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## Orthopaedic and Spinal Surgeon

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### Report on Opinion - Case 97HDC10629

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**Complaint**

The Commissioner received a complaint from a consumer about the provider's attitude and the assumptions he made when carrying out an ACC assessment on the consumer's injury. The complaint was that:

- *The provider did not introduce himself nor did he have appropriate signs or details on himself when the consumer met him for an appointment arranged by ACC.*
- *The consumer was upset at the provider's unwillingness to listen to him.*
- *The provider performed various movement tests on the consumer and at no time did he ask whether any movement was causing pain.*
- *The consumer felt insulted by some of the questions that the provider asked during the consultation and was unsure of their relevance.*
- *The consumer felt as though the provider could not wait for him to leave and acted as if he had wasted his time.*
- *The provider never asked the consumer his ethnic background, and in his report made an assumption that the consumer was of Maori descent.*

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**Investigation**

The complaint was received on 8 December 1997 and an investigation was undertaken. Information was obtained from:

The Consumer  
The Provider/Orthopaedic and Spinal Surgeon  
The consumer's Support Person

As a part of the investigation, notes taken by the provider at the time of the review were obtained, as well as a copy of the report that the provider issued to the Accident Compensation and Rehabilitation Insurance Corporation ("ACC").

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**Outcome of Investigation**

The consumer had a motor vehicle accident in June 1986 and suffered injuries to his neck, right shoulder, left wrist and left ankle. In addition the consumer sustained injuries to his head which he claims have led to problems with mood swings and management of his anger. The consumer has consulted a neurologist in respect of his head injury.

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**Outcome of  
Investigation,  
*continued***

As a result of his injuries the consumer also lodged a claim with ACC complaining of a continuous aching pain in his neck, shoulders and upper arms, and pain in his ankle when walking. ACC referred the consumer to the provider for an assessment to help determine whether the consumer was eligible to receive ACC assistance. The assessment took place in mid-October 1997 at a medical centre. The provider is one of a number of specialists who have consulting rooms at the centre - a list of these specialists, including the provider, is on a board in the stairwell leading up to the centre. The consumer attended the centre with his partner, as support person.

The provider recalled calling the consumer into the consulting room, greeting him, and introducing himself. The consumer states the provider *"never introduced himself to [the consumer] and so [the consumer] introduced himself and [his partner] to the provider."* The consumer stated that the provider abruptly told the consumer's partner to *"close the door"*, and commenced the meeting by asking *"[s]o what makes you think that your ankle stops you from working?"*

The provider said he commenced a normal review process and asked various questions about the consumer's injuries. The provider recalled that the consumer had an *"angry countenance"*, and was particularly angry about the ACC review system, but that there was no anger directed at himself. The consumer said he wanted to explain to the provider that he was in a motor vehicle accident and that the ankle was a minor part of the injuries he suffered. The provider informed the consumer that he already had a report from ACC which outlined all of that information.

The consumer said he had to assert himself on three occasions before the provider stopped to listen to what he was saying. The consumer comments *"[the provider] was surprised to find that I in fact had considerably more serious injuries than an ankle problem. I understand that ACC had misinformed him . . ."*

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**Outcome of Investigation, continued**

The consumer found the questions asked by the provider unusual and upsetting. The consumer recalled the provider asking the following: *“How much are you being paid by ACC?”*, *“Are you married to [your partner]?”*, *“Are you a drinker or a smoker?”*, *“What did [your partner] do for a living?”* and *“What income is [your partner] on?”* The consumer states *“I answered all the questions at the time, but was quite insulted by some of the questions as I am unsure of the relevance”*. The consumer says that there was no explanation from the provider as to why those questions were posed.

The provider explained to the Commissioner that *“with regard to the [ACC] report I have to direct my questions in the appropriate direction. [The consumer] had a number of complaints and it was necessary to define them adequately.”* Furthermore, *“[a]n ACC Review Report needs to be a comprehensive assessment of the patient’s illness with relation to the physical, social and medico-legal components associated with their illness. It is well recognised that patients who have legal and monetary problems associated with their disability present a different illness picture.”* In this regard, the provider comments that he had to lead the consumer in the questioning process as some of the issues that the consumer was talking about seemed to be getting off the point.

The provider then proceeded to give the consumer a regular examination to assess his physical status. This included:

- Walking across the room to assess the consumer’s gait
- An examination of the shoulders
- An examination of the ankles
- An assessment of the range of motion of the joints involved
- An assessment of the consumer’s neurological status (i.e. reflexes)

The consumer does not recall being informed of the purpose of each of the exercises. In addition, the consumer states that the provider *“at no time asked whether any movement was causing pain, which I found most unusual.”* The consumer claims that other orthopaedic surgeons have advised him to inform them of any pain during such tests.

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### Report on Opinion - Case 97HDC10629, continued

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**Outcome of  
Investigation,  
*continued***

The provider confirmed he did not ask the consumer to say when he was in pain because patients will normally say if a particular movement is sore. If there is an indication by the consumer that there is pain in a movement, then he will not continue past it. The provider said that there was no indication from the consumer during any of the movements that he was experiencing any pain. The consumer told the Commissioner that he was experiencing pain and that he was grimacing. The consumer's partner said that she saw the consumer "*in pain.*"

At the completion of the review the provider informed the consumer that x-rays would be needed, and referred the consumer to a nearby radiologist. The consumer then offered to shake the provider's hand and thank him for his service. However, the provider had turned in his chair and continued to write notes. The consumer recalled leaving his hand out toward the provider so that it could not be ignored.

The provider states that "*I do not routinely shake hands with my patients as they leave. However, a number of patients indicate to me that they would like to shake my hand, and I do not have any hesitation in doing so.*" The consumer comments that "*eventually [the provider] grudgingly shook my hand.*" The consumer and his partner then left the room.

In the provider's report to ACC dated October 1997, he refers to the consumer as a "*39 year old man of Maori descent.*" The consumer is of European descent, and states that "*[the provider] never once asked me what my race was.*" In his letter of complaint, the consumer also queries what his race has to do with an ACC assessment.

The provider advised the Commissioner that "*I normally make note of the patient's ethnicity. I do not always enquire as to their ethnic background, depending on their mannerisms and ethnic features. I may not have asked this man specifically if he was of Maori descent, and I sincerely apologise if I had made an inappropriate assumption.*"

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**Outcome of Investigation, continued**

When the provider was asked to elaborate on what he meant by “*mannerisms and features*” he explained that he inferred from a combination of the colour of the consumer’s skin, the way the consumer spoke, the colour of the consumer’s hair and his facial features, that the consumer was Maori. The consumer states that he is a dark skinned person, and that he has been mistaken for a person of Maori descent previously.

When asked why he does not enquire into a consumer’s ethnic background, the provider informed the Commissioner that there are some consumers who become offended when asked about their ethnicity. During an interview with investigation staff, the consumer commented that he would be offended if the question of his ethnic identity was asked of him.

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

The following Rights in the Code of Health and Disability Services Consumers’ Rights are applicable to this complaint:

*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 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.*

*RIGHT 6*

*Right to be Fully Informed*

- 1) *Every consumer has the right to information that a reasonable consumer, in that consumer's circumstances, would expect to receive . . .*
- 3) *Every consumer has the right to honest and accurate answers to questions relating to services, including questions about -*
- a) *The identity and qualifications of the provider;*

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**Opinion:  
Breach** In my opinion the provider breached Right 4(2), Right 5(2) and Right 6(1) of the Code of Rights.

#### **Right 4(2)**

Providers of health services have an obligation under the Code to comply with professional standards. Rule 5 of the New Zealand Medical Association's Code of Ethics places a responsibility on medical practitioners to "*ensure that accurate records of fact are kept.*" The provider's report that the consumer was of Maori descent was incorrect.

The provider admits he does not always ask consumers their ethnicity as some consumers take offence. Making an assumption that the consumer was Maori based only on his appearance, the way he spoke and his mannerisms was not appropriate. A practitioner is required to ascertain facts and by not asking the consumer his ethnicity, the provider did not comply with professional standards. Accordingly, it is my opinion that the provider has breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.

#### **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. Effective communication is a two way process and in seeking information from the consumer, the provider is obliged to inform the consumer of the nature of the assessment and the reasons for seeking such information.

While I recognise the need for the provider to ask a wide range of questions as part of his assessment, the consumer did not understand the relevance of many of these questions and as a result was left offended and confused. In my opinion the provider should have explained the need to ask questions in relation to the physical, social and medico-legal components associated with illness. Such an explanation given at the start of the assessment may have minimised any hostility or anger that the consumer felt during the assessment. For this reason I consider that the provider did not create or provide an environment that enabled the consumer to communicate openly, honestly or effectively. In failing to do so, in my opinion the provider breached Right 5(2) of the Code of Health and Disability Services Consumers' Rights.

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### Report on Opinion - Case 97HDC10629, continued

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**Opinion:  
Breach,  
*continued***

**Right 6(1)**

The Code of Health and Disability Services Consumers' Rights requires providers of health services to inform consumers of any information that a reasonable consumer, in that consumer's circumstances, would expect to receive. In any examination, it is reasonable for a consumer to be given an explanation as to the purpose of the examination.

In this case, the examination was to ascertain the range of movement in the consumer's particular joints and muscles. Before commencing the examination, the provider did not explain to the consumer the purpose of the examination or the range of movements he intended to perform on the consumer's ankle, shoulders and arms. In not doing so, it is my opinion that the provider has breached Right 6(1) of the Code of Health and Disability Services Consumers' Rights.

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**Opinion:  
No Breach**

There were aspects of the provider's service which in my opinion did not breach the Code of Health and Disability Services Consumers' Rights.

**Right 5(2)**

The consumer complained about the provider's general unwillingness to listen at the start of the consultation and attitude toward him at the end of the examination, in particular, a reluctance to shake the consumer's hand.

While there appears to have been some initial confusion over the extent of the injuries to be assessed, the provider did listen to the consumer and as a result extended his examination beyond the consumer's ankle injury. In addition, while a handshake may in some circumstances be an appropriate way to end a consultation, in this case I can find no evidence to suggest that the provider deliberately ignored the consumer's desire to shake hands. The provider has indicated that while he does not usually initiate handshaking, he is willing to do so if requested. The provider could not immediately shake the consumer's hand because he was still writing notes, but did return the gesture as the consumer was leaving the room. In my opinion the provider's actions were reasonable in the circumstances.

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### Report on Opinion - Case 97HDC10629, continued

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**Opinion:**  
**No Breach,**  
*continued*

**Right 6(1)**

The consumer complained that at no time either before, during, or after the examination did the provider ask him to indicate whether he was experiencing any pain as a result of the movements. While practitioners can usually expect a consumer to react when faced with genuine pain, a consumer may well not understand this and should be advised to specifically identify pain.

I note that in this case the consumer advised he had attended eight previous assessments and on each occasion had been asked to identify when pain was being experienced. On this basis I consider that the consumer is familiar with the need to inform the practitioner that a particular movement is causing discomfort. Therefore, in my opinion the provider's action in not requesting the consumer to inform him when he was in pain was reasonable in the circumstances.

**Right 6(3)(a)**

The consumer has complained that the provider did not have appropriate signs and details about himself in the consulting rooms. The Code of Health and Disability Services Consumers' Rights provides that consumers have the right to honest and accurate answers to questions relating to services, including the identity and qualifications of a provider.

On seeing the provider, the consumer did not specifically ask for his identity or qualifications and, on this basis, it is my opinion that the provider did not breach Right 6(3). In respect of signs about the provider, I am satisfied that there is a list of the specialists, including the provider, who work at the centre on a board in the stairwell leading to the consultation room.

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**Actions Taken**

In a letter to the Commissioner, the provider apologised for having drawn the inference that the consumer was Maori.

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### Report on Opinion - Case 97HDC10629, continued

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**Recommendations** I recommend that the provider:

- Apologise in writing to the consumer for his making an incorrect assumption about his ethnicity, for failing to inform the consumer of the reasons for his questions, and for not informing the consumer of the need and nature of movements associated with his injuries.
- Read the Code of Health and Disability Services Consumers' Rights and confirm in writing to the Commissioner that he understands his obligations under the Code.
- Cease his practise of making assumptions on ethnicity and if this information is required specifically asks the question which factually identifies the consumer's ethnicity.
- Advise consumers to inform him when they are experiencing pain during an examination.

A copy of this opinion will be sent to the consumer, and the President of the Medical Council of New Zealand, and ACC.

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