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## Surgeon

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### Report on Opinion - Case 97HDC6083

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**Complaint**

The Commissioner received a complaint from a consumer about her treatment during a liver biopsy at a hospital in April 1997. Her complaint was:

- *Lack of clarity as to which one of two doctors would undertake the biopsy.*
  - *The surgeon's refusal to let the consumer's sister be present as her support person during the procedure.*
  - *The manner and content of the surgeon's communication during and after the procedure.*
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**Investigation**

The complaint was received by the Commissioner on 19 May 1997 and an investigation was undertaken. Information was obtained from:

The Consumer  
The Provider/Surgeon  
A House Officer  
The Consumer's sister  
The Consumer's father  
The Service Director, Hospital's Medical & Diagnostic Services.

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**Outcome of Investigation**

The consumer has hepatitis C and consulted the provider, a surgeon, at an outpatient clinic in late January 1997. The provider advises that: *"An appropriate request for a liver biopsy was sent to X-Ray who normally notify Admissions who then arrange for the patient's admission and who are expected to give me adequate written notice. ... I was not informed nor given any prior notice by the Admission office or the X-Ray Department or the ward, that the patient was waiting. This unknown booking imposed further workload on an already busy morning."*

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**Outcome of Investigation, continued**

The House Officer relates: *"I saw [the consumer] in the Day Unit prior to the liver biopsy to give informed consent. I explained that I might be doing the procedure but [the provider] would be present. I did not give permission for her sister being present in the room during the procedure. I think a communication mix-up might have occurred as I indicated only that it was alright if the patient's sister went with her as far as the Radiology Department."*

The consumer and her sister relate that while waiting outside X-Ray they heard the provider swearing and cursing about "... *being double booked ... I am going on holiday ...*". The provider admits that he was probably swearing as he came along the corridor but this was not directed at the patient. The House Officer confirms that the provider was swearing and that this was not directed at the patient. The consumer accepted this was not directed at her but still found the display of anger unprofessional and disturbing. The consumer and her sister went into X-Ray and were told that the provider was going to do the biopsy. The consumer explained to the provider that they had received permission from the House Officer for her sister to be present. The provider replied that they had not received his permission and, when the consumer asked, the provider refused. The consumer's sister then left. The House Officer was called away to other duties and the provider did the biopsy.

The provider states: *"It is my standard practice to do invasive procedures like a liver biopsy only with the patient and hospital staff present. This is my preference because I am more comfortable in this situation and as it increases the risk of infection and in order to do the procedure safely and well."*

The consumer says that after the procedure: *"... I suffered considerable pain and received an injection when I returned to the ward. I had just finished receiving my injection when [the surgeon] rudely opened the curtain to check on me. He implied that I was making up the pain I was experiencing as he questioned the location of the pain. My father, who was very concerned, came behind the curtain and [the surgeon] rudely questioned his presence."*

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**Outcome of Investigation, continued**

The provider says: *“When I saw her in the mid-afternoon her discomfort was settling. After ascertaining from a nurse of the patient’s whereabouts in the day ward, I did indeed open the curtain as I could not see the patient otherwise. I had spoken before I entered.”*

The hospital’s Service Director, in her letter to the consumer dated 9 July 1997, writes: *“I know that he [the surgeon] would regret that his sometimes brusque manner caused any patient to be upset.”*

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**The Code of Health and Disability Services Consumers’ Rights****RIGHT 1***Right to be Treated with Respect*

- 1) *Every consumer has the right to be treated with respect.*

**RIGHT 4***Right to Services of an Appropriate Standard*

- 2) *Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*

**RIGHT 8***Right to Support*

*Every consumer has the right to have one or more support persons of his or her choice present, except where safety may be compromised or another consumer’s rights may be unreasonably infringed.*

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### Report on Opinion - Case 97HDC6083, continued

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**Opinion:  
Breach** In my opinion the provider has breached Right 1(1), Right 4(2) and Right 8 of the Code of Health and Disability Services Consumers' Rights.

**Right 1(1)**

The provider's swearing and brusque manner resulted in the consumer undergoing an invasive procedure in a state of distress.

The provider should have taken a few minutes to explain the situation he found himself in, and why he preferred to do this procedure with only patient and staff present. This approach could have reassured the consumer, resolved some of the provider's anger and allowed the consumer's request to be given due consideration.

The provider must appreciate that an expression of anger is disturbing to those who witness it. People in hospital often feel vulnerable. Swearing and angry outbursts by the professionals providing care are not appropriate. While the provider's anger may not have been directed at the consumer, his lack of control did not reassure her of his ability to act professionally, nor did it give her confidence in the hospital itself. In my opinion, the provider's outburst meant that the consumer was not treated with respect.

**Right 4(2)**

The New Zealand Medical Association Code of Ethics states, under the heading "Responsibilities To The Profession":

***"Respect For Patient***

*Ensure that all conduct in the practise of the profession is above reproach, and that neither physical, emotional nor financial advantage is taken of any patient*

***Personal Conduct***

*Ensure that one's professional conduct is beyond reproach and report to the appropriate body of peers any conduct by a colleague which may be considered unethical or unbecoming to the profession."*

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**Opinion:  
Breach  
Continued**

The provider's swearing and expressing his anger at being double booked within the hearing of a consumer does not meet this standard. The provider's abrupt approach to the consumer when she was in the day ward and rude questioning of her father does not meet this standard. This brusque, abusive behaviour is a form of bullying and creates a situation in which a consumer would find it difficult to express their wishes or disagree with those of the provider. Indeed the consumer could only expect that she might do something which would upset the provider.

In my opinion the provider's behaviour both before the procedure and after the biopsy does not attain an appropriate professional standard.

**Right 8**

In my opinion the provider has breached Right 8 of the Code of Health and Disability Services Consumers' Rights.

The Code of Rights states that consumers may have present with them a support person or persons of their choice provided safety is not compromised or the rights of other consumers infringed. There is no reason under the Code of Rights why a consumer's support person cannot be present during a biopsy procedure. No evidence was put forward by the provider as to how the presence of the consumer's support person would have posed a safety risk or infringed the rights of other consumers. The provider's explanation that it was his "*preference because I am more comfortable in this situation*" clearly indicates a lack of understanding of his obligations under the Code.

The Code of Rights requires providers to take account of individual circumstances and to do what they reasonably can to meet the consumer's rights in those circumstances.

It is the consumer's right to have one or more support persons present except where safety may be compromised.

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### Report on Opinion - Case 97HDC6083, continued

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**Future****Actions -****The Surgeon/  
Provider**

I recommend the provider:

- Apologise in writing to the consumer. The apology is to be sent to my office and I will forward it to the consumer. A copy of the apology will be retained on the investigation file.
  - Familiarise himself with the Code of Health and Disability Services Consumers' Rights and confirm that he understands his obligations as a provider.
  - Moderate his language.
  - Act in a professional and supportive manner.
  - Seek, and act on, feedback on his manner.
  - Review all future requests for support person(s) on their own facts with the underlying knowledge that he has obligations at law to ensure this right to a support person.
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**Future****Actions -****CHE**

I recommend that the Crown Health Enterprise for whom the provider works:

- Advise consumers of their right to support under the Code of Health and Disability Services Consumers' Rights and, where the right is denied, provide appropriate explanation, discuss this with the consumer and record this on file.
  - As a part of staff performance appraisal, review the provider's personal interactions with consumers to ensure an ongoing appropriate professional standard of communication is met.
  - Take this opportunity of using this case note to remind all staff of their obligations under the Code, particularly the obligation in respect to Right 1 and Right 8.
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**Other Actions**

A copy of this opinion will be sent to the President of the Medical Council of New Zealand.

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