

## **Management of cervical spinal injury (08HDC14166, 29 June 2009)**

*Chiropractor ~ Chiropractic clinic ~ Cervical spine injury ~ Physiotherapy ~ Orthopaedic ~ Standards of care ~ Adequate information ~ Informed consent ~ Documentation ~ Financial exploitation ~ Vicarious liability ~ Rights 2, 4(1), 4(2), 6(1), 6(2), 7(1), 7(7)*

A 34-year-old man had an accident at work which left him with pain and spasms in his left shoulder. The man had physiotherapy to his shoulder and was referred to an orthopaedic surgeon. The orthopaedic surgeon arranged for X-rays and an MRI, which confirmed a cervical disc (neck) injury, and recommended surgery. The man did not want surgery and sought a second opinion from a chiropractor, who examined him, arranged for him to have spinal X-rays, and then discussed a treatment plan and payment options. The man agreed to pay for the total cost of treatment before treatment began. The chiropractor provided the man with 29 treatments. However, the treatment did not relieve his symptoms, so he sought a refund, which was refused. The man subsequently had successful corrective cervical disc surgery.

It was held that it is normal chiropractic practice for written informed consent to be obtained prior to cervical spine manipulation. It should be signed by the provider and patient, and record that the treatment plan has been explained and the treatment consented to, once appropriate questioning and tests have been conducted. By failing to do so, the chiropractor breached Rights 6(1), 6(2), and 7(1).

The chiropractor did not provide a reasonable standard of treatment and care, and breached Rights 4(1) and 4(2). His failure to adequately document his examinations and treatment also amounted to a breach of Rights 4(1) and 4(2). The chiropractor did not comply with the Chiropractic Board's guidelines regarding pre-payment plans. The information he gave in regard to his treatment and pre-payment was inadequate, and breached Rights 2 and 7(7).

The chiropractic clinic did not provide any information to show it exercised any authority over the chiropractor's conduct other than to support him in his endeavours to convince the man to first sign up for a pre-payment treatment programme and then continue the treatment when he wished to withdraw. The clinic failed to take reasonably practicable steps to prevent the chiropractor from breaching the Code, and was therefore vicariously liable for his actions.

The chiropractor was referred to the Director of Proceedings. The Director decided to lay a charge of professional misconduct before the Health Practitioners Disciplinary Tribunal. The matter was heard together with 07HDC17307 on 24 May 2010. It proceeded by way of an agreed summary of facts. In its decision dated 15 June 2010 the Tribunal upheld all particulars and found the chiropractor guilty of professional misconduct.

The Tribunal imposed the following penalty:

- 18 months suspension to be followed by 18 months supervision with regular reports being provided to the Board followed by a further 18 months of case load supervision.
- Conditions including that prior to recommencing practice he undertake training and demonstrate competency to the satisfaction of the Chiropractic Board in:
  - a. fundamental Chiropractic assessments and examinations;
  - b. risks associated with the routine use of x-rays and the appropriate assessments needed prior to ordering them;
  - c. informed consent ethics and the provision of information to clients;
  - d. client-centred practice;
  - e. ethical business practice for chiropractors; and
  - f. ethics generally.
- He is also to provide a mental health assessment to the Board.
- Censure.

No fine was imposed due to chiropractor's financial situation; however costs of \$5,000.00 (\$3,000 for the Director, \$2,000 for the Tribunal) were awarded.

The Tribunal's full decision can be found at:

<http://www.hpdt.org.nz/Default.aspx?tabid=267>

The Director subsequently decided to also commence proceedings in the Human Rights Review Tribunal in order to seek compensation for the consumer. The matter was settled between the parties without a statement of claim having to be filed.