General Practitioner / Medical Trust

Report on Opinion - Case 97HDC6688

Complaint

The Commissioner received a complaint from the consumer about treatment she received from the GP. The complaint is that:

- *During hormone implant surgery on the consumer's hip ("the procedure"), the GP did not use the surgical gloves provided to him.*
- *During the procedure, the GP reused surgical instruments after placing them on non-sterile surfaces.*
- *The GP did not wash his hands in her presence before or after the procedure.*
- *The GP's son watched the procedure from the connecting door between the GP's office and his examination room.*

Investigation

An investigation was undertaken and information obtained from:

The Consumer
The Provider, General Practitioner
The Chairman of the Medical Trust that owns the Medical Centre, ("the trust")
The Former Chairman of the Trust
The Practice Nurse at the Medical Centre
A Representative of Development and Services Management Services at the District Council
The Support Person for the Consumer

The GP's medical registration details were obtained from the Medical and Dental Council of his home country. The Commissioner also sought advice from an independent general practitioner.

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Background

The trust was established in April 1996 in order to locate and employ a doctor for an area. The trust, with the assistance of the District Council, advertised in two overseas medical journals and in February 1997, employed the GP.

The GP was in a locum position at the medical centre for two months at which point the trust entered into lease negotiations with the GP with a view to him buying into the medical practice.

During this time the GP was paid a weekly salary by the trust or 55% of the medical centre earnings, whichever was the greater amount.

Information Gathered During Investigation

In early June 1997, the consumer attended an appointment with the GP at the medical centre for the routine subcutaneous placement of a hormone replacement implant.

Prior to the consumer entering the consulting room, a pack of sterile instruments had been placed on a bench in the room by the practice nurse, along with local anaesthetic, the hormone replacement implant, sutures, an unsterile guard to protect the patients clothes, and sterile gloves.

In a letter of 28 July 1997, the GP stated that on beginning the procedure he opened the sterile pack of instruments, and placed the open pack and instruments on the leg of the consumer. He then continued with the procedure. In a letter of 25 August 1997 from the trust to the Commissioner, the former chairman (who was still a trustee of the trust) stated:

> *"*[The GP] *informed me during the procedure he did not place surgical instruments on a non-sterile surface, but onto the sterile pack which came with the Hormone Implant."*

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Information Gathered During Investigation, *continued*

The GP further advised that he did not find it necessary to use gloves during this procedure. He did not give any medical reasoning or evidence to support that view. The GP also advised that he had previously encountered obstacles during this time at the medical centre, with obtaining sterile gloves for his use during more major surgery.

Prior and subsequent to the GP beginning employment at the medical centre, necessary supplies were ordered and managed by the centre's practice nurse. Copies of purchase orders were supplied which showed that surgical gloves had always been available at the centre during the period of the GP's employment. Additionally, the practice nurse confirmed that:

> *"Sterile gloves have always been in the surgery since I have worked at the centre."*

The GP provided conflicting information regarding the issue of whether he washed his hands during the procedure. In his letter of 28 July 1997, he initially stated:

> "*I did not need to wash my hands as I didn't touch the hormone tablet with my hands because I didn't have to touch it with my hands."*

Later in this letter, the GP stated:

> *"I did wash my hands before and after her procedure in my room next door where the basin is."*

During the implant procedure the GP's six year old son opened the connecting door between the consulting room and the GP's office. The GP advised the Commissioner that he instructed his son to go away. However, conflicting information was received from the trust in a letter of 25 August 1997 to the Commissioner, which stated that the GP informed the trust that:

> *"*[The GP's] *son did appear at the door, at his request, with* [the GP's] *asthma inhaler, which he needed."*

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Information Gathered During Investigation, *continued*

In early June 1997 the trust received a verbal complaint from the consumer concerning the GP's practice during the placement of her hormone replacement implant. The chairman of the trust advised that he contacted the GP and raised these matters with him. He would have liked to address this matter further with the consumer, but did not do so as they had been informally advised that the complaint was subject to an investigation by the Health and Disability Commissioner.

The trust received complaints from medical centre staff concerning the GP one month after he had started at the Centre. The trust stated that these complaints were dealt with, but provided no details to support this.

Code of Health and Disability Services Consumers' Rights

RIGHT 1
Right to be Treated with Respect

...
2) Every consumer has the right to have his or her privacy respected.
...

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 10
Right to Complain

...
3) Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.
4) Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than one month.
...

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Report on Opinion - Case 97HDC6688, continued

Code of Health and Disability Services Consumers' Rights *continued*

6) Every provider, unless an employee of a provider, must have a complaints procedure that ensures that –

a) The complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and

b) The consumer is informed of any relevant internal and external complaints procedures, including the availability of –

i. Independent advocates provided under the Health and Disability Commissioner Act 1994; and

ii. The Health and Disability Commissioner; and

c) The consumer's complaint and the actions of the provider regarding that complaint are documented; and

d) The consumer receives all information held by the provider that is or may be relevant to the complaint.

7) Within 10 working days of giving written acknowledgement of a complaint, the provider must,-

a) Decide whether the provider –

i. Accepts that the complaint is justified; or

ii. Does not accept that the complaint is justified; or

b) If it decides that more time is needed to investigate the complaint,-

i. Determine how much additional time is needed; and

ii. If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.

8) As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of –

a) The reasons for the decision; and

b) Any actions the provider proposes to take, and

...

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Report on Opinion – Case 97HDC6688 continued

Opinion: No Breach - the GP

In my opinion the GP did not breach the Code in respect of the following matters:

Sterile Gloves

I sought advice from an independent general practitioner on established standard medical procedures in relation to the use of sterile gloves for minor surgical procedures. I was advised that the use of sterile gloves is optional during a minor surgical procedure. However, the area on the patient for surgery must be sterile, usually swabbed with *iodine*, and the use of sterile equipment is essential. The consumer is unable to remember if the GP swabbed the area of her skin for surgery with *iodine* or any other sterile fluid. As the GP stated it was not necessary to wear sterile gloves, in my opinion the GP did not breach the Code in relation to this matter.

Sterile Instruments

There is conflicting accounts of what occurred in relation to the reuse of non-sterile surgical instruments. The GP claims to have placed the surgical instruments onto a sterile pack. It has not been possible to determine whether this occurred. Given the inconclusive and conflicting evidence, I am not able to determine that the GP breached the Code.

Opinion: Breach - the GP

In my opinion the GP breached Right 4(2) of the Code.

Hand Washing

The GP provided conflicting information in relation to not washing his hands prior and subsequent to the procedure. None of this information supports any claim that he washed his hands prior to the procedure on the consumer. My advisor stated that doctors should wash their hands between each patient consultation. Further, the doctor should wash their hands immediately prior to any surgical procedure. In my opinion, the GP should have washed his hands immediately prior this procedure. He failed to do so, which is a breach of Right 4(2) of the Code.

Privacy

While there is also conflicting information in relation to the GP's six year old son watching the procedure, in my opinion the consumer's privacy is of the utmost importance. The GP must be held accountable for this incident, as he was responsible for his son. In my opinion the GP breached Right 1(2) of the Code.

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Report on Opinion – Case 97HDC6688 continued

Opinion: Breach - the Trust

The trust must facilitate the fair, simple, speedy and efficient resolution of complaints. In my opinion the trust made no attempt to seek resolution of the consumer's complaint. No information was provided to demonstrate the trust has a formal complaint procedure. While the trust heard the consumer's complaint at a meeting in early June 1997, it did not act on this complaint because it claimed that it had been informally advised that the Commissioner was investigating the complaint. This was not an appropriate reason for the trust not to investigate the complaint. The Commissioner received the complaint on 18 June 1997 and at this point the trust should have already taken steps towards resolving the consumer's complaint. Regardless of any knowledge the trust may have had of the Commissioner's investigation, it should have continued with its own complaint resolution process that it was required to undertake. The trust should have facilitated the resolution of the complaint within that period, and in my opinion its failure to do so breached Right 10(3) of the Code.

Rights 10(4), 10(6) and 10(8)

The following rights set out the minimum obligations to notify a consumer of receipt and of progress with their complaint. Under Right 10(6) of the Code the trust, as a provider, must have a complaints procedure that ensures that the consumer's complaint is acknowledged in writing within five days of its receipt. I am unaware whether the trust has such a complaints procedure. The trust received the consumer's complaint in early June 1997, and did not reply to this complaint within the specified five working day period. It is not an excuse that they were aware that the Commissioner was undertaking an investigation and, regardless of this, the Commissioner did not receive the complaint until 18 June 1997. In my opinion, this was a breach of Right 10(6)(a) of the Code.

In addition, the trust did not provide any evidence that they informed the consumer of any relevant internal or external complaint procedure. In my opinion this was a breach of Right 10(6)(b) of the Code.

The trust also breached Right 10(7) of the Code. They did not correctly consider whether the consumer's complaint was justified or whether more time was needed to investigate her complaint. Moreover, the trust breached Right 10(4) of the Code by not informing the consumer of the progress of her complaint at one monthly intervals.

General Practitioner / Medical Trust

Report on Opinion - Case 97HDC6688 continued

Actions

I recommend that the GP takes the following actions:

- Apologises in writing to the consumer. This apology should be sent to the Commissioner, who will forward it to the consumer.

I recommend that the trust takes the following actions:

- Apologises in writing to the consumer. This apology should be sent to the Commissioner, who will forward it to the consumer.
- Implements a formal complaint procedure which adheres to all provisions of the Code of Health and Disability Services Consumers' Rights.
- Ensures patient privacy is observed at all times at the medical centre.

Other Actions

A copy of this opinion will be sent to the Medical Council of New Zealand and the Medical and Dental Council of the GP's home country for their information.

I recommend that if the Medical Council of New Zealand receives a further request from the GP to practice medicine in New Zealand, this request should only be accepted if verbal references are obtained and the Commissioner's opinions on his practice reviewed.

Other Comments

The Commissioner was hampered during the investigation by the fact that the GP returned to his home country. He did not provide an overseas contact address, telephone or facsimile number on leaving New Zealand. Contact details had to be obtained from the Medical and Dental Council of his home country.

In addition, the trust did not volunteer information to assist with the investigation and only responded to direct requests.