

20 November 2002

Dear Dr B

Following an investigation I have now formed my opinion on the complaint made by Mr A about the services you provided to him in 2001. In doing so I have carefully considered your response to my provisional opinion which was very positive and constructive. However, I have not been persuaded to alter my provisional view that you breached the Code of Rights.

Mr A's complaint was summarised as follows:

Complaint

Dr B, Maxillofacial and Oral Surgeon, did not provide the appropriate standard of health care to Mr A in 2001. In particular, he did not:

- *properly assess the state of Mr A's tooth*
- *remove Mr A's tooth when this was appropriate*
- *properly treat Mr A's tooth*
- *properly inform Mr A of all the treatment options available to him, including the risks and benefits of those options, prior to commencing treatment*
- *properly explain to him the reasons for the treatment being unsuccessful and the consequences*
- *properly communicate with other providers involved in Mr A's care.*

Information

During the course of my investigation I reviewed information from yourself, Mr A, Dr C, a Dentist, a Pathologist and a Dental Surgeon. I also sought independent expert advice from Dr Donald Adams, an Oral and Maxillofacial Surgeon. I enclose a copy of Dr Adams' advice.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.

Background

- November 2000 – Dr C referred Mr A to you as he had internal resorption in one of his teeth.
- December 2000 – Mr A had a consultation at which you assessed his tooth.
- December 2000 – Mr A had an appointment for surgery which he did not attend.
- January 2001 – Mr A had an apicectomy.
- February 2001 – Mr A’s sutures were removed by you.
- February 2001 - Dr C referred Mr A back to you as he was concerned about the state of his tooth.
- February 2001 – Mr A had a consultation during which you took a periapical radiograph of his tooth.
- March 2001 – Mr A had a consultation at which you decided the tooth needed extraction.

The Code of Health and Disability Services Consumers’ Rights

Appropriate standard of services

In my opinion you breached Right 4(1) of the Code, which provides that every consumer has the right to have services provided with reasonable care and skill.

I accept the advice of my expert advisor that the apicectomy you performed in January 2001 was appropriate to treat the internal resorption, provided a standard root filling was subsequently completed. However, you did not complete a standard root filling and therefore did not address the areas of resorption in the vicinity of the crown end of the tooth, which allowed the disease to spread.

I do not accept that it was reasonable for you to assume that Dr C would treat the resorption at the crown end of the tooth. This view is supported by the following facts:

- Dr C has told me that he referred Mr A to you as he had noted resorption at the apex but was primarily concerned about resorption further up towards the crown of the tooth. His referral letter of November 2000 is consistent with this as it states that the purpose of the consultation was “re: internal resorption around [dental element] 22”.
- I also accept Mr A’s statement that he thought you would undertake all the work needed to treat his tooth and he was “shocked” that he had to return to Dr C for further treatment.

- Your notes and those of Dr C do not record any arrangement for shared care.
- Mr A did not return to Dr C after the apicectomy in February 2001 so that he could complete treatment for the resorption. The purpose of the consultation was for Dr C to remove the temporary antibiotic filling you had placed there and replace it with a regular filling.

I acknowledge that in reaching my decision I have also taken into account the following factors:

- You wrote to Dr C in January 2001 informing him that you had removed the apex of Mr A's tooth and the resorptive tissue. At that point it would have been wise for Dr C to confirm that you had treated the resorption at the crown end of the tooth.
- You offered to remove Mr A's tooth at no extra cost and refund half the fee for the apicectomy. You also made reasonable efforts to resolve Mr A's issues about your treatment prior to the complaint.
- I accept the advice of my expert advisor that the internal resorption in Mr A's tooth proceeded at a most unusually rapid rate, which you could not have anticipated. In particular I note that Mr A's surgery was delayed from December 2000 until January 2001. I am not able to determine the reasons for this delay as you and Dr C have different accounts. However, I acknowledge my expert advisor's comment that this delay may have been an adverse factor in saving the tooth because of the rapid rate of the resorption during this period.

Nonetheless you should have fully treated the resorption in Mr A's tooth and I acknowledge your statement that Mr A's tooth failed because the disease process at the crown end of the tooth migrated down the root at a faster rate than was predictable.

Finally, I acknowledge my expert advisor's comment that you did not fully appreciate the extent of the pathology in Mr A's tooth, which significantly reduced the chances of its success even if properly conducted. I consider it probable that you did appreciate the extent of the pathology but in your decision to perform the apicectomy you gave too much weight to Mr A's wish to keep his tooth and your assumption that Dr C wanted this. Although this was unwise, I have accepted the advice of my expert advisor that the apicectomy was appropriate provided that the standard root filling was completed.

In my opinion you breached Right 4(1) of the Code because you failed to complete a standard root filling.

Information disclosure

In my opinion you did not breach Right 6(1)(b) of the Code. Right 6 of the Code states that every consumer has the right to information that a reasonable consumer, in that consumer's circumstances, would expect to receive. Right 6(1)(b) of the Code states that this information includes an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option.

Prior to treatment

I accept that you provided Mr A with sufficient information about the nature of the apicectomy procedure at your consultation in December 2000. The form that Mr A signed giving consent to the apicectomy does not disclose in detail what information you gave to him about it and so is unhelpful in clarifying the nature of the information he received. However, Mr A has told me that you informed him you could save his tooth by taking the top off it and then plugging it. I also consider that he knew that an extraction of the tooth was another option as he told me he informed you that he wanted to keep his tooth if that was possible.

I also accept that you told Mr A the apicectomy was not guaranteed to be successful but that there was a reasonable chance of success. This view is supported by your letter to Dr C dated January 2001 in which you said that the resorption could "probably" be arrested by an apicectomy.

In my opinion you did not breach Right 6(1)(b) of the Code because you provided Mr A with sufficient information about the apicectomy prior to undertaking the procedure.

After treatment

I accept that you told Mr A in your letter dated May 2001 that his treatment had failed because of the rapid rate of the resorption, which was a significant reason. In addition I note that you agreed with the New Zealand Dental Association Consumer Affairs representative to meet with Mr A to discuss his complaint but you were not given this opportunity.

I also note that Mr A drafted a letter to you in June 2001 requesting information about his treatment but he sent it to the Dental Council for advice and assistance in resolving the issues he had with you. The Dental Council then referred the complaint to me as required by law. In these circumstances I consider that you made reasonable efforts to provide Mr A with information concerning the failure of his treatment.

Therefore in my opinion you did not breach Right 6(1)(b) of the Code because you provided sufficient information to Mr A concerning the failure of his treatment.

Response to my provisional opinion

In your response to my provisional opinion you repeated that you failed to complete a standard root filling because you assumed Dr C would do so, but acknowledged that you had not properly communicated with him about this. This meant that, in the absence of any other evidence, you were responsible for completing all the treatment on Mr A's tooth, and by failing to do so breached Right 4(1) of the Code.

I also acknowledge that you have accepted my recommendations that you apologise to Mr A and refund his full consultation fee but that this is to be on the basis of a full and final settlement of this issue. Please send your apology and refund to me and they will be sent to Mr A.

You also informed me that you have reviewed your practice and processes to ensure that the circumstances giving rise to Mr A's complaint do not happen again.

Finally, I appreciate your comments about the impartial way in which my investigation was conducted.

Comments

Record of consultation in December 2000

I note with concern that you did not record in writing the content of your discussion with Mr A in December 2001. I therefore remind you of your obligation under the Code of Practice of the New Zealand Dental Association to keep appropriate records.

Periapical radiographs taken in December 2000 and February 2001

You have told me that you lost the periapical radiograph of Mr A's tooth taken in February 2001 during a visit to Dr C's surgery to discuss his complaint. I view this with concern because it was important in this case for my expert to assess the state of the tooth as soon as possible after surgery in January 2001, to measure the rate of the resorption at that time. Unfortunately the next available radiograph after surgery was taken in June 2001. I therefore remind you of your obligation under the Code of Practice of the New Zealand Dental Association to arrange the adequate physical security of records.

You have also told me that the radiograph, which is listed in your billing records as taken in December 2000, refers to the lost one taken in February 2001 as it was billed in advance. I find this difficult to accept. Mr A has sent to me a statement of account dated January 2001 in which he is billed for the full amount of your treatment, including the radiograph taken in December 2000. In January the radiograph taken in February could not have been envisaged as it was taken in response to Dr C's concerns about Mr A's tooth, which were expressed to you in February. In addition you have said in your response that a radiograph is usually only taken by way of follow-up four months after surgery.

Dr C

Dr C declined to comment on my provisional opinion.

Actions

- A copy of my final opinion will be sent to the Dental Council of New Zealand.
- A copy of my final opinion, with identifying features removed, will be sent to the Australian and New Zealand Association of Oral and Maxillofacial Surgeons.

Apology and refund

Kindly send me your apology and refund cheque for forwarding to Mr A, by 30 November 2002.

Thank you for your cooperation with my investigation.

Yours sincerely

Ron Paterson
Health and Disability Commissioner

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