Oral Surgeon

Report on Opinion - Case 97HDC10169

Complaint

The Commissioner received a complaint from a consumer about the services provided by an Oral Surgeon. The complaint is that:

- *In early October 1997 the provider extracted teeth 28, 38 and 48 from the consumer under general anaesthetic. During the procedure tooth 47 was fractured. The consumer was not told by the provider that tooth 47 may fracture.*

- *The provider failed to apply a temporary dressing at the time of the surgery. If the provider had placed a temporary dressing on the fractured tooth the consumer would not later have required a root canal filling and crown.*

Investigation

The complaint was received by the Commissioner on 13 November 1997.

The Commissioner decided to refer the complaint to an advocate for the purpose of resolving the matter between the consumer and the provider. The complaint was not resolved and was referred back to the Commissioner who decided to commence an investigation.

Information was obtained from:

The Consumer
The Provider / Oral Surgeon
A Consulting Dentist
An Endodontist

The consumer's dental records and x-rays were obtained and reviewed. The Commissioner also received dental advice from a Dental Surgeon.

Continued on next page

Oral Surgeon

Report on Opinion - Case 97HDC10169, continued

Outcome of Investigation

In mid-September 1997 the consumer attended a Dental Clinic for a general examination, clean and x-ray of her teeth. The dentist who saw the consumer found the consumer required extraction of her wisdom teeth and referred her to the provider, an Oral Surgeon, for removal of teeth 28, 38 and 48.

Nine days later the consumer saw the provider. The provider took a panoramic radiograph of the consumer's teeth, explained the procedure and the risks of the surgery and gave the consumer a list of pre-operative and post-operative instructions. The consumer signed a consent form for the extraction of her teeth. The provider did not tell the consumer it was possible that the tooth adjacent to tooth 48 could fracture.

In early October 1997 the provider extracted teeth 28, 38 and 48 under a general anaesthetic. During the surgery the provider fractured tooth 47 or the restoration. The provider did not put a temporary dressing on the fractured tooth. He advised that there was no tooth substance to retain a dressing.

The provider told the consumer about the fractured tooth when she recovered from the anaesthetic. The provider told her to see a dentist as soon as possible and to come back to him if she was worried. He gave her pain relief to last three days but did not make an appointment to see the consumer to check on the condition of the fractured tooth.

On the afternoon of surgery at approximately 5.30pm, the consumer's husband rang the provider because the consumer was feeling so much pain. The provider did not make an appointment to see the consumer. The following day the consumer telephoned her usual dental surgery but was unable to make an appointment.

A week later, the consulting dentist removed the sutures, placed a dressing on the fractured tooth/filling and advised the consumer that she would require a crown filling in addition to the root canal filling. The consumer returned again five days after this, with pain. The consulting dentist replaced the dressing and referred the consumer to an Endodontist.

Continued on next page

Oral Surgeon

Report on Opinion - Case 97HDC10169, continued

Outcome of Investigation, *continued*

The Endodontist who performed the root filling found " *the distal and disto-linguil aspect of the tooth missing, leaving the pulp exposed. The tooth was very sensitive to heat and cold. The tooth had been fractured during removal of the 48…[In early November] the patient was unable to chew on the right side and could not eat or drink anything hot. Under local anaesthetic I removed the inflamed pulp."*

The consumer had the first stage of the root canal treatment in early November 1997 and the second stage three weeks later. The consumer has still to have the crown completed.

In early March 1998, the consumer approached the provider for an explanation. He said that the tooth 47 had a very deep filling with little retention and had a large over-hang over the crown of the wisdom tooth. He said in hindsight it was inevitable that this filling would fracture. The radiograph of the consumer's mouth indicates severe dental neglect and it is more than likely that the tooth in question would have required endodontics and crowning to preserve it.

The provider said he could not dress the broken tooth following the surgery because of a non-retentive cavity filled with blood. There was also a risk the dressing might dislodge and be inhaled.

The Commissioner obtained advice from a Dental Surgeon who viewed the dental records and x-rays from the provider and the consulting dentist. The Dental Surgeon advised the Commissioner that:

"[The provider] seems to be suggesting that the post-operative pain was coming from the extraction site, rather than the second molar and that the state of the second molar was such that a dressing was inappropriate. [The provider] also states that he advised [the consumer] that he had fractured the tooth before her discharge from hospital, but he did not appear to make any arrangements for follow up treatment.

There are instances where restorations protrude out onto the surface of the third molar making fracture inevitable. In most instances this can be pre-determined by radiographic examination.

Continued on next page

Oral Surgeon

Report on Opinion - Case 97HDC10169, continued

Outcome of Investigation, *continued*

In this instance I believe that the radiographic and clinical evidence would clearly show that the restoration of the distal of the 47th would be fractured and dislodged. It would be my opinion that [the consumer] should have been warned of this eventuality before proceeding with the tooth removal or at least [the provider] should have been prepared for such an eventuality with the necessary materials and equipment to deal with the fractured tooth."

The provider states that he did not place a dressing on the fractured tooth because of the bleeding, that there was no retention and a temporary dressing may have been dislodged during the period when the patient was recovering from the anaesthetic.

The Dental Surgeon advised the Commissioner:

"…there are materials available that will adhere to a moist surface tooth structure…

[The provider] should have placed some form of temporary dressing on this tooth. If he [the provider] considered that it was inappropriate to do this at the time of surgery then he should have made arrangements for early follow-up to check on the condition of the tooth.

…all patients who have undergone surgical removal of third molars need definitive arrangements for follow up. This should include a review to ensure complete and normal recovery from the anaesthetic, presence of any haematoma or infection, and continued advice about keeping the area clean. Patients also need to be advised on diet and analgesic requirements. The surgeon should also arrange for removal of any stitches.

…when there is an obvious problem such as a broken filling, then it is incumbent on the surgeon to make necessary arrangements for this problem to be dealt with as soon as possible, if not by himself then by a referring dental surgeon."

Continued on next page

Oral Surgeon

Report on Opinion - Case 97HDC10169, continued

Outcome of Investigation, *continued*

In conclusion the Dental Surgeon said:

"[The provider] failed to advise [the consumer] of a possible complication with the adjacent tooth [before surgery], he failed to make adequate steps to protect the tooth from which the restoration had been dislodged and he failed to make follow up post-operative arrangements to ensure that [the consumer] had an uneventful recovery."

Code of Health and Disability Services Consumers' Rights

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

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;…

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

Oral Surgeon

Report on Opinion - Case 97HDC10169, continued

Opinion: Breach

In my opinion the provider breached Right 4(2) and Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights as follows:

Right 4(2)

Protection of fractured tooth

When the provider fractured tooth 47 he did not place a dressing on the tooth because of the bleeding. There are materials available that can be used with safety in this situation. The provider did not have those materials available during the surgery. The provider's failure to have these materials available is a breach of the consumer's right to services of an appropriate standard.

Even if this proved impossible on the day of surgery, the provider did not make arrangements for the consumer to return the following day so a temporary dressing could be applied. The provider's referral to another dentist was for pain relief. The provider's failure to make this arrangement for follow-up for a dressing is also a breach of the consumer's right to services of an appropriate standard.

Follow-up care

The consumer had teeth extracted under general anaesthetic. The provider did not make an appointment to see if the consumer had fully recovered from the anaesthetic, to check that the surgical site was recovering as expected or to remove sutures. On the evening of surgery the consumer suffered severe pain and the provider referred her to another dentist. The provider's failure to make appropriate post operative arrangements to ensure the consumer had a uneventful recovery is a breach of her right to services of an appropriate professional standard.

Right 6(1)(b)

The provider took a panoramic x-ray of the consumer's teeth before surgery. The risk to tooth 47 was visible on that x-ray. The provider gave the consumer verbal and written instructions about several risks of surgery but did not tell her of the high possibility of fracture to the adjacent tooth. The prospect of fracture was high, and clearly visible on the radiograph. Failure to give the consumer this information before she consented to have the surgery is a breach of her right to be fully informed.

Continued on next page

Oral Surgeon

Report on Opinion - Case 97HDC10169, continued

Opinion: Breach, *continued*

Right 7(1)

The provider's failure to provide sufficient information to the consumer meant that she was unable to give informed consent to the procedure. The provider must recognise that to be valid, consent is a process of effective communication and being fully informed, thereby being in a position to consent. In my opinion this did not occur and the provider breached Right 7(1) of the Code.

Actions

I recommend the provider apologise in writing to the consumer for the breach of the Code in relation to her dental care. This apology is to be sent to the Commissioner's office and it will be forwarded to the consumer.

I recommend the provider contributes towards the cost of a root canal filling and crown to replace tooth 47 for which the consumer is currently saving. This sum is over and above that payable by the Accident Compensation and Rehabilitation Insurance Corporation ("ACC") and is not to exceed $1000.00.

A copy of this opinion will be sent to the Dental Council of New Zealand and Accident Rehabilitation and Compensation Insurance Corporation.

Director of Proceedings

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