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## Orthopaedic Surgeon / Crown Health Enterprise

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### Report on Opinion - Case 97HDC8964

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#### Complaint

The Commissioner received a complaint, forwarded from Advocacy Network Services on behalf of a consumer, questioning an orthopaedic surgeon's competence during a surgical procedure. The complaint was that:

- *The consumer was admitted to a hospital in late January 1997 for surgery on her left forefinger following an incident the previous day. The orthopaedic surgeon suggested her finger would be repaired using a pin device, but this procedure was not carried out.*
- *The consumer was referred for physiotherapy which was unsuccessful because, due to the bone being misplaced, she was unable to bend her finger.*
- *When the consumer told the surgeon she was unhappy with the outcome and that she had decided to seek a second opinion, his response was that she would either have to live with the situation or have the finger amputated, and that a second opinion would confirm this.*
- *She has since had corrective surgery, performed by another surgeon, and movement in her finger has increased greatly without excruciating pain.*
- *The consumer believes that the pain and suffering she has incurred since the accident is as a result of incompetence during the initial surgical procedure and would not have happened if the correct surgery had been carried out immediately.*

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#### Investigation

The complaint was received on 15 September 1997 and an investigation commenced. Information was obtained from:

The Consumer  
The Provider/Orthopaedic Surgeon  
Crown Health Enterprise/Employing Authority of Provider

The consumer's medical records were viewed. The Commissioner obtained advice from an independent orthopaedic surgeon.

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### Report on Opinion – Case 97HDC8964, continued

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#### Outcome of Investigation

On a date in late January 1997 the consumer was admitted to a hospital with a comminuted fracture of the head of her second left metacarpal. She was seen by the registrar on call, who called in an orthopaedic surgeon to discuss the case. The consumer was advised that she would need corrective surgery. According to the consumer, the surgeon suggested her finger would be repaired using a pin device, but on recovery, she was told the provider had not performed the procedure *“for a reason to do with the tendons”*.

Following a review on the ward round the next day, the provider formed the opinion that this was going to be a very difficult fracture to treat surgically because the fracture was in several pieces. The provider did not believe this type of fracture could be fixed with either pins or screws, but fractures of a similar type at the wrist are at times treated with traction whereby the soft tissues are used to pull the fracture into line. This traction is then maintained by an external fixation device. It was decided that a similar procedure would be attempted in the consumer's case.

When traction was applied to the fracture during surgery two days after being admitted, the position was significantly worsened and the fixation device was abandoned. The provider felt that the best position he could obtain was the resting position that the consumer had come into the hospital with, so it was decided to treat the fracture in the initial period resting in a plaster slab in the extended position.

The consumer returned to the outpatient clinic in early February 1997 when the plaster slab was removed. The index finger was buddy strapped to the middle finger for support and the hope was that movement of the index finger could be regained while fracture healing continued.

The consumer was referred for physiotherapy. She advised the Commissioner that she could not bend her finger *“because the knuckle bone had been set where it lay after the accident”*. The consumer said in her complaint that the provider advised her to continue with physiotherapy and for the physiotherapist to be forceful with the bending.

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### Report on Opinion – Case 97HDC8964, continued

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#### **Outcome of Investigation** *continued*

At the consumer's next appointment in mid-March 1997, x-rays taken showed a fracture that was not completely healed and it was recognised at that time that her metacarpophalangeal ("MCP") joint was very stiff. The provider advised the Commissioner that at this appointment he suggested "*continued conservative management*" due to his concerns about the lack of fracture healing.

The consumer continued with physiotherapy until May 1997 but her finger showed very little improvement.

The consumer was again seen by the provider later that month, who noted that at this time she still had a very stiff MCP joint in her injured finger. It was noted that her pinch grip function was satisfactory but that her power grip was poor.

The consumer told the provider she was unhappy with the outcome of her treatment. She advised the Commissioner in her complaint that the provider told her that "*there was not much else [he could] do*" and she had to either to "*put up with it or have the finger removed*". The consumer told him she would seek a second opinion. She advised the Commissioner that the provider told her that another doctor would "*probably tell [her] the same thing*".

The provider confirmed to the Commissioner that at the appointment in mid-May, the consumer expressed her disappointment with the result of treatment to date and informed him that she had arranged, through her GP, to see another doctor in the area for a second opinion. The provider was told the second opinion had already been arranged and clinic notes made at the time state the consumer was advised to keep her appointment with the doctor.

The provider cannot remember the exact details of his conversation with the consumer that day, but he does remember talking about her treatment options, including accepting the situation as it was, or considering amputation of the index finger. He does not recall stating that a second opinion would reinforce that there were no further treatment options available. The provider states that his intention was to ask one of his colleagues for a second opinion in any event, had the consumer not already sought one.

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### Report on Opinion – Case 97HDC8964, continued

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**Outcome of  
Investigation  
*continued***

The doctor whom the consumer sought a second opinion from told the consumer that her tendons were jammed on top of her finger and that the bone needed to be repositioned. She has since had further surgery (performed by this doctor) and advised the Commissioner that, at this stage, the prognosis is reasonably good.

The provider noted that (without knowing the exact procedure performed by the doctor) this surgery would not have been appropriate at the time of initial presentation. Such surgery was appropriate only after fracture healing had been obtained. The provider advised the Commissioner that at the time the consumer presented, it was his concern that unless the fracture was stably fixed so as to allow early mobilisation, the outcome could actually have been worsened and could have potentially removed the surgery option performed as the secondary procedure. It is the provider's view that a slightly angulated fracture treated conservatively can actually do much better than a fracture fixated so as to achieve an ideal position on x-ray and it was because of this that he proposed the treatment option that the consumer was given in January 1997.

The employing authority of the provider (Crown Health Enterprise) advised the Commissioner that the provider's response fully outlined its involvement with the consumer, and that the consumer's *"ongoing follow up care was managed in line with clinical indications and usual practise"*.

The consumer believes that the delay in having the correct surgery performed has had a considerable effect on her well being and that she has been unable to ride trackwork – her occupation prior to the birth of her child six years ago – which she had been doing on a part-time, voluntary basis, in order to keep up her skills for future employment.

The consumer believes that her pain and suffering since her accident could have been avoided, and was due to incompetence during the initial surgical procedure. The consumer has advised the Commissioner that since the corrective surgery (one week prior to writing her letter of complaint) the movement in her finger increased greatly without the previous excruciating pain.

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### Report on Opinion – Case 97HDC8964, continued

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**Orthopaedic Advice to Commissioner** The Commissioner sought and obtained advice from an independent orthopaedic surgeon who viewed the consumer's complaint, the provider's response and the consumer's clinical records.

The Commissioner's advisor stated that:

***Type of fracture***

*"The nature of this fracture is such, that... no matter what treatment was instituted, that there would be residual loss of function in the knuckle joint of the index finger"*

**[The provider's] *treatment of the fracture***

*"It was necessary to immobilise the finger with the knuckle (metacarpophalangeal) joint in full extension. This inevitably means there will be stiffness of the joint. If immobilisation is required, the optimum position is in flexion, but this was not possible in this case, as to do so would have compromised even further, the position of the fracture"*

*"Having carefully considered matters, it was prudent of [the provider] not to proceed to open reduction, and internal fixation, as a primary procedure."*

**[The doctor's] *records of his secondary surgical procedure***

*"This was a difficult case from the outset. If the fracture had been operated on at the time it was manipulated at [the hospital], the surgery would have been much more extensive, than that which was required later."*

**[The provider's] *comments regarding the possibility of amputation of the finger***

*"It was appropriate for [the provider] to raise the question of a possible amputation...I have experience of other cases in whom amputation was finally carried out, and the involved person was very unhappy that this option had not been discussed earlier. Although an index finger with limited movement can be accommodated for, amputation of a finger with poor function is likely to achieve a better result."*

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**Report on Opinion – Case 97HDC8964, continued**

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**Orthopaedic  
Advice to  
Commissioner  
continued**

**[The provider's] response to [the consumer's] request for a second opinion**

*“In summary, I believe that [the provider's] care was appropriate, but he should have been more accepting of [the consumer's] wishes of a second opinion, although I note she had already arranged this before she saw him – there is no record of [the provider] sending a letter recording the treatment in progress to date to [the doctor]. [The provider] is an experienced orthopaedic surgeon but this particular fracture was both difficult and uncommon, and a second opinion from another surgeon would have been reasonable, even before [the consumer's] request.”*

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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 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.*
- 4) *Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.*

*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.*
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### Report on Opinion – Case 97HDC8964, continued

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**Opinion: Rights 4(2) and 4(4)****No Breach -  
Provider**

In my opinion, the provider did not breach Rights 4(2) and 4(4) of the Code of Rights in relation to the consumer's care.

I accept advice that this was a very difficult fracture to treat and that in fractures of this kind, stiffness of joints and impairment of function are an inevitable consequence. It is clear from the clinical notes that the provider considered all appropriate treatment options and proceeded during surgery with the treatment he felt would be most successful. I accept that the operation was appropriate in all the circumstances.

In my opinion, the provider's treatment of the consumer's fracture was provided in a manner that minimised potential harm and optimised her quality of life.

Further, the provider's discussion with the consumer regarding the option of amputation this was legitimate in terms of optimising her quality of life.

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**Opinion:  
Breach –  
Provider****Right 6(1)(b)**

In my opinion, the provider breached Right 6(1)(b) of the Code of Rights in failing to provide the consumer with a reasonable explanation of the options available to her, including the expected risks, side effects, benefits, and costs of each option.

While the provider's treatment of the consumer's fracture was appropriate and reasonable in the circumstances, it is unfortunate that the consumer did not understand how her fracture was being treated, or why the chosen course of action was being pursued. Further, the consumer was not given sufficient information about her long-term prospects for recovery or any further procedures which may have increased her mobility.

While amputation was discussed as an option, the consumer sought advice from another practitioner because she was unhappy with the provider's advice.

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### Report on Opinion – Case 97HDC8964, continued

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**Opinion:  
Breach –  
Provider,  
*continued***

The provider was aware that further surgical procedures could be performed, which may have increased the consumer's mobility. He advised the Commissioner that such surgery would only be appropriate once fracture healing had been obtained and stabilised. Despite this knowledge, the provider did not inform the consumer of the potential for a second surgical procedure. An explanation of this option was required by Right 6(1)(b).

In my opinion, the provider also breached Right 6(1)(b) in the course of his discussion of the possibility of amputation with the consumer. While amputation is often an appropriate course of action in cases like the consumer's, this option was presented in such a way that the consumer did not understand the benefits of such a procedure. It was not clearly communicated to the consumer that this course of action might have in fact increased her ability to use her hand.

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**Opinion:  
No Breach  
Crown  
Health  
Enterprise**

The Crown Health Enterprise is the employing authority of the provider and is liable for his actions or omissions under Section 72 of the Health and Disability Commissioner Act 1994 unless it can show that it has taken reasonable steps to prevent those acts or omissions.

The Crown Health Enterprise ("CHE") provided sufficient evidence that it has taken reasonably practicable steps to ensure its surgeons clearly explain to surgical patients all the expected risks, side effects, benefits, and costs of treatment options. In my opinion, the Crown Health Enterprise did not breach Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights.

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**Orthopaedic Surgeon / Crown Health Enterprise**

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**Report on Opinion – Case 97HDC8964, continued**

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**Actions****Provider**

I recommend that the provider takes the following actions:

- Apologises in writing to the consumer for breaching Right 6(1)(b) of the Code of Rights. This apology is to be sent to the Commissioner and will be forwarded to the consumer.
- Ensures that surgical patients are fully informed following a procedure as to what treatment has been carried out, and the reason for the course of action taken.
- Ensures that consumers are fully informed of all of their choices regarding treatment and that each choice is explained including an explanation of the benefits, costs, risks or side effects. This will enable consumers to make informed choices about their on-going care, avoid miscommunication and allow informed choice to occur.
- Gives consumers the opportunity to seek a second opinion. In situations where a second opinion is sought, the provider must provide all necessary information to the practitioner providing the second opinion and assist consumers to find a suitable practitioner to provide such an opinion.

**Other Actions**

A copy of this opinion will be sent to the Medical Council of New Zealand.

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