Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667

Complaint

The Commissioner received a complaint from a consumer about the dental treatment she received from a dental surgeon and an oral/maxillofacial surgeon at a public Hospital. The complaint was that:

- *In mid-July 1996, during a dental operation at the Hospital, the Oral and Maxillofacial Surgeon cut a nerve which left the consumer's tongue numb.*
- *The Oral and Maxillofacial Surgeon did not take appropriate care when extracting the wisdom tooth given that it was a hook shaped tooth, which should have shown up on the x-ray taken prior to the procedure.*
- *Following the procedure, the consumer was not provided with post-operative care by the Oral and Maxillofacial Surgeon.*
- *The Oral and Maxillofacial Surgeon did not inform the consumer of the true condition of the wisdom tooth on the right side.*
- *In November 1996, the Dental Surgeon did not respond to the consumer's complaint about the services she had received at the Hospital Dental Department.*
- *At two subsequent appointments the only treatment the Dental Surgeon provided to the consumer was mouthwash.*

Investigation

The complaint was received by the Commissioner on 31 July 1997, and an investigation undertaken. Information was obtained from:

The Consumer
The Oral and Maxillofacial Surgeon/Provider
The Dental Surgeon/Provider

The consumer's Oral Diagnosis and Treatment records, including dental x-rays, were obtained and viewed. The Commissioner obtained advice from an expert advisor.

Outcome of Investigation

In mid-March 1996 the consumer attended a public Hospital. She was seen by a dentist who noted a problem with the consumer's lower wisdom teeth and advised her that she needed to have the teeth extracted.

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Outcome of Investigation, *continued*

The consumer was placed on the day-stay list and the extraction scheduled for mid-July 1996. The consumer attended the Hospital that day and had a pre-operative consultation with the Dental Surgeon/Provider.

The consumer said she remembered the Dental Surgeon telling her that her teeth would be extracted and that "it was a basic extraction". She recalled the Dental Surgeon informed her that her tongue "would be moved out of the way to minimise the chance of the nerve being damaged". She said she was told there was a one percent chance "of something bad happening", that this was "a pretty rare and extreme outcome" and that it "definitely won't happen to you". The consumer said she had never had a general anaesthetic before and was very nervous about the operation. She said she did not understand what was being said to her but did not ask the Dental Surgeon to explain because he had told her that it would not happen to her anyway. She said she was not informed of the consequences of nerve damage. In her verbal complaint, made on 30 July 1997, the consumer said she was informed that there was a risk that the nerve might be cut, although the risk was very minimal. The consumer still believes the nerve has been cut because she has had numbness on the right side of her tongue ever since the operation.

During the investigation the Dental Surgeon explained that he had been scheduled to perform the consumer's extraction but had been called to an emergency procedure. During the pre-operative consultation, the Dental Surgeon said he discussed the "normal things" with the consumer, including post-operative pain, swelling, discomfort and bruising. The Dental Surgeon said he always explained the risk of damage to two main nerves, the nerve affecting the tongue and the nerve affecting the chin and lower lip. He said he would have explained that the chance of temporary damage to a nerve was higher than the risk of permanent damage and that temporary damage could persist "for several weeks, several months and sometimes longer". He said he would have told the consumer that there was a one percent chance of permanent numbness.

The Dental Surgeon confirmed that he informed the consumer about tongue shielding. He said he explained that he would put a retractor down to protect the nerve. He said he would have mentioned that there was a possibility of "altered sensation" in the tongue as a result of the operation and would have categorised the possibilities as "complete loss of sensation", "altered loss such as tingling" or "discomfort such as pain".

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Outcome of Investigation, *continued*

The Dental Surgeon explained to the Commissioner that the purpose of the retractor is to protect the nerve away from the surgical site and that the tongue is moved out of the way with a separate retractor. The Dental Surgeon said a change in nerve sensation is unusual and that he would have said that. He denied saying it was "rare" or "extreme" or "it definitely won't happen to you".

The Dental Surgeon said he would have explained that the consumer could experience "tingling" or "numbness" of the tongue and possibly a decrease in taste sensation but did not discuss potential difficulties with eating or speaking.

The consumer's clinical records contain a consent form signed by herself and the Dental Surgeon on the day of the procedure in mid-July 1996. The consent form reads:

"I [the consumer] … *request that surgical removal of teeth 38 + 48 be performed on me. I acknowledge that the nature and effect and possible risks of the operation have been fully explained to me. I also consent to such further or alternative operative measures as may be found necessary during the course of surgery."*

The Dental Surgeon said that due to his attendance at the emergency operation, the consumer's teeth were extracted by the Oral and Maxillofacial Surgeon. Clinical notes record that a throat-pack was inserted to stop blood entering the consumer's lungs. A local anaesthetic was also injected into the operation site to assist with the surgery and with the immediate post-operative discomfort. The buccal flaps of the left bottom wisdom tooth were raised and that tooth was removed without incident. The Dental Surgeon told the Commissioner he understood *"that the tooth on the right side was difficult to remove".* The buccal and distal bones were elevated and removed. An antibiotic (Amoxycillin 500mgs) and a painkiller (Voltaren 500mgs) were given following the extraction.

The consumer advised that after the operation she was told that she had a hook shaped right wisdom tooth and that this had surprised the Oral and Maxillofacial Surgeon because it did not show up on her x-ray.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Outcome of Investigation, *continued*

During the investigation the Dental Surgeon explained that patients were informed the surgical plan was determined by what was shown in the x-rays. Patients are told that anything discovered during surgery, not indicated in the x-rays, can alter the chance of nerve damage. The consumer's hook tooth had not shown on the x-ray because the x-ray provides a two dimensional image. A three dimensional image, such as that provided by a CAT scan, would have been required to see it.

The Commissioner's advisor commented:

> *Examination of the orthopantomographic radiograph shows no evidence of a hooked root and it is understandable that no mention was made of such a situation at the initial consultation. However, this hooked root has no bearing on the lingual paraesthesia which has arisen because of a different circumstance.*

Post Operative Care

The consumer's clinical notes confirm that there was a post-operative check two days after the operation. The Dental Surgeon, in his response to the Commissioner confirmed that he reviewed the consumer at this time. He noted in the clinical records that the consumer was experiencing some pain although the wound was "healing well, minimal swelling". Panadeine was prescribed for pain relief. He also gave her a bottle of Chlorhexidine antiseptic mouthwash as she was having difficulties cleaning her teeth due to the discomfort.

Four days after this, the consumer had a scheduled appointment with the Dental Surgeon. Her sutures were removed and the consumer told the Dental Surgeon her mouth was "pretty sore", that the right side of her tongue was "completely numb" and she was experiencing difficulty eating solid food.

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Report on Opinion - Case 97HDC7667, continued

Outcome of Investigation, *continued*

The Dental Surgeon's clinical notes indicate, *"Patient is significantly improved today. Black silk sutures were removed. She does have a complaint that she does have a bit of lingual paraesthesia on the right side. She feels that the feeling is coming back and we will keep this under review and assess her in three months time."* Following this consultation the consumer was concerned that her tongue was not going to return to normal. However, she was told that the continued tingling was a good sign that feeling would eventually return.

The consumer said she laid verbal complaints with both providers and a receptionist at the Dental Department, but was unable to recall precise dates. The consumer said she telephoned the receptionist at the dental department "quite a few times", told her about the operation, when it was performed, and about her problems with biting, eating and soreness. She said she made these calls because "some days were so painful I couldn't stand it". She said that each time the receptionist would tell her she had an appointment coming up and would "fob her off".

The consumer said she also telephoned the Dental Surgeon, although she was unable to recall exactly when. She said she complained about the hook tooth and how it did not show up on the x-ray, that no care was taken with the extraction and that the pain was disturbing her sleep. The Dental Surgeon does not remember receiving a complaint from the consumer. He stated that his policy was to advise patients to put the complaint in writing and to address it to the Head of Department. The consumer did not recall the Dental Surgeon asking her to write her complaint down but acknowledged that he could have.

The consumer also spoke with the Oral and Maxillofacial Surgeon, but could not recall the date. She said she had basically the same complaint with him and that he did not seem too concerned and she "got nowhere". The consumer also asked whether there was any corrective surgery available and was told that there was none. She said the Oral Surgeon was "not very helpful" and "very blunt". He could not recall any complaint being laid directly with him.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Outcome of Investigation, *continued*

The consumer's clinical notes record that in early November 1996 she saw a visiting Oral and Maxillofacial Surgeon. The Dental Surgeon confirmed that he reviewed the consumer with one of his consultants. The consumer said that the visiting Oral Surgeon examined her tongue and she asked him whether the nerve had been damaged or cut. She said he told her that it had not been cut, but damaged or bruised, but did not explain his answer to her. The clinical note recorded:

"Patient presented today very concerned about the numbness of her right side of tongue. She does state that she does feel occasionally episodes of tingliness in the tongue, that she has regular episodes of biting her tongue. On clinical examination patient can feel pain when tweezers are squeezed on her tongue and she can feel a probe being scraped along the surface of the tongue although not as well as the left side. She has not had very good tactile discrimination on the right side and feels cotton wool on the left side better than the right. Patient has a cotton roll of ethyl chloride applied to the tongue and she could feel the cold and then the pain afterwards, there was small ulceration of the tongue. She was given 1g of Panadeine and a Difflam mouth wash to ease this problem. She was once again reassured that she will be reviewed in three months time. It is likely that the nerve sensation will improve although the patient has been made aware that this is not 100% definite and that this is a known risk of surgery and it was discussed with her prior to the surgery and she is happy with this."

The Dental Surgeon advised that at this consultation he *"once again... had a lengthy discussion with [the consumer] reassuring her that the "tingling" feeling in her tongue was a positive sign, and that with time the feeling in her tongue should improve, but it was not something that could be immediately rectified. If the numbness had not improved by her next review appointment we would discuss any treatment options."* The Dental Surgeon advised that, *"from my understanding [the consumer] was happy with our discussion and the explanations given to her, she thanked me and I arranged for her to be reviewed in the New Year."* He said the consumer failed to attend any further appointment made for her.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Outcome of Investigation, *continued*

The consumer said she was not happy being told to come back in three months and did not attend the appointment arranged for a date in early April 1997. She was concerned and worried about the lack of sensation on the right side of her tongue. She felt she had not been taken seriously and that she "could take Panadeine and mouthwash without visiting the hospital". She saw no point to the visits.

The consumer says that her tongue is still numb and has become mashed and damaged from constantly biting it, both when she sleeps and when she eats.

The Crown Health Enterprise advised the Commissioner that, at the time of the incident, the Dental Surgeon and Oral Surgeon were employees of a second Crown Health Enterprise and that it (the first Crown Health Enterprise) was the facilities provider. However the Regional Health Authority's contract to purchase dental services was held by the first CHE and it was therefore responsible for the management and provision of the dental services. Under a custom and practice arrangement between both Crown Health Enterprises, clinicians employed by the second CHE provided the dental services. In doing so, they were responsible to the first CHE for their clinical practice, and not to the second. The second CHE has held the contract with the Regional Health Authority for the supply of dental services since September 1998.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Code of Health and Disability Services Consumers' Rights

RIGHT 4
Right to Services of an Appropriate Standard

1) Every consumer has the right to have services provided with reasonable care and skill.
2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

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 -
b) An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and

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.

RIGHT 10
Right to Complain

1) Every consumer has the right to complain about a provider in any form appropriate to the consumer

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Opinion: No Breach, Oral and Maxillofacial Surgeon & Dental Surgeon

Right 4(2)

In my opinion, neither the Oral and Maxillofacial Surgeon nor the Dental Surgeon breached Right 4(2) of the Code.

The procedure followed was appropriate and there is no evidence to suggest the consumer's nerve has been "cut". Had this been the case, I am advised that complete anaesthesia of the side of the tongue would have been apparent immediately upon recovery and would have been permanent. The consumer's complaint, two days after the procedure, was of pain and discomfort (which is normal), not of tongue numbness. The partial feeling and tingling suggest that the nerve was damaged, rather than cut.

The paraesthesia the consumer experiences on the right side of her tongue is not directly related to the actual movement of the right wisdom tooth when it was being removed. It is a consequence of the technique and instrumentation used to extract the tooth. The "hook" to which the consumer refers is the root of the tooth and did not contribute to the consumer's tongue numbness.

The consumer also complained about the lack of post-operative care she received from the Oral and Maxillofacial Surgeon. In fact, it was the Dental Surgeon who was involved in the post-operative consultations. The consumer was also seen by a Senior Oral and Maxillofacial Surgeon in November 1997 which is normal procedure in a public health facility. The lack of post-operative care is unable to be substantiated.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Opinion: Breach Dental Surgeon

Right 6(1)(b), Right 7(1) and Right 10(1)

In my opinion, the Dental Surgeon breached Right 6(1)(b), Right 7(1) and Right 10(1) of the Code.

Right 6(1)(b)

Lingual paraesthesia is a well-documented complication following the removal of lower third molar teeth. The incidence of paraesthesia in patients treated by the National Health System in the United Kingdom is approximately 11% while surveys in the United States and Australasia record the incidence at approximately 2%. I am advised that the difference can be directly attributed to the extraction technique where lingual nerve protection, or "shielding", is routinely undertaken. The technique is common in the United Kingdom but practised to a much lesser extent elsewhere.

In cases where "shielding" is practised, it is necessary for the patient to be warned pre-operatively of the likelihood of paraesthesia because it is particularly intractable and may persist permanently. It is also extremely difficult for the patient to manage as it can involve difficulties with speech, mastication and taste.

The consumer said she was informed that there was a risk that a nerve could be cut or damaged during the extraction. There is evidence to show the consumer was told that her tongue would be "shielded" and was warned specifically of the risk of tongue numbness but not of the consequences of this numbness in her daily life. The Dental Surgeon acknowledged that difficulties with activities such as eating or speaking were not explained to her during the pre-operative consultation. Right 6(1)(b) of the Code sets out the information a consumer should expect to receive. It was the consumer's right to be informed of the possible consequences should a nerve be cut or damaged, without the need to ask for clarification.

In my opinion the Dental Surgeon did not fully explain the effects of tongue numbness to the consumer prior to the extraction of her wisdom teeth nor did he explain the type of risk that could occur and this failure to fully inform the consumer is a breach of Right 6(1)(b) of the Code.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Opinion: Breach, Dental Surgeon, *continued*

Right 7(1)

The consumer signed a consent form prior to the extraction procedure. The Dental Surgeon said that, prior to the consumer signing the consent form, he explained that temporary damage could persist for "several weeks, several months and sometimes longer". The consumer said she understood that the risk of permanent damage was minimal. However, the Dental Surgeon acknowledged that he gave no warning about the practical effect of any complications following the surgical removal of the consumer's third molars. In the absence of this information I have concluded that despite the consumer signing a consent form acknowledging that the risks had been fully explained to her, the Dental Surgeon did not meet his obligations to ensure she understood the practical consequences of potential complications. The consumer was therefore not able to make an informed choice about the imminent surgery.

In my opinion, the Dental Surgeon breached Right 7(1) of the Code by providing services to the consumer without informing her about the practical consequences of paraesthesia and ensuring she understood the implications of consent.

Right 10(1)

The consumer complained that the Dental Surgeon did not respond to her complaint about the services she received at the Hospital. Right 10 of the Code allows consumers to complain to a provider in any form appropriate to the consumer. I am satisfied with the consumer's account that during times of pain and frustration, she contacted the Hospital for assistance. In my opinion the Dental Surgeon breached Right 10(1) of the Code by not accepting the consumer's verbal complaint and by informing her that she had to put her case in writing to the Head of Department.

Breach: First Crown Health Enterprise

Right 6(1)(b) and Right 7(1)

The Dental Surgeon was responsible to the first CHE for his clinical practice. The first CHE was, therefore, vicariously liable for the Dental Surgeon's actions and had an obligation to ensure the consumer was fully informed about the potential consequences of surgery prior to her signing the consent form. In my opinion, by failing to ensure that the consumer understood the practical implications of surgery the first Crown Health Enterprise also breached Rights 6(1) and 7(1) of the Code of Rights.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Future Actions

I recommend that the Dental Surgeon undertakes the following actions:

- Apologises in writing to the consumer for failing to ensure she was fully informed of the practical consequences of the risks associated with lingual paraesthesia.
- In future advises patients of all options and associated risks.
- Read the Code of Health and Disability Services Consumers' Rights and confirms his understanding of his obligations under the Code of Rights, should he practise in New Zealand in the future.

Additionally I recommend that the first Crown Health Enterprise:

- Arranges a consultation with the consumer to discuss treatment options.
- Ensures that all departments are reminded about complaints processes.

I understand that the consumer's ACC claim has been declined. I recommend that the first Crown Health Enterprise forward details of the consumer's treatment to ACC with the request that the claim be reconsidered.

I am aware that other departments use consent forms designed to ensure that consumers understand what they are consenting to, and include an information fact sheet outlining the expected risks associated with a procedure on the form itself. I recommend that the first Crown Health Enterprise review its consent processes in all departments to ensure consistency across departments.

I recommend that Hospital and Health Service providers and the Health Funding Authority are clear about lines of accountability when a regional service is run from another site. Unless this is made clear then future opinions, where I establish a breach under the Code of Health and Disability Services Consumers' Rights, will hold both organisations responsible.

A copy of this opinion will be sent to the Dental Council of New Zealand, the New Zealand Dental Association and the University of Otago School of Dentistry with a recommendation that further research and discussion be carried out with respect to the practice of "tongue shielding". A copy of this opinion with identifying information removed will be published.

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Oral and Maxillofacial Surgeon, Dental Surgeon, Crown Health Enterprise

Report on Opinion - Case 97HDC7667, continued

Response to Provisional Opinion: Second Crown Health Enterprise

The second Crown Health Enterprise has advised that consumers undergoing wisdom tooth extractions are now provided with an oral explanation about the procedure, along with associated risks. An information sheet is also provided which sets this information out in writing.

With respect to my recommendation that the consumer have a further consultation to discuss treatment options, the second Crown Health Enterprise has suggested an oral and maxillofacial surgeon employed by its Oral Health Services. This provider has not previously been involved in the consumer's treatment.