will be sent to the Medical Council of New Zealand.
- A copy of this opinion will be sent to the Nursing Council of New Zealand.
- A copy of this opinion, with identifying features removed, will be sent to the Royal New Zealand College of General Practitioners, for educational purposes.

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