
General Practitioner / Clinical Director / Certifying Consultant / Counsellor / Hospital and Health Service

Report on Opinion – Case 98HDC12437

Complaint

The Commissioner received a complaint concerning the treatment provided by a general practitioner, a certifying consultant, a clinical director, a counsellor and a hospital and health service. The complaints about each party was as follows:

General Practitioner

- *In late October 1997 the general practitioner referred the consumer to a hospital for abortion counselling without first providing the consumer with other options or informing her that the hospital was an abortion clinic.*

Certifying Consultant

- *In November 1997 one of the certifying consultants did not discuss options other than abortion with the consumer and instead signed the authorisation for abortion to proceed on “mental health grounds”. The certifying consultant did not request a psychiatric consultant to assist in determining “mental health grounds” as the reason for the consumer’s abortion.*
- *In early November 1997 the certifying consultant asked the consumer to complete a consent form for termination of pregnancy while the consumer was in a distressed state and without fully informing the consumer of her options. The consultant did not read the consent form back to the consumer before signing it herself.*
- *The consultant completed a “Certificate of Certifying Consultants Authorising an Abortion” despite the fact that she was not the operating surgeon and despite the fact that the consumer’s general practitioner had not referred her for an abortion. The consultant did not fully consider the consumer’s case and did not properly assess the effects of pregnancy and termination of pregnancy on the consumer’s mental health before completing a “Certificate of Certifying Consultants Authorising an Abortion”.*
- *The consultant did not keep adequate records and reports relating to her treatment of the consumer.*

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Complaint *Continued*

Clinical Director

- *At a pre-abortion appointment in mid-November 1997 the clinical director stated that if the consumer was “only 50/50” about having an abortion then it would not be carried out. In early December 1997 the clinical director was the second certifying consultant and surgeon for the consumer and the abortion was authorised and carried out despite the consumer’s continued distress.*
- *In mid-November 1997 the clinical director asked the consumer to complete a consent form for termination of pregnancy while the consumer was in a distressed state and without fully informing the consumer of her options. The clinical director did not read the consent form back to the consumer before signing it herself.*
- *The clinical director completed a “Certificate of Certifying Consultants Authorising an Abortion” despite the fact that she was not the operating surgeon and despite the fact that the consumer general practitioner had not referred the consumer for an abortion.*
- *The certifying consultant did not keep adequate records and reports relating to her treatment of the consumer.*

Counsellor and Hospital and Health Service

- *The pre-abortion counselling at the hospital by the counsellor did not provide the consumer with full information prior to her abortion in early December 1997, in particular information about options and choices.*
 - *The counsellor did not take appropriate action when the consumer stated that she did not want an abortion.*
 - *The consumer’s support person, her husband, was sent home by the hospital staff.*
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Investigation Process The original verbal complaint was received by the Commissioner on 10 March 1998 and an investigation was commenced on 12 May 1998. Information was obtained from:

The consumer

The general practitioner / provider

The certifying consultant at the hospital / provider

The clinical director at the hospital / provider

The manager, Gynaecology Services at the hospital

Corporate solicitor, hospital and health service

Medical records relating to the treatment of the consumer were obtained and reviewed. The counsellor died in mid-March 1998. The counsellor's notes were reviewed as part of this investigation.

Information Gathered During Investigation

General Practitioner

In late October 1997 the consumer, aged 40, presented to a medical clinic for a pregnancy test. The result of the test was positive and when informed of this the consumer became distressed. The doctor attending the consumer arranged for her to see a general practitioner, who was working as a self-employed locum at the clinic, for further advice.

The general practitioner's notes of this consultation record that the consumer was "*unhappy about pregnancy, doesn't want another one*" and she was "*tearful*". The general practitioner ("the GP") informed the Commissioner that "*It was difficult to try and make out what [the consumer] wanted as she was tearful throughout the consultation and kept on repeating 'I can't have another one.'*"

The consumer informed the GP she had a young son who was conceived after fertility treatment. The GP's notes also record he "*discussed options*" with the consumer and that he advised her to return in one week after she had more time to think about her options and had discussed them with her husband. The GP organised an ultrasound scan to help confirm the consumer's gestation date. This scan was performed in early November 1997.

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**Information
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The consumer returned to the GP two days later to discuss the results of her ultrasound scan. The scan indicated a single live pregnancy of about 6 or 7 weeks. The GP records the consumer was “*still uncertain about [her] decision*” and advised the Commissioner that the consumer repeatedly stated that she was uncertain about what to do.

The GP informed the Commissioner that he went through all the options again with the consumer and when the consumer asked questions about the termination procedure he explained the procedure as fully as he could.

The consumer stated that at this consultation she asked the GP for counselling and practical help. She further states that the GP did not offer her any encouragement, advice or practical assistance.

The GP states he informed the consumer that it would be better if she spoke to a counsellor with more experience at discussing all the options in pregnancy. He opted to refer the consumer to a hospital and stated he specifically mentioned to her that terminations were performed there. He reports he was careful to explain that just because she was going to the hospital this did not mean she was going to have an abortion. The GP stated he is always careful to do this whenever he refers an undecided woman to the hospital for counselling only. In his notes, the GP recorded “*Plan D/W [discuss with] [hospital] Counsellor. For blds [blood tests] / wabs once decision made*”. The GP states that he explained to the consumer that he would not do any blood tests or internal examinations until she was sure of her decision.

The consumer stated that the GP informed her that the hospital would provide her with professional counselling but that she was not aware that the hospital was an abortion clinic.

The GP stated he phoned the hospital and discussed the consumer's dilemma with a counsellor there, including telling the counsellor that the consumer may decide against a termination. He completed a referral form and under the “history and indications” section the GP wrote “*...unexpected pregnancy – quite traumatised with thought of another pregnancy at her age versus decision of termination. Would like to discuss options before final decision...*”

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Counsellor

Two days later the consumer attended the hospital and spoke to a counsellor. The consumer stated she found this meeting unhelpful and that she was not provided any information about other agencies to whom she could turn to for help. When the consumer mentioned “Pregnancy Counselling Services” she states the counsellor told her “*don’t ring them, they’ll be around on your doorstep wanting to show you videos*”. The consumer further reports she was given a copy of the document “Abortion – Making the Decision” when she stated she was Catholic. This document is based on information supplied by an American group, “Catholics for A Free Choice”, which the consumer later found had been denounced by the Catholic Church. The Catholic Bishop in the area protested to the local health board requesting the removal of this literature and was assured that it had been withdrawn. The consumer states this document was instrumental in her husband withdrawing his opposition to the abortion.

The counsellor’s notes of this consultation do not detail what information she provided to the consumer and simply state “*Given some written articles that may help*”. Her notes further state “*a lengthy interview – but no decision*”.

The hospital counselling protocols state pre-decision counselling should involve:

- *“Clarification of thoughts, feelings and issues relating to pregnancy*
- *What support, if any?*
- *Financial, social situation*
- *Goals in life prior to pregnancy*
- *Exploration of the three choices available:*
 - a) *Continue with pregnancy*
 - b) *Adoption/shared guardianship*
 - c) *Abortion*
- *Thoughts and feelings in relation to each choice*
- *Advantages and disadvantages in respect of current situation and life goals*
- *Factual information of what is involved for each choice*
- *Support services available*
- *Referral if required*
- *Grief process that may be involved with unexplained pregnancy*

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Information Gathered During Investigation continued

The counselling philosophy of the hospital aims:

- *“To support and empower women to make their own decisions*
- *To ensure that the service is woman centred and not judgmental in any respect*
- *To recognise that abortion is no longer seen as a precipitator of major psychiatric illness or life long physical effects*
- *To offer women an opportunity to explore relevant feeling and issues related to an unplanned pregnancy, within an environment of practical and emotional support.*
- *To offer significant others an opportunity to explore their feelings and issues related to an unplanned pregnancy*
- *To give women the factual information they need to make a well informed decision*
- *To work in culturally appropriate ways and have information available in Maori, Pacific Island and Asian languages, and make referral where appropriate.”*

Certifying Consultant

Following her interview with the counsellor in early November 1997, the consumer spoke to the certifying consultant. The consumer told the Commissioner she did not know the purpose of this consultation was to obtain her approval for an abortion. During the consultation the consumer says she was not asked any questions relating to her physical and mental health although her weight and blood pressure were taken. The consumer states the consultant gave her a brief description of the termination procedure. According to the consumer, she signed a consent form, which she says was not read to her before she was asked to sign it, and then she made an appointment for a termination of her pregnancy.

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**Information
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A corporate solicitor from the hospital and health service advised the Commissioner that the consultant was acting as "First Certifying Consultant" and that her role at this meeting was to decide whether there were legal grounds for termination of the pregnancy. The corporate solicitor states the consultant did not attempt to gain the consumer's consent for a termination of pregnancy, that consent was not obtained until mid-November 1997. The consent form was signed by the consumer in mid-November 1997 before the clinical director, not the consultant. The corporate solicitor also states that the consultant was aware the consumer had concerns about continuing with the procedure and therefore advised the consumer to return to her general practitioner for further discussion. The consumer had two additional counselling sessions prior to the consultation with the clinical director in mid-November 1997.

It is the certifying consultant's role to determine under Section 32 of the Contraception, Sterilisation and Abortion Act as to whether any of paragraphs (a) – (d) of sub-section (1) of Section 187A of the Crimes Act 1961 apply. That is, it is the role of the Certifying Consultant to determine whether continuation of the pregnancy would result in serious danger to, among other things, the mental health of the presenting woman.

The authorisation certificate for the consumer's abortion states her abortion was on the grounds of "*mental health*". The consumer states the issue of her mental health was never discussed by the counsellor or the certifying consultant. Conversations with the certifying consultant and the counsellor centred on the physical and financial impact of her pregnancy and there was no reference to mental health.

Following her consultation with the consultant, the consumer and her husband met with a social worker at a local women's hospital. At this meeting the consumer again felt that she was not given practical advice on how to cope with her situation and decided not to seek further meetings with this social worker.

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Clinical Director

In mid-November 1997 the consumer had a pre-abortion consultation with the clinical director at the hospital. According to the consumer, she was given the pre-operative instruction sheets for patients on arrival at reception. The consumer completed a consent form which was also signed by the clinical director. The clinical director states “[The consumer] *signed the consent form appearing to understand exactly what she was signing for. At [the] Hospital we only do one procedure, and that it is termination of pregnancy. She did not appear to be in a state of distress although [she] acknowledged that the decision she faced was a difficult one for her.*” The clinical director advised the Commissioner that she had a long consultation with the consumer and discussed her options. She did not read the consent form verbatim but went through it outlining the common complications.

The consumer stated she was very upset and unhappy at the prospect of an abortion. She felt she needed more time and more counselling before making a final decision. The clinical director advised the Commissioner that “*I told her that if she was to have a termination of pregnancy, she needed to be much surer about her decision than she was. I offered her a postponement and she decided on [early] Dec 1997 as a suitable alternative date. I made it absolutely clear that she could come and speak to the counsellor any time and that she should not proceed with the termination unless she was sure about her decision.*”

The clinical director rescheduled the termination of pregnancy for early December 1997.

Hospital and Health Service

On the day of her scheduled appointment, the consumer awoke upset, crying and still unsure of what she should do. Her husband drove her to the hospital with their young son. On arrival at the reception, the consumer was informed she was first on the list. According to the consumer, the receptionist informed the consumer's husband that children were not allowed in the clinic at all and that he would have to leave and return later to collect his wife.

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The receptionist noticed that the consumer was upset and asked whether she would like to see a counsellor. The consumer said "yes" and the counsellor came to speak with her. The consumer informed the counsellor she didn't know how to cope with another baby but she did not want an abortion either. She stated "*I just don't know how to cope*". The counsellor's notes from this visit state "*Seen again today – really not very much advanced with decision making. Doesn't want another child [counsellor's emphasis]... *Everything leads to a decision to request a TOP [termination of pregnancy] but worried how she will feel afterwards... Decided to proceed with TOP – took Misoprostal. Her own decision.*"*

The consumer stated she asked for 5 minutes alone. The counsellor left the room. When the counsellor returned the consumer stated "*I'll stay*". The counsellor departed and a nurse came into the room and left prostaglandin tablets. The consumer took these tablets and was taken to theatre where the termination procedure was carried out.

After a post-operative check, the consumer was told she could go home. Her husband met her outside the clinic where he had been asked to wait because he was with his young son.

The consumer states that in late January 1998 she rang the counsellor and stated she wished to formally complain about the hospital's failure to inform her of her options and the failure to treat her comments on the day of her procedure as a withdrawal of consent. She also expressed dissatisfaction that the clinical director had performed the surgery when she had earlier indicated that surgery would not proceed if the consumer was uncertain. The consumer stated that the counsellor said she would raise these issues at the next staff meeting. The consumer did not hear anything further from the clinic or the hospital and health service about her complaint.

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**Information
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In her notes of late January 1998 the counsellor recorded:

“[The consumer] phoned today V angry, upset. We should never have let her have the T.O.P – we should have sent her home – The no decisions should have told us that she didn't want it done. Too easy – Dr said we wouldn't do it unless she 100% not 50%. Thinks of it everyday. I should have sent her home – she won't forgive me for not doing it calmed when call ended.”

The hospital and health service has no record of a complaint received from the consumer.

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**Code of
Health and
Disability
Services
Consumers'
Rights***RIGHT 2*

*Right to Freedom from Discrimination, Coercion, Harassment, and
Exploitation*

*Every consumer has the right to be free from discrimination, coercion,
harassment, and sexual, financial or other exploitation.*

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; and*
 - c) *Advice of the estimated time within which the services will be provided; and*
 - d) *Notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and*
 - e) *Any other information required by legal, professional, ethical, and other relevant standards; and*
 - f) *The results of tests; and*
 - g) *The results of procedures.*
- 2) *Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.*

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.*

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

*RIGHT 8
Right to Support*

Every consumer has the right to have one or more support persons of his or her choice present, except where safety may be compromised or another consumer's rights may be unreasonably infringed.

*RIGHT 10
Right to Complain*

- 1) Every consumer has the right to complain about a provider in any form appropriate to the consumer.*
- 2) Every consumer may make a complaint to -
 - a) The individual or individuals who provided the services complained of; and*
 - b) Any person authorised to receive complaints about that provider; and*
 - c) Any other appropriate person, including -
 - i. An independent advocate provided under the Health and Disability Commissioner Act 1994; and*
 - ii. The Health and Disability Commissioner.***
- 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 1 month.*
- 5) Every provider must comply with all the other relevant rights in this Code when dealing with complaints.*

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**Code of
Health and
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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*
- 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*
 - c) *Any appeal procedure the provider has in place.*
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Report on Opinion - Case 98HDC12437, continued

**Opinion:
No Breach
General
Practitioner**

In my opinion the general practitioner did not breach Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights with respect to the information provided to the consumer about the hospital.

The GP presented the consumer with several options and referred her for counselling to further discuss her options.

There is a conflict in the evidence of the GP and the consumer regarding the consumer's knowledge of the hospital's services. The consumer reports she was not aware that terminations were performed at the hospital. The GP stated he "...specifically mentioned to her that terminations were carried out there. I was careful to explain that just because she was going there did not mean she was going to have an abortion." The GP clearly outlined in his referral letter that the consumer wished to visit the hospital to discuss options before making a final decision.

The consumer also states the GP did not provide her with information on maternity care. As the consumer was undecided on whether to proceed with the pregnancy it is my opinion that it was appropriate that the GP did not provide this information to her.

**Opinion:
No Breach
Certifying
Consultant
and Clinical
Director**

In my opinion the certifying consultant and the clinical director did not breach Right 4(2) of the Code of Health and Disability Services Consumers' Rights by failing to request the assistance of a psychiatric consultant in determining "mental health grounds" as the reason for the consumer's termination of pregnancy.

Section 29 of the Contraception, Sterilisation and Abortion Act 1977 (CSA) states "*no abortion shall be performed unless and until it is authorised by 2 certifying consultants*". Section 33 CSA requires the two Certifying Consultants to determine whether or not to authorise the abortion. The two certifying consultants must be "*of the opinion that the case is one to which any of paragraphs (a) to (d) of subsection (1) or... subsection (3), of section 187A of the Crimes Act 1961 applies*." If so, they shall issue in accordance with section 33(5) CSA a certificate authorising the performance of an abortion.

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**Opinion:
No Breach
Certifying
Consultant
and Clinical
Director
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Section 187(1)(a) of the Crimes Act 1961 states that performing an abortion is unlawful unless, in the case of a pregnancy of not more than 20 weeks gestation, the person doing the act believed that "*the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl.*"

The certifying consultant and the clinical director were the two certifying consultants in this case. Therefore it was their role to determine whether in their opinion the continuance of the consumer's pregnancy would result in serious danger to her mental health.

**Opinion:
No Breach
Clinical
Director**

In my opinion the clinical director did not breach Right 7(1) of the Code of Health and Disability Services Consumers' Rights by performing a termination of pregnancy on the consumer without a referral to perform the operation from the general practitioner. The GP referred the consumer to the hospital to further discuss her options and receive counselling by making decisions about termination.

In my opinion the clinical director informed the consumer of her options and received her informed consent to perform the termination of pregnancy. When the consumer indicated she still had concerns the clinical director cancelled the operation scheduled for mid-November 1997 and rescheduled it for early December 1997 to allow the consumer more time to make a decision. Although the consumer was uncertain about terminating her pregnancy, I am satisfied that she was informed about her options, received counselling and freely made the decision to terminate her pregnancy as indicated by her arrival at the clinic in early December and her decision to take the prostaglandin tablets.

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Report on Opinion - Case 98HDC12437, continued

**Opinion:
No Breach
Counsellor**

In my opinion the counsellor did not breach Right 2 of the Code of Health and Disability Services Consumers' Rights by supplying the consumer with literature written by "Catholics for a Free Choice". Given the background of this information the counsellor would have been advised to explain that it is not sanctioned by the Catholic Church, however I accept that the information was given, along with other information, to assist the consumer in making a decision, rather than to convince her to have termination of pregnancy.

Because of the counsellor's death I am unable to determine what was said during the counselling sessions. However, I am satisfied from her notes that counselling took place and that the hospital and health service has adequate protocols and standards in place regarding counselling services for women receiving abortion services to ensure sufficient information is supplied to assist women in making an independent decision.

**Opinion:
No Breach
Hospital and
Health Service**

In my opinion the staff at the hospital did not breach Right 8 of the Code of Rights in not allowing the consumer access to a support person on the day of her termination of pregnancy. It is appropriate and sensible that children are not allowed to enter the hospital at any time and it is unfortunate that the consumer's husband had to care for his young son while his wife was being seen. The hospital and health service did not forbid the consumer's husband from supporting his wife but could not allow his son to enter the premises because of the impact this may have had on other consumers.

In addition, in my opinion the hospital and health service did not breach Right 10 of the Code of Rights. While the counsellor has recorded in her notes a conversation with the consumer in late January 1998, the hospital and health service has no record of a complaint being made and I am unable to determine what information the counsellor passed on before her death. However, I am satisfied that the hospital and health service has a complaints procedure which complies with the requirements of the Code.

Actions

A copy of this opinion will be sent to the Abortion Supervisory Committee for its information.
