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## Urologist

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### Report on Opinion - Case 98HDC14279

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**Complaint** A consumer complained about the result of surgery performed by the provider, an Urologist. The complaint is that:

- *As a result of dissatisfaction with a testicular implant operation, the consumer wrote to the provider setting out his concerns. The provider has not responded to the letter.*
  - *The implant is incorrectly positioned, hardly visible when viewed from the front, (the principal reason for the operation) much smaller and significantly harder than the natural testis.*
  - *A remedial operation will cost in the vicinity of \$2,500.00 - \$3,000.00.*
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**Investigation** The complaint was received by the Commissioner on 30 April 1998 and an investigation was undertaken.

Information was obtained from the following:

The Consumer / Complainant  
The Provider / Urologist

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**Outcome of Investigation** The consumer had his right testis removed some years ago. The consumer had entered into a new relationship and become involved in the Nudist Organisation. The consumer was anxious to have prosthesis inserted for cosmetic reasons.

The provider operated on the consumer in mid-January 1998. At this time the provider noted the right side of the consumer's scrotum was quite contracted and considered it would be some weeks after the implant at least before it expanded a little. The provider thought the cosmetic effect would be reasonable in due course.

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### Report on Opinion - Case 98HDC14279, continued

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**Outcome of  
Investigation,  
*continued***

The consumer was not satisfied with the appearance of the prosthesis and consulted a second specialist in mid-February 1998. In correspondence addressed to a third specialist and copied to the provider, the second specialist reported that the scar was well healed but the right testicular prosthesis sits slightly high in the scrotum and also the longitudinal axis is oblique, with the lower pole being lateral and more anterior and the upper pole medial and more posterior. It is relatively fixed in position. The second specialist's opinion was that the axis would not change and to alter the axis would necessitate the removal of the prosthesis followed by a period of time to allow the tissues to settle down and then the implanting of another prosthesis.

The provider next saw the consumer in early March 1998. The provider agreed the cosmetic appearance was not good. The provider advised the consumer that he thought he could improve the position and appearance by readjusting the fixed (lower) end of the testis, but as the scrotum is contracted any expectation of it looking entirely like the other side may be unrealistic. The provider felt that as the scrotum was now expanded a little it may be easier to get a more satisfactory position. The provider offered to do this without any surgical charge but there would be a small charge for the theatre and anaesthetist.

The consumer wrote a letter of complaint to the provider in mid-March 1998, and the provider responded in mid-May 1998 after he had taken advice from the Medical Defence Union.

The consumer reported in late October 1998 that there had been no improvement in the situation.

In response to the Commissioner's Provisional Opinion dated 17 December 1998, the provider's lawyer submitted on behalf of the provider a letter from a Plastic, Reconstructive and Cosmetic Surgeon. In this letter that Surgeon states:

*“an acceptable aesthetic result is very often a matter of some opinion and at times, patients' expectations may not necessarily be met by the surgeon as the expectations of the surgeon and patient may differ.”*

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### Report on Opinion - Case 98HDC14279, continued

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**Outcome of  
Investigation,  
continued**

*“It is also possible sometimes for the surgeon to have an expectation of a cosmetic result but because of the nature of the patient’s tissues or some other aberration that occurs during the surgery, or after the surgery, in the healing process the final aesthetic result is not in keeping with what the patient or the surgeon expects.”*

The provider’s lawyer also submitted some general comments on testicular implants from the second specialist, who states:

*“ ... It is not uncommon for the scrotum to be rather shrunken on the affected side and it is necessary sometimes to stretch it somewhat at the time of the operation in order to accommodate the prosthesis. Because of the nature of the scrotum it may well be that the pocket is not at exactly the appropriate height or in the appropriate axis (there are after all no axes to give a guide such as there would be when aligning a joint prosthesis). Consequently the prosthesis may well lie in a position which is not anatomically normal.”*

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### Report on Opinion - Case 98HDC14279, continued

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

*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*

...

- (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.*

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### Report on Opinion - Case 98HDC14279, continued

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**Opinion:** In my opinion the provider did not breach Right 4(2) of the Code of  
**No Breach** Health and Disability Services Consumers' Rights.

**Right 4(2)**

The purpose of this procedure was cosmetic. The actual clinical procedure was performed in accordance with appropriate surgical standards but did not achieve an aesthetic result.

The provider has provided supporting information to show that one can only achieve an acceptable aesthetic result in a situation where the preoperative conditions are ideal. In this case the scrotum had shrunk on the operative side with the result that the prosthesis lies in a position which is not anatomically normal.

I accept that the provider did not advise the consumer he could guarantee the outcome. The provider has not been paid for the surgery or the prosthesis and has offered to attempt further surgery without his fee. While I recognise that the consumer has paid \$520.00 for the costs of the anaesthetist and theatre for the first operation and would need to incur further costs, I find the provider's offer to be reasonable in the circumstances and in my opinion he has not breached Right 4(2) of the Code.

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### Report on Opinion - Case 98HDC14279, continued

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**Opinion:  
Breach** In my opinion the provider has breached Right 10 of the Code of Health and Disability Services Consumers' Rights.

**Right 10(6)**

The consumer first complained orally on 9 March 1998 to the provider about the result of this procedure. The consumer then wrote to the provider on 25 March 1998. The provider responded on 13 May 1998 after he had taken advice.

The provider should have responded in writing to the consumer's verbal complaint and kept the consumer informed while he took advice from the Medical Defence Union. In not doing so the provider did not meet his obligations under Right 10 of the Code.

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**Actions** I recommend the provider apologise in writing to the consumer for not responding to his complaint within the timeframe established by the Code of Rights.

I recognise the provider's actions by waiving his fee and offering to repeat the surgery at no cost to make amends.

A copy of this opinion will be sent to the Medical Council of New Zealand and the Medical Defence Union.

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**Other Actions** I recommend that the Medical Defence Union ensure that whenever a complaint is referred to them, they ensure the individual doctors are complying with the procedures established by the Code.

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