
Dentist

Report on Opinion - Case 98HDC15211

Complaint

The Commissioner received a complaint from a consumer that a dentist performed a dental procedure without her consent. The complaint was that:

- *In September 1997 the consumer approached the dentist for a free quote for dental work, to be presented to Income Support.*
 - *The dentist checked the consumer's teeth and then proceeded to carry out the treatment without her consent. When the consumer realised what was happening she was told rather rudely by the dentist not to move her mouth and to keep still.*
 - *After the treatment was completed the dentist explained to the consumer what he had done and handed her a bill for \$273.00. The consumer was shocked and confused.*
-

Investigation

The complaint was received on 5 June 1998 and an investigation was undertaken. Information was obtained from:

The Consumer
The Provider / Dentist
The Receptionist, Dental Centre
A Dentist
A Caseworker, Income Support

Outcome of Investigation

The consumer had been experiencing pain in an upper premolar tooth and contacted her caseworker at Income Support to discuss financial assistance. She said she was informed that Income Support required quotes from at least two dentists before treatment could be commenced. The consumer said she was also told that if the quotes exceeded the \$300.00 limit prescribed by Income Support she would be required to make up any shortfall.

Continued on next page

Dentist

Report on Opinion Case 98HDC15211, continued

**Outcome of
Investigation,
*continued***

The consumer consulted a dentist who performed a mirror and probe examination and told her it would be cheaper and quicker for him to extract the tooth. The consumer told him she preferred to retain the tooth and was informed that her other option was to have root canal treatment. The consumer said this dentist asked her whether she wanted a temporary dressing, which she declined. She told him she needed to obtain a second quote but would get back to him. She was quoted \$300.00 for the root canal treatment.

This dentist advised the Commissioner that he was unable to locate any clinical records for the consumer. He said the records have been computerised and that data on "hard to transfer" cases is missing. He confirmed his quote would have been no more than \$300.00 because that was the maximum entitlement available through Income Support.

The consumer made enquiries with receptionists at two other dental surgeries. She said both quotes were for root canal treatments and were in the region of \$700.00 each.

The consumer said she discussed the quotes with her case worker at Income Support and decided to obtain a further quote. In mid-September 1997, the consumer went through the phone book looking for a dentist closer to home and found the phone number of the dentist who is the subject of this opinion. She spoke with the dentist's receptionist and told her: "I need an appointment for a free quote for Income Support". The consumer said she was informed that the quotes were free. She said she remembered the conversation because she had no money to pay for a consultation. An appointment was arranged for that day. The receptionist was unable to recall the conversation but said she tells people who ask about free quotes, "*we charge Income Support for the quote and if Income Support does not pay it you will have to*". The dentist advised the Commissioner he has never offered free quotes.

On arrival at the dentist's surgery the consumer introduced herself to the receptionist as "the one who rang you for a quote" and was given a form to fill in. She said the dentist came out and she told him "I'm here for a quote for Income Support for a root canal".

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

**Outcome of
Investigation,
*continued***

The consumer was taken into an examination room and asked to lie down. The dentist examined the consumer's tooth with a mirror and probe.

The dentist said the consumer's tooth was quite decayed and it was obvious it was causing a problem. The dentist tapped the tooth to test percussion sensitivity. He explained that if tapping caused pain it would indicate the pulp was dead and the periapical tissue was inflamed. The dentist's records do not record the result of this test which he assumed meant the tooth was not percussion sensitive. His clinical notes recorded "pain in upper tooth".

The dentist explained to the Commissioner that the consumer's upper premolar tooth was badly decayed and the options available were either extraction or root canal treatment. However, the dentist said at an interview that he did not discuss extraction as an option with the consumer. He said there was no extensive decay elsewhere in the consumer's mouth and that from what he could see, the rest of her teeth were in good shape. He said he would not have recommended extraction under those circumstances.

The consumer said the dentist told her the tooth was badly decayed and explained the root canal procedure to her. She could not recall this explanation in any detail. She said that, because she had already been to the previous dentist she knew root canal treatment was required and thought the dentist was explaining what needed to be done in the context of providing her with a quote.

The dentist explained during the investigation that his initial examination did not confirm the treatment the consumer required. He said that the only way he was able to determine whether root canal treatment was necessary was to excavate the decay. He explained that, if the tooth was decayed to the pulp, then the treatment of choice was root canal but that, if the pulp was not largely exposed, then a dressing over the pulp exposure and a filling may have been all that was required. The dentist said he sank his probe into the decay but was uncertain how far down it went. He advised that once the decay had been excavated, and the pulp was largely exposed, the tooth would have required an immediate dressing.

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

**Outcome of
Investigation,
*continued***

During the dentist's examination the question of the consumer's pain was raised. The consumer recalled the dentist stating "you must be in a lot of pain" to which she responded "for a few days". The dentist said he advised "I can get you out of pain today, if you wish". He said his normal wording is "the tooth is saveable and I need to remove the decay and put a dressing on".

The dentist told the Commissioner "*the Social Welfare quote note in the appointment book indicates a patient wants a letter to Social Welfare for financial assistance and does not necessarily mean that they come to me seeking a quote only*". The dentist said that, in the past, his staff would telephone Income Support for approval to perform emergency treatments and this would be granted. He said it is now common for approval for definitive treatment to take 1-2 days.

The dentist advised the treatment took place more than a year ago and that he could not remember the exact dialogue but suggested the consumer indicated her consent by saying " 'okay', or words to that effect". The consumer said that if the dentist had suggested he do a temporary dressing she would have declined the offer, as she had done with the previous dentist.

The consumer said the dentist put some cotton wool in her mouth and the nurse entered the examination room. She said the dentist inserted an injection into her gum but did so discretely and she did not realise what was happening until she felt her mouth go numb. She said the dentist put a clamp on her tooth and she became suspicious at this stage but, because of the clamp, found it hard to speak. She said that when she did try to speak the dentist told her, quite rudely, not to move and to keep still. The consumer said she was concerned she might hurt herself if she attempted to speak so she said nothing more. The consumer said she thought the dentist might be doing a temporary dressing but dismissed the idea because she thought "that's not why I'm here".

The dentist said it would have taken at least five minutes for the consumer's mouth to go numb once the injection had been inserted. He questioned the consumer's silence during this time and said "*she had ample time to speak up if she was concerned and considered she hadn't consented to treatment*".

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

**Outcome of
Investigation,
*continued***

The dentist denied telling her rudely to keep still. The dentist said he would hold a patient's head still if they were moving but would never speak rudely. The dentist asked his nurse, who was present during the treatment phase of the consultation, whether he had done this and she responded "never".

The consumer said that when the dentist finished the treatment he asked her to sit in the waiting room. She said he came out and explained that he had put a temporary dressing on her tooth to stop the pain for a few days and then handed her a bill for \$273.00. She said the dentist told her it would cost a further \$600.00 to complete the root canal treatment. The consumer is no longer in possession of the original bill. The dentist provided the Commissioner with a copy of the bill which indicated the cost of treatment was \$173.00.

The dentist advised that he had not discussed the cost of root canal or other treatment with the consumer prior to treatment. He explained that he would not have known the cost of the treatment until it was finished, given that he was unable to determine whether he could dress the pulp and fill the tooth or whether root canal treatment was necessary, until after the tooth had been excavated.

The consumer said she was shocked and confused but took the bill and left. The dentist wrote to Income Support indicating the cost of treatment, including the initial consultation, emergency treatment and dressing to relieve pain, root canal treatment and restoration would cost \$773.00. The consumer said had she been provided with a quote, she would never have consented to treatment by the dentist because she would have been required to make up the cost difference and the previous dentist could have performed the entire treatment for \$300.00. A representative from Income Support, confirmed that the previous dentist completed the root canal treatment at a cost of \$300.00.

The consumer said that following the dentist's treatment, she knew "something was not right" so she telephoned her case worker at Income Support. She then contacted the Dental Association. The consumer was under the impression the Dental Association would deal with the situation. However, she received a telephone call from Bay Collection Agency in mid-May 1998, requesting payment of the dentist's bill.

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

**Outcome of
Investigation,
*continued***

The Dental Association confirmed that the consumer made contact in mid-September 1997 and that details of the complaint were faxed to their Complaints Officer. The consumer also contacted the Dental Association in mid-October 1997, mid-November 1997 and early February 1998. No resolution was achieved through the Dental Association's complaints process.

The dentist said the first he knew of the consumer's complaint was when the final account notice, dated early April 1998, was returned "not at this address". The dentist provided the Commissioner with a copy of this account, in the amount of \$173.00. The Dental Association provided the Commissioner with a copy of a letter dated mid-February 1998 sent by a Complaints Officer to the dentist. In that letter the complaint was outlined as follows:

"Regarding [the consumer] who first contacted the Dental Association [in September 1997]. At that time she said she was booked in for a free quote for Social Welfare. She said that you did the work without being asked to and charged her \$170.00."

The Complaints Officer advised the dentist:

"At that time I told her her first course of action was to contact you. She has called [the Association] again recently. Did you ever receive any communication from her? Do you want to call her... or would you prefer that I call her. If so, please send me details."

The Dental Association advised that according to their records, the dentist did not respond to this letter.

The dentist advised the Commissioner that, once he became aware that there was a problem he attempted, unsuccessfully, to contact the consumer by telephone on a number of occasions.

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

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

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

RIGHT 6

Right to be Fully Informed

- 1) *Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including -*
 - a) *An explanation of his or her condition; and*
 - b) *An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; ...*

RIGHT 7

Right to Make an Informed Choice and Give Informed Consent

- 1) *Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise.*

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

**Opinion:
Breach** In my opinion the dentist breached Right 6(1) and Right 7(1) of the Code as follows:

Right 6(1)

The dentist acknowledged he did not discuss the cost of root canal treatment with the consumer prior to excavating the decay. He explained this was because he was unsure whether the treatment would involve excavation and a filling or full root canal treatment. However, he should have been able to give an approximate quote for this procedure or alternative quotes without commencing treatment. Further, the dentist did not discuss extraction as an option because he determined the consumer's other teeth were in good shape and he did not recommend extraction under those circumstances. Right 6(1) of the Code sets out the information a consumer should expect to receive without having to ask their provider. The consumer was entitled to information regarding the options available to her and any costs associated with each option. In my opinion, the dentist breached Right 6(1) of the Code by not discussing the treatment options available to the consumer, or their associated cost, prior to commencing the dental treatment.

Right 7(1)

The dentist was aware that the consumer arranged the consultation for the purpose of obtaining a quote for Income Support. He explained that, in his experience, while consumers may seek a quote in order to obtain financial assistance, that did not necessarily mean they went to him seeking only a quote. The dentist's ability to obtain the consumer's informed consent to treatment depended upon her being fully informed about the treatment options and the cost of those various options. The dentist said his initial examination had not confirmed the treatment the consumer required and advised the only way he was able to determine whether root canal treatment was necessary was to excavate the decay. The dentist also indicated that he was aware of the consumer's pain and said that he excavated the decay and dressed the tooth in order to relieve her of that pain. Whatever the reason for the treatment, in my opinion, by not obtaining the consumer's informed consent prior to commencing the treatment the dentist breached Right 7(1) of the Code.

Continued on next page

Dentist

Report on Opinion - Case 98HDC15211, continued

Future Actions

I recommend that the dentist takes the following actions:

- Provides a written apology to the consumer for treating her without fully informing her of her treatment options and ensuring he had obtained her consent for the procedure. This is to be sent to the Commissioner's office and will be forwarded to the consumer.
- Reads the Code of Health and Disability Services Consumers' Rights and confirms in writing to the Commissioner that he fully understands his obligations as a provider of health services.
- Discusses treatment options and fees with his patients, along with all the other necessary information, to ensure they are fully informed.
- Waives his fee for the treatment provided and confirms in writing that this has been done.

A copy of this opinion will be sent to the consumer, the New Zealand Dental Association and the Dental Council of New Zealand.
