

Complaints to the Health and Disability Commissioner about reports for third parties

Each year, the Health and Disability Commissioner (HDC) receives a number of complaints about reports prepared by health providers for third parties. Complaints about medical certificates and reports prepared for the purpose of assessing WINZ or ACC entitlements, or employment proceedings are common. Most complaints about psychologists concern the provision of reports by court-appointed psychologists in the course of Family Court proceedings under the Care of Children Act 2004. Doctors are not the only health providers who are subject to such complaints. Other providers such as Occupational Therapists are included. The motivation behind the complaint to HDC is usually that the third party (eg WINZ or ACC) will reverse the decision. Occasionally there is a desire to punish the provider of the report. It is appreciated that any complaint causes a provider some anxiety and stress, and that these complaints by unhappy people about reports required by another agency can provoke a different sense of frustration.

It is unusual for HDC to take any action on complaints about third party reports, but each decision is made on a case by case basis. While the actual completion of a report or certificate is not necessarily the provision of a health service for the purposes of the Health and Disability Commissioner Act 1994, it is usually based on an assessment and contains some element of diagnosis, and therefore arises out of the provision of a health service. The Code of Health and Disability Services Consumers' Rights applies. In the majority of cases, a decision to take no further action is made based on the information provided in the complaint, but in a handful of cases, a response from the provider is sought and occasionally, clinical opinion obtained.

There are inaccuracies in the report

A common claim is that the report contains inaccuracies – usually the assertion that the person is fit for work, or the current incapacity is not caused by an injury. In such a situation the decision is usually made that it is not appropriate to take any action on the complaint on the basis that it is not the role of HDC to provide second opinions and there is an adequate right of review or remedy within the ACC process. Similarly the complainant is told that the most appropriate place to challenge the contents of a psychologist's report directed by the Family Court is in the course of a hearing, and that complaints about the professionalism or attitude of the report writer are best directed to the Family Court Co-ordinator or the Psychologists Board. Efforts are made to explain to the complainant that while the Privacy Commissioner does have jurisdiction to alter inaccuracies in a health record, it does not follow that a diagnosis (even where an alternative diagnosis is later made) will be eliminated from a health record.

A small group of complainants are concerned about the way in which their personal information has been included in a report. This may give rise to two issues: Was the personal information relevant? Was the personal information accurate? In either case the complainant is likely to be directed back to the organisation that requested the report and/or the provider of the report. The details of the Privacy Commissioner are provided where there has been a request to have information altered. It is possible that the content of the report is such that it throws into question the professionalism or competence of the writer, in which case a referral to the Medical Council would be contemplated, but that would be an exception. As shown below, HDC may remind the provider about the importance of professionalism in communication.

The provider was rude/did not listen

Some complainants will include an allegation about a provider's manner. Consideration is often given to referring the matter back to the provider to resolve, but where the complainant is dissatisfied with a third party decision, it is recognised that resolution between doctor and patient is unlikely. HDC may obtain a response to the complaint. In one instance, a complainant's recording of the consultation failed to support his allegation that a medical practitioner "kept pushing past the threshold of pain", treated the complainant in a racist manner, was abusive, intimidating or a bully, but it was clear that the consultation had quickly become highly-charged. In a subsequent report to ACC, notwithstanding the lack of complete examination, the practitioner stated that he could see no reason why ACC should continue to support the complainant and that he should take control of his life and also his anger. The doctor replied to HDC that he had himself felt intimidated. He apologised if his demeanour had been disrespectful and for the content of later communications with ACC. In deciding to take no further action on the complaint, HDC reminded the practitioner of the need for professionalism and impartiality in his communication, particularly when reporting on a clinical assessment. It was recognised that this complainant had presented with some challenging behaviours, but that some patience and maturity would have assisted.

There was a delay or error in providing a medical certificate

Delay or error in production of certificates often arises from poor systems in place at a practice for the prompt generation of a certificate, or failure to co-ordinate all relevant information. Despite reasonable efforts by individuals, the delay can adversely affect a complainant in a significant way, a few days without a benefit or supplementary grant causing hardship, as can a failure to lodge an initial ACC claim for work-related illness. In one instance an opportunity to identify and diagnose asbestosis was missed as a result of a number of factors, including an incorrect denial by a patient of asbestos exposure as well as a failure to read one of the formal radiology reports. When asbestosis was later suspected, the focus was naturally on treatment of the individual. Because one of the ACC forms was not submitted prior to the patient's death, the family was not eligible to all ACC entitlements they would otherwise have received. As a result of this complaint, the DHB introduced a guideline to remind staff when ACC claims should be considered and organised a team from ACC to attend a Grand Round.

Conclusion

In summary, it is not HDC's usual practice to look into grievances where there are appropriate alternative remedies. It is not usually appropriate for HDC to scrutinise the content of a medical report. However, it is important to remember that the HDC Code of Rights applies at all times. Effective oral communication skills should help defuse challenging consultations, as should a self-check on professionalism and impartiality both in conversation and written communication.

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