

## **Doctor breaches Code in post-operative care of man who later died**

**21HDC01892**

A man's rights were breached by a doctor's post operative care, the Deputy Health and Disability Commissioner has found. In a report released today, Carolyn Cooper found the doctor breached Rights 4(2), 6(1) and 7(1) of the Code. Sadly, the man died from an injury sustained during a chest drain procedure following heart surgery. Ms Cooper said clinical records contained no documentation of informed consent prior to the chest drain procedure.

"On balance I consider it more likely than not that Dr C did not provide Mr A with an explanation of the particular risks of the chest drain procedure, including the risks of damage to another organ, a major bleed, or death.

"In not providing this information, I find that Dr C failed to provide Mr A with information that a reasonable consumer in his circumstances could expect to receive, in breach of Right 6 of the Code. Without this information, the man was not able to make an informed choice and give informed consent. Accordingly, I find that in carrying out the chest drain procedure Dr C also breached Right 7," said Ms Cooper. Health NZ said the risks would have been explained verbally.

Ms Cooper added that the doctor also failed to provide services of an appropriate standard -Right 4 – because he did not document the informed consent discussion, clinical decision making or handover notes before finishing his shift. This does not comply with professional or other relevant standards, she said.

The decision centres on the care of the man after surgery. While he was reported as being in a 'stable and satisfactory position' after surgery, a chest X-ray a couple of days later found an abnormal accumulation of fluid around his lungs. An attempt to drain the fluid by insertion of the chest drain was unsuccessful and the procedure was abandoned.

The man was sent back to his room for observations but there was no hand over care to the evening team. Later in the evening he collapsed. A scan revealed an injury to his spleen. Unfortunately, the man's condition deteriorated, and he died three days later.

Ms Cooper also made adverse comment about the doctor for not arranging a follow up X-ray after the unsuccessful procedure. Health NZ had adverse comments relating to having no written policy about when the use of ultrasound guidance should be considered; when to arrange a post-procedure X-ray; and that multiple staff failed to recognise the need for a post-procedure X-ray for Mr A.

Ms Cooper made a series of recommendations to Health NZ including providing her with progress on its recommendations from its adverse events review, and of the results of an audit to monitor compliance of written consent. She further recommended it develop a policy for chest drain procedures within eight months of her report.

She recommended the doctor apologise to the man's family and complete HDC's online learning module on informed consent, and to reflect on deficiencies identified in his care.

Health NZ has made a range of changes since the event which are outlined in the report.

28 August 2024

### **Editor's notes**

Please only use the photo provided with this media release. For any questions about the photo, please contact the communications team.

The full report of this case can be viewed on HDC's website - see HDC's '[Latest Decisions](#)'.

Names have been removed from the report to protect privacy of the individuals involved in this case.

The Commissioner will usually name providers and public hospitals found in breach of the Code unless it would not be in the public interest or would unfairly compromise the privacy interests of an individual provider or a consumer. More information for the media, including HDC's naming policy and why we don't comment on complaints, can be found on our website [here](#).

HDC promotes and protects the rights of people using health and disability services as set out in the [Code of Health and Disability Services Consumers' Rights](#) (the Code).

In 2022/23 HDC made 592 quality improvement recommendations to individual complaints and we have a high compliance rate of around 96%.

Health and disability service users can now access an [animated video](#) to help them understand their health and disability service rights under the Code.

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