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## General Practitioner

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### Report on Opinion - Case 97HDC8578

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**Complaint**

The Commissioner received a complaint from the consumer through the Medical Council of New Zealand about treatment she received from a general practitioner at an accident and 24 hour medical centre. The complaint is that:

- *In mid-August 1997 the consumer consulted the GP at the accident and 24 hour medical centre. While examining the consumer's chest the GP cupped the consumer's breasts.*
  - *The GP did not explain to the consumer that he was going to examine her breasts.*
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**Investigation**

The complaint was received by the Commissioner on 12 September 1997 and an investigation was undertaken. Information was obtained from:

The Consumer  
The General Practitioner/Provider

Peer review by a general practitioner was obtained.

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**Information Gathered During Investigation**

In August 1997, the consumer received treatment from her GP, for bronchitis. Her GP prescribed *ventolin* and *erythromycin* for the consumer.

Two days later, the consumer developed a sore chest and ribs. As it was after hours, the consumer consulted a GP at the accident and medical centre ("medical centre"). The consumer told the GP she had bronchitis and now had a sore chest, particularly around the lower ribs and back.

The consumer said the GP asked if her breasts were sore and she replied no. The consumer said the GP then asked her when her last period was. The GP said he asked the consumer about her periods but could not remember her response.

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### Report on Opinion - Case 97HDC8578, continued

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

There was no chaperone present during the consultation. During the investigation the GP said that if this were an internal examination he would have offered a chaperone as a matter of course. In his response to the Commissioner, the GP said it was a busy night and it was his personal assessment of the situation that, "*it was untimely and inconsiderate for me to request a nursing chaperone for a routine examination. I was totally unaware that her husband was accompanying her on the night or anyone else given a busy waiting room. It is my normal practice to welcome any family or friend escort for any consultation.*"

During the consultation, the GP listened to the consumer's chest and back. The consumer's top was not removed throughout the consultation. The examination was done under the consumer's top. The consumer was not wearing a bra.

The GP advised the consumer that her lungs sounded clear and suggested that perhaps her chest area was inflamed.

The GP was called out of the room for a short time to attend to another matter. It was a busy night. When the GP returned he continued the examination.

In his response to the Commissioner the GP said that the distraction was unavoidable as, "*it was a medical problem that was urgent enough to be attended to and therefore had to excuse myself. It was not my choice.*"

The consumer said, "*[h]e then stood or crouched behind me, I was sitting on a chair and felt with both hands around my lower ribs, then slightly up. He then cupped my breasts and held them. It did not feel appropriate. It seemed sleazy. I felt uncomfortable and violated.*"

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**Information  
Gathered  
During  
Investigation,  
continued**

During the investigation the GP said that he cannot remember whether he was in front or behind the patient but that he just lifted the breasts up in passing to ascertain whether there was any tenderness which would account for her symptoms. He said *“To say that the breast was cupped and held is again very unfair. This was done just on passing to complete palpation of the chest wall and rule out any breast tenderness that might have been felt as chest pain, for completeness sake.”*

The GP did not explain to the consumer why he was examining her breasts. The GP said he may have lost his focus by being called out of the examining room in the middle of the consultation. The GP said this may have been a factor in his not explaining fully the purpose of the examination to the consumer. He was ruling out inflammation, infection or hormonal related tenderness. The GP advised that it was not appropriate to focus only on bronchitis being the cause of the chest pain, but he also needed to consider differential diagnoses such as pneumonia, osteochondritis and other possible causes.

The GP prescribed *brufen* for the consumer.

The GP denied any improper behaviour on his part during the consultation.

I am advised that bronchitis does not cause chest pain, though this may occur as a result of coughing and consequent strain on the musculo-skeletal system. The GP determined that osteochondritis was the most probable cause of the consumer's pain and correct treatment was given for this complaint. Osteochondritis is inflammation of the joints between the bone and cartilage of the ribs.

Although this was a likely cause, it was appropriate that the GP considered other diagnoses. The independent reviewer comments, *“[p]ersonally I would not have considered a breast origin for the pain likely, although it is certainly a possibility - women are usually quite able to distinguish the two sites by questioning when necessary but in the absence of other positive clinical findings all options would have to be considered. “Cupping” the breast would be inappropriate.”*

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### Report on Opinion - Case 97HDC8578, continued

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

The following Rights of the Code of Health and Disability Services Consumers Rights apply:

*RIGHT 1*

*Right to be Treated with Respect*

1) *Every consumer has the right to be treated with respect.*

...

*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.*

...

*RIGHT 6*

*Right to be Fully Informed*

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.*

...

**Opinion:  
Breach –  
The GP**

**Right 6(2)**

The consumer had the right to be fully informed about any procedure that the GP was to perform on her. The GP has said he lifted the consumer's breasts with his hands. The consumer was not given an explanation as to why he was doing this. This was not a formal breast examination and the consumer did not expect her breasts to be touched, especially as she said she had told the GP that her breasts were not sore. Before the GP touched the consumer's breasts, the GP should have informed the consumer of what he was going to do, and the reason for doing it in order to get her informed consent to the examination. In my opinion, by not informing the consumer of the reasons for the breast examination the GP has breached Right 6(2) of the Code.

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**Opinion:  
Breach -  
The GP,  
*continued***

**Right 4(2)**

The consumer had the right to have services provided that comply with legal, professional, ethical, and other relevant standards. The Medical Council of New Zealand (MCNZ) in its *Statement for the Profession on Sexual Abuse in the Doctor/Patient Relationship* states:

*“The doctor must ensure that every interaction with a patient is conducted in a sensitive and appropriate manner, with full information and consent”*

Sexual impropriety is defined as, “ *any behaviour such as gestures or expressions that are sexually demeaning to a patient, or which demonstrate a lack of respect for the patient’s privacy, including but not exclusively: ...examining the patient intimately without their consent ...* ”

The onus is on the doctor to behave in a professional manner. The GP accepts that he did not explain why he examined the consumer’s breasts in the manner he did, nor did he give sufficient information within the consultation to enable her to consent to the touching of her breasts during the examination. In my opinion, he breached the MCNZ guidelines and in doing so breached Right 4(2) of the Code.

The MCNZ define sexual transgression as “*any inappropriate touching of a patient that is of a sexual nature, short of sexual violation, including but not exclusively: ... touching of the breasts or genitals, except for the purpose of appropriate physical examination or treatment ...*”

The GP said he just lifted the breasts to ascertain whether there was any tenderness. I am advised that this does not seem to be a clinically valid way to ascertain tenderness. Questioning and formal examination if questioning produced a positive response, would be the appropriate action.

The consumer said that the GP did, in fact, ask if her breasts were sore and that she told him they were not. Once this response was given, further examination, even if it was “*in passing*” was not appropriate without adequate explanation. In my opinion there was no clinical reason for the GP to touch the consumer’s breasts and in doing so he breached the MCNZ guidelines.

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**Opinion:  
Breach –  
The GP,  
*continued***

The issue of whether the GP cupped the consumer's breasts was unable to be proven due to conflicting advice from the consumer and provider. However, the evidence is clear that the GP did touch the consumer's breast and while this could be described as poor judgement on a busy night, my opinion, as reflected above, is based on the agreed facts and the MCNZ guidelines.

Consequently, in my opinion the GP did not provide the consumer with services of a professional standard and by failing to do so breached Right 4(2) of the Code.

A chaperone was not offered or used during the examination. The GP said he made a personal assessment that as it was a busy night and this was not an internal examination, a chaperone was not required. The consumer's husband had accompanied his wife and it would seem a small matter to have asked him to be present during the examination. An intimate examination of a woman, especially without warning or explanation, and especially around the breast area from behind is ill advised and not good clinical practice.

While the GP has denied any improper behaviour on his part, in the absence of any clinical reason for the GP to examine the consumer's breasts in the manner described, and the GP's failure to offer or use a chaperone, he has not shown that his actions were reasonable in the circumstances. The use of a chaperone not only recognises the sensitive nature of any breast examination but also provides protection to both consumer and provider.

#### **Right 1(1)**

Further, by failing to listen to the consumer and allowing himself to be distracted within the consultation, the GP did not treat the consumer with respect and in my opinion breached Right 1(1) of the Code.

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**Actions**

I recommend the GP undertakes the following:

- 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.
- Refunds to the consumer the cost of the consultation. Payment should be made 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 GP 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, the accident and medical centre and another medical centre.

I will refer this matter to the Director of Proceedings under section 45(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any actions should be taken.

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