
Obstetrician Gynaecologist

Report on Opinion - Case 97HDC8870

Complaint The Commissioner received a complaint from the consumer about treatment she received from the obstetrician/gynaecologist. The complaint is that:

- *In early August 1997, the consumer attended the antenatal clinic at the public hospital for a one off visit because of pregnancy problems. The consumer was examined by the obstetrician/gynaecologist who was in a hurry, off hand and repeatedly checked his watch.*
- *During the examination and without any explanation, the obstetrician/gynaecologist pulled the consumer's skirt down to well under her pubic line and repeatedly returned his hands to the consumer's pubic area.*
- *During the consultation, the obstetrician/gynaecologist asked the consumer in a suggestive fashion if her man rubbed her belly at night and kept asking her about headaches despite the consumer telling him that she did not get headaches. The obstetrician/gynaecologist did not check the consumer's feet for signs of oedema, despite her telling him she had swollen feet and ankles.*

Investigation The Commissioner received the complaint on 23 September 1997 and an investigation was undertaken. Information was obtained from:

The Consumer
The Obstetrician/Gynaecologist
A Midwife

Relevant clinical records were viewed. The Commissioner obtained independent peer advice from an obstetrician and gynaecologist.

Information Gathered During Investigation In early August 1997, the consumer attended the public hospital's antenatal clinic ("the clinic"). The consumer, pregnant with her fourth child, experienced abdominal pain the previous night and was concerned she might have a vaginal infection and wanted a swab taken.

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**Information
Gathered
During
Investigation,
continued**

The consumer told the Commissioner that after she arrived at the clinic, she had a dizzy spell and a nurse seated her in a recliner chair. The consumer thinks she may have passed out briefly and was still feeling a bit under the weather when she saw the obstetrician.

The obstetrician told the Commissioner that the clinic nurse who called him to see the consumer made no mention that the consumer had a dizzy spell or had passed out briefly. The obstetrician said this is important information normally communicated to the doctor by either the nurse or the patient. There is no record of any dizzy spells or passing out in the consultation record from the date in question.

The obstetrician's antenatal clinic was running late and there was a lunchtime meeting he and his trainee intern were to attend. The obstetrician was called back by the clinic supervisor to see the consumer and as the clinic was about to end he sent his trainee intern ahead to the meeting.

The consumer said the obstetrician made it obvious he was in a hurry, by being off hand and repeatedly checking his watch. The obstetrician scanned the consumer's notes and realised that the consumer was under the care of another consultant. The consultation with the obstetrician took place in a separate cubicle and there was no one else present during the consultation. The consumer said a chaperone was not offered. The obstetrician explained during the investigation that chaperones are not offered for routine antenatal assessments where a vaginal examination is not performed.

The obstetrician said that the consumer told him:

"she had to come that morning for a check because she had a headache and visual disturbance. I asked further questions to ascertain the nature of her symptoms and I was reassured that she did not have any other symptoms."

The obstetrician said that the consumer did not advise him about the dizzy spell. The obstetrician proceeded to perform a routine antenatal examination.

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**Information
Gathered
During
Investigation,
continued**

The consumer said to the Commissioner:

"I pulled my own clothing down to the baby's bulge, which is where doctors have previously wanted. He pulled my skirt further to well under my pubic hair line, without explanation. He seemed to have an unusual interest in that area, and paid more than normal attention to where the baby's head was positioned, even after he had located it, and was touching my pubic area even though he could not have felt the baby there behind my bones. I wanted to stop the proceedings and leave but felt helpless."

The consumer said each time she asked the obstetrician a question after he finished examining her he repeatedly returned his hands to her pubic area. The consumer said this stopped her asking questions and she tried to reach down and pull her skirt up or cover herself but that his hands were always in the way. The consumer said it was obvious that she was uncomfortable.

During the investigation, the obstetrician said that when measuring the fundal height a measurement is taken from the top of the pubic bone to the top of the uterus. The obstetrician is adamant he did not pull the consumer's garments down below this and that he did not focus on the pubic area. The obstetrician confirmed he did palpate above the pubic bone and this is recorded in the notes. The obstetrician explained that this was necessary as the baby's head is in that area.

In his letter of late August 1997 to the group manager, women's health at the hospital, the obstetrician wrote:

"I would like to categorically refute the allegations made against me. The patient needs to be informed that it is necessary to touch the pubic bone during a SFH measurement. She also needs to be informed that the lower abdomen is palpated to ascertain the presenting part and descent."

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Report on Opinion - Case 97HDC8870, continued

**Information
Gathered
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continued**

The obstetrician said that the consumer did not say anything and that he did not detect that she was uncomfortable or he would have stopped.

The consumer said that the obstetrician asked her in a very suggestive fashion if, *"my man rubs my belly for me at night."* The consumer said she was very distressed by this question and was quite terse when she answered. The obstetrician said the comments attributed to him were *"pure fabrications"* and that the word *"belly"* does not exist in his vocabulary. The obstetrician said he uses the term *"tummy"* instead.

The consumer said:

"This is the end of my pregnancy with my fourth child and I've had other pregnancies, so I've had a lot of other doctors examining me. This was not like any other examination I'd experienced before. Something rang big alarm bells from the beginning of the examination, because of the over familiar manner. I wanted to jump up and run but I was feeling faint and heavily pregnant."

The obstetrician said, *"[a]gain, I had wanted to get to the lunch time meeting, so my examination of this patient can be considered hurried by my usual standards."* The obstetrician said he concentrated on measuring the consumer's blood pressure to exclude the possibility of a pre-eclampsia related headache. The consumer's blood pressure was normal.

The consultation note recorded, *"headaches / blurred vision. Abdominal pain. Leg aches. No oedema. BP 120/74. Ceph pp 4/5. Font engaged."*

The consumer said after the examination, as they were sitting and talking, the obstetrician started looking at his watch again and hurrying things along. The consumer said that the obstetrician started talking about headaches even after she kept telling him she was not getting headaches. The consumer said that she told the obstetrician about her swollen feet and ankles and that he ignored this and did not check her feet. The consumer said that the obstetrician kept saying she had no oedema and no signs of any of the diseases of pregnancy and that her headaches did not mean anything, even though she had told him she was not getting headaches.

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**Information
Gathered
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Investigation,
continued**

At the end of the examination, the obstetrician said that the consumer mentioned headaches and he tried to explain there was no significant pathology to explain headaches. The obstetrician said the consumer kept on mentioning headaches even though she had no pre-eclampsia or high blood pressure and that he checked for oedema by checking her feet which is recorded in the notes. The obstetrician added, “[w]hy would I record something that is contrary to what I found. It is not true. There was no dizziness mentioned, but headaches were.”

The obstetrician said this is his first allegation of this sort in his sixteen years of practice with eleven years in obstetrics and gynaecology. He was upset by this allegation, “it is a lie” and “it doesn't pay to be a good Samaritan and examine another doctor's patient.” The obstetrician acknowledged he was “short with her initially”, but that he agreed to see her and that he took his time examining her, “I could just as well have not seen her. In retrospect I wish I hadn't as then there wouldn't be this complaint.”

The consumer said she needed a vaginal swab taken, but as she did not feel comfortable about asking the obstetrician, she waited and then asked a clinic midwife to take the swab.

The midwife informed the obstetrician a few days later that the consumer had approached her and confided she was worried about an infection.

During the investigation, the midwife said, “I recall [the consumer] visiting me at the end of [the obstetrician's] busy antenatal clinic. I observed that [the consumer] was upset. In the privacy of the consultation room, [the consumer] calmed down and complained about [the obstetrician's] manner, during which no specific details were provided.” It transpired during this discussion that the consumer informed the midwife that she was upset because of a personal matter and the consumer was concerned to exclude the risk of infection to her baby. The midwife took the appropriate vaginal swabs.

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**Information
Gathered
During
Investigation,
*continued***

In the afternoon the consumer contacted the group manager of women's health at the hospital and told her of the incident. The consumer could not remember the doctor's name. The consumer said that the group manager rang her back a week later and was evasive about who the doctor was and dismissive of her complaint.

The consumer said that the group manager wrote to the consumer seven days after the consumer made her complaint and said the complaint had been documented but still did not name the doctor.

The group manager's letter states, "[a]s discussed with you on the phone, your concerns have been addressed with the specialist that you saw at the clinic. I have documented your complaint and this will be kept on file." and added, "[p]lease do not hesitate to contact me in the future if you wish to meet with either myself or the Clinical Director of the service." The consumer did not contact the clinical director.

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

The following rights in the Code of Health and Disability Services Consumer's Rights apply:

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.*

3) *Every consumer has the right to have services provided in a manner consistent with his or her needs.*

...

RIGHT 5

Right to Effective Communication

...

2) *Every consumer has the right to an environment that enables both consumer and provider to communicate openly, honestly, and effectively.*

Provider Compliance

1) *A provider is not in breach of this Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in this Code.*

2) *The onus is on the provider to prove that it took reasonable actions.*

3) *For the purposes of this clause, "the circumstances" means all the relevant circumstances, including the consumer's clinical circumstances and the provider's resource constraints.*

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**Opinion:
No Breach**

Right 4(2)

To assess whether the consumer's baby was developing adequately, the obstetrician measured fundal height, which is the distance between the pubic bone and the uterus. My peer reviewer advises this involves:

"[t]he obstetrician measuring, with a tape measure, the distance between the symphysis pubic bone and the top of the uterus and obviously to do this the lower end of the tape will be placed in the pubic area, usually below the pubic hair line. It is often necessary to repeat the measurement and also to palpate the area to accurately find the bone, in addition patients often will expose their abdomen without lowering their undergarments adequately and so it would be normal practise for the obstetrician to push the elastic of underpants, for instance, further down."

The peer reviewer comments that the history the obstetrician took and the examination he performed were in accordance with good clinical practice and were directed at ensuring the baby was adequately grown and that the consumer was showing no developing signs of pre-eclampsia.

Given the seriousness of the allegation, conflicting nature of the evidence, credibility of both the consumer and the obstetrician and the absence of any witness, there is insufficient evidence to establish that the obstetrician conducted an inappropriate examination of the consumer.

**Opinion:
Breach**

Right 5(2)

The Code of Health and Disability Services Consumers' Rights requires health service providers to create an environment in which both provider and consumer can communicate openly, honestly and effectively.

The consumer was entitled to have services provided in an unhurried manner in order for her needs to be identified. The consumer's primary need was for a vaginal swab to exclude the possibility of any infection. However, this need was not expressed to the obstetrician and without the benefit of that specific concern, he proceeded to perform a routine examination on the consumer. In his haste, the obstetrician set the tone for creating an environment where effective communication, especially on a sensitive issue, was unlikely to take place and in my opinion, the obstetrician has breached Right 5(2) of the Code.

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Actions:**The****Obstetrician**

I recommend the obstetrician takes the following actions:

- Apologises in writing to the consumer for his breach of the Code. The apology is to be sent to this office and will be forwarded to the consumer.
- Reads the Code of Health and Disability Services Consumers' Rights and views a copy of the provider video available from this office and confirms in writing to the Commissioner that he fully understands his obligations as a provider of health services.

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

Actions:**The Crown****Health****Enterprise**

I take this opportunity to remind the Crown Health Enterprise ("CHE") of their obligations under Right 10 of the Code. While I did not investigate the actions taken by the CHE in response to this complaint, I am concerned about the way this complaint was handled. The consumer was entitled to know the name of the doctor who attended her. The CHE is to advise the Commissioner of their complaint process and provide full details of the actions taken on this complaint which resulted in the correspondence to the obstetrician.
