

**Damage to blood vessel during surgery,  
and inadequate information given to patient  
(02HDC10715, 2 December 2004)**

*Breast and general surgeons ~ Breast surgery ~ Integrated care with multiple providers ~ Supervision ~ Primary responsibility for care ~ Complications ~ Communication ~ Standard of care ~ Rights 4(1), 6(1)(a), 6(1)(e)*

A 51-year-old woman complained about the services provided by two breast surgeons at a breast clinic. The woman was seen by a number of doctors at the clinic over the course of a year, and was diagnosed with ductal carcinoma in situ (DCIS) of the right breast and widespread calcifications with atypical ductal hyperplasia (ADH) in the left breast. She underwent a bilateral mastectomy with reconstruction.

The woman complained that she was not provided with adequate information about her treatment and subsequent care; was not fully assessed prior to surgery; was not informed that one of the surgeons was under supervision; and was not told that her left latissimus dorsi artery was damaged during surgery.

The surgery had been postponed because immediately prior to the procedure it was found that a preoperative mammogram had not been requested. The results established a clearer picture of the underlying pathology and indicated that more extensive surgery than had been planned was necessary. It was held that although omission of the preoperative mammogram was unfortunate, it was recognised in time and, notwithstanding the distress caused to the woman, did not result in any inappropriate surgery.

The woman had been told by one of the surgeons that he would be assisting with the surgery, and she felt misled when she discovered that the two surgeons had performed the breast reconstruction in tandem. The first surgeon had primary responsibility for the patient's care. The second surgeon was a UK-trained breast and general surgeon who had temporary registration with the Medical Council of New Zealand, under which he was permitted to practise under the supervision of the first surgeon. The Commissioner was satisfied that the second surgeon was adequately qualified to perform breast reconstruction surgery, and that it was appropriate for him to inform the patient that he was assisting during the surgery. However, the patient was entitled to an explanation of the role that the two surgeons would undertake during her surgery. This was the responsibility of the primary surgeon.

The woman also complained that an infection in her left breast was not adequately treated, and she was not offered a full explanation for the bleeding and the delayed healing in her breast. In light of the uncertainties surrounding the cause and location of the bleed, and the reports from expert advisors, the Commissioner held that the explanation offered was appropriate. However, the discussion the second surgeon had with the woman about her postoperative bleeding was not sufficient and left her unclear about what had happened and its significance. The surgeon should have fully discussed the complication with the woman or facilitated a meeting with the first surgeon to discuss the matter. The second surgeon's treatment of the infection was found to be adequate.

The first surgeon, as senior surgeon and the one with primary responsibility for the woman's care, was found in breach of the Code on several counts. In damaging the blood vessel during surgery, he was held not to have exercised the care and skill

expected of an experienced breast and general surgeon, in breach of Right 4(1). In addition, the woman was not given adequate information about the severed blood vessel, in breach of Rights 6(1)(a) and (e). While the surgeon largely managed the woman's breast infection appropriately, and eventually took the correct action to treat it, he had not recognised or responded to the underlying cause in a timely manner, and accordingly breached Right 4(1).

The woman also complained that she was inappropriately advised by the surgeon to have an expander inserted into her left breast. She was concerned that because she had very thin skin flaps the procedure would not be suitable and, on gaining a second opinion, she elected not to have the procedure. Although the surgeon's decision did not concur with that of the expert advisors, the Commissioner was satisfied that the surgeon had exercised reasonable professional judgement, and did not breach the Code in this respect.

The woman was also unhappy with the cosmetic result of her breast reconstruction, which had left her breasts asymmetrical. Both expert advisors agreed that the reconstruction was less than ideal and did not meet the woman's expectation, but were satisfied that the surgery had been performed appropriately.

The specialist clinic was found not to be in breach of the Code regarding concerns about the woman's continuity of care, and was not vicariously liable for the first surgeon's delay in treating the infection.