
Gynaecologist

Report on Opinion - Case 97HDC9863

Complaint The Commissioner received a complaint from a consumer that the provider, a gynaecologist:

- *performed an unnecessary abdominal hysterectomy on the consumer in June 1997 despite the consumer's request that her uterus be conserved if at all possible*
 - *displayed a lack of respect in his discussions with the consumer regarding the reasons for a hysterectomy and failed to listen to her concerns*
 - *failed to give the consumer sufficient information about the extent, risks and likely outcomes of a hysterectomy prior to the procedure*
 - *did not provide sufficient advice and treatment to the consumer following her hysterectomy.*
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Investigation The complaint was received from the consumer on 10 November 1997 through Advocacy Services. An investigation was commenced and information obtained from:

The Consumer
The Provider/Gynaecologist
The Receptionist at the Gynaecologist's rooms
A Representative, Private Hospital
A Witness, Former colleague of consumer

The Commissioner also received advice from a gynaecologist.

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Outcome of Investigation

In mid-May 1997, the consumer saw her general practitioner because of lower abdominal discomfort and urinary symptoms. Her general practitioner noted an enlargement in her pelvic area and arranged for her to have an ultrasound later that day and to be seen by a gynaecologist. The radiologist who reported on the pelvic ultrasound stated the consumer's uterus was:

...markedly enlarged and measures 12 cms in length x 11 cms in width. The uterine outline is lobulated and is markedly disfigured by the presence of multiple fibroids. The fibroids range in size from 3.5cms, 4cms, 5cms and 6cms in size. The ovaries could not be visualised. There is early signs of bilateral hydronephrosis in both kidneys.

The consumer stated the radiologist advised her she had multiple fibroids and would need a hysterectomy, especially in view of the pressure on her kidneys from the pelvic mass. The radiologist conveyed to the consumer that there was some urgency in having this done.

When the consumer saw the gynaecologist in mid-May 1997, he arranged surgery at a private hospital for the first week of June 1997. The consumer reported that the gynaecologist spent some time during this consultation describing what a uterus was and the different types of hysterectomy. In addition he gave her a pamphlet about having a hysterectomy. She reported the gynaecologist briefly discussed the option of a myomectomy, saying it was possible to just remove the fibroids, but that this was not an option in the consumer's case because it would not be possible to control the bleeding by just removing the fibroids, and this bleeding would cause subsequent adhesions and pain. She also reported that the gynaecologist did not ask her what she would have him do if he considered a hysterectomy was not necessary on surgical examination.

The gynaecologist informed the Commissioner that there was a discussion about fertility issues in which the gynaecologist reports that *"it was established that at just under 44 years of age and in no current relationship subsequent pregnancy and childbearing would not be a realistic option and consent to hysterectomy was given on that basis."*

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**Outcome of
Investigation,
*continued***

The consumer stated the gynaecologist behaved inappropriately during this consultation by making references to her vagina being "tight", suggesting she use a dilator to stretch herself. The gynaecologist responded that he did not recall making these remarks to the consumer and would certainly not have discussed the use of a dilator with someone who was not in a sexual relationship. In addition, the gynaecologist stated his receptionist is always present during vaginal examinations.

The gynaecologist's receptionist stated she was present during this examination. While she did not recall anything unusual or untoward occurring during the consultation, she said she does not usually listen to conversations between the doctor and his patients. The receptionist also stated that she could not recall clearly the situation as it had occurred some time ago but does not consider that the gynaecologist made inappropriate comments of a sexual nature to the consumer.

Both the consumer and the gynaecologist stated that at the end of the consultation, they agreed an abdominal hysterectomy should be performed.

Five days later the consumer underwent pre-operative tests and signed a consent form for an abdominal hysterectomy. However, the consumer reported she had trouble coming to terms with the forthcoming loss of her uterus and her resulting inability to bear children. She discussed this with a colleague who advised her to ensure the surgeon should retain her uterus if at all possible. The consumer reported she had assumed the surgeon would do this anyway but decided to telephone the gynaecologist to make sure.

Ten days after the first consultation, the consumer telephoned the gynaecologist. The consumer reported that in this conversation, she told the gynaecologist her uterus was important to her and that although she was now 43, she would try to have a child if she developed a new relationship. The consumer then stated that the gynaecologist made comments such as "*you would have to get married and pregnant within one week*", "*your uterus would rupture in a pregnancy*" and "*if you had a baby it would be deformed*". The consumer reported that the gynaecologist said he strongly disapproved of women bearing children in their forties. The consumer stated while it appeared to her that the gynaecologist understood that she wanted her uterus conserved if at all possible, she did not get an undertaking from the gynaecologist that he would do so. He advised her it would not be possible because of bleeding problems.

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**Outcome of
Investigation,
*continued***

The consumer's former colleague witnessed this telephone call and has written to the Commissioner describing what she heard the consumer say to the gynaecologist.

The gynaecologist advised the Commissioner that he has no recollection of this telephone conversation and stated that if such a conversation took place, he would have made an entry in his clinical notes. The gynaecologist also added there was another opportunity for the consumer to voice her concerns when he visited her in hospital the evening before the operation. However the consumer stated she did not say anything more at this time because she felt vulnerable and did not want another angry outburst.

The patient admission sheet and theatre notes at the hospital where the consumer had her surgery all specified the operation was to be a total abdominal hysterectomy. There was no reference, on the consent form or elsewhere, to a possible myomectomy. However, the consumer considered she consented to an abdominal hysterectomy only under certain conditions such as if there were malignant or multiple fibroids or where her kidneys might be damaged. Otherwise she wished a myomectomy to be performed. The consumer further reported that no discussion about the operation took place with the nurse on duty the night before the operation. The private Hospital advised that two nurses who participated in the consumer's pre-operative care have no recall of her expressing concerns that she should have a myomectomy rather than a hysterectomy.

Immediately after the operation, the gynaecologist wrote to the consumer's GP stating:

[The consumer's] clinical features [showed] a large fibroid uterus. ... I discussed management options at some considerable length with her including such issues as the preservation of fertility by attempting to carry out myomectomy only. However in view of her age and current domestic status, the decision was finally made to proceed to abdominal hysterectomy with conservation of ovarian function...

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**Outcome of
Investigation,
*continued***

In response to the gynaecologist's note, the consumer reported to the Commissioner that she does not believe she gave informed consent to a total abdominal hysterectomy. The consumer believes it unacceptable to cite her age and domestic situation as reasons for the removal of her uterus. The consumer considers that a myomectomy was all that was required to remove the non-malignant fibroid.

In the operation note that accompanied the letter sent to the consumer's GP, the gynaecologist notes the following, "...[T]he large fibroid mass [was] manipulated out of the pelvis and delivered from the abdominal wound prior to being removed separately.... A standard total hysterectomy was then performed..." The gynaecologist also noted the presence of a "couple of small fibroids on the uterus itself."

The post-operative histology report made available to the Commissioner indicates the subserosal fibroid was benign in nature and that the uterus contained a single, intramural fibroid some 10mm in diameter.

After the operation, the consumer reported that the advice given by the gynaecologist on the length of time it would take to convalesce was inaccurate. The gynaecologist had told her she would be uncomfortable for a couple of days but would be given pain killers, that a week in hospital would be required and that she would be back to normal after four weeks. The consumer reported she needed a longer than usual time in hospital (seven days) incurring extra expense. The consumer, in reliance on the gynaecologist's advice, went back to work in the first week of July 1997, just under four weeks after surgery. The consumer claims that she needed more time to recover and suffered several complications that she was not warned about.

The gynaecologist, in his response, stated that many patients are able to return to work four to six weeks after this type of surgery and that the consumer's difficulties were related more to her own attitude than to the surgery itself.

Twelve days after her operation, the consumer's GP noted that the consumer wanted "to go back to work this week — no sick leave. Advised too early — insists".

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**Outcome of
Investigation,
*continued***

The consumer further stated that the care she received after the operation was deficient. The consumer stated that the gynaecologist did not inform her about the possibility of bladder damage following a hysterectomy. The gynaecologist responded by stating that he was not aware of any bladder damage sustained either during or following the operation. The consumer also believed she may have suffered a thrombosis following the operation to which the gynaecologist responded there was no evidence of a thrombosis at the time. The consumer consulted with her GP after the operation, reporting back and leg pain as a result of the surgery. The GP recorded no abnormal signs and symptoms and noted that she had suffered from sciatica previously.

The consumer stated that her longer period of convalescence was due to having a hysterectomy rather than a myomectomy as the latter would have been a less traumatic operation.

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

RIGHT 1

Right to be Treated with Respect

- 1) *Every consumer has the right to be treated with respect.*

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 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.*

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Opinion:
No Breach

Right 1(1)

In my opinion the gynaecologist did not breach Right 1(1) of the Code of Rights in respect of the consultation with the consumer in mid-May 1997. I am unable to confirm whether the conversation regarding vaginal dilation between the gynaecologist and the consumer took place but note that the gynaecologist's receptionist was present during the consultation and was unable to recall anything unusual or untoward about the consultation. Furthermore the receptionist does not consider that the gynaecologist made inappropriate comments of a sexual nature to the consumer.

Right 4(2)

In my opinion the gynaecologist did not breach Right 4(2) in terms of his diagnosis, operative skills or post-operative care. I am satisfied following advice from my gynaecology advisor that the surgery itself was carried out in an appropriate way and with the urgency that was required under the circumstances to remove the fibroids.

Right 6(1)(b)

In my opinion the gynaecologist did not breach Right 6(1)(b) of the Code. The gynaecologist documented that discussion occurred with the consumer outlining management options, including the risks and side effects of these options. The discussions included both recovery and rehabilitation. The gynaecologist did not breach Right 6(1)(b) of the Code in respect of advice given in this regard. I note that the consumer was also given written information on having a hysterectomy.

Opinion:
Breach

In my opinion the gynaecologist breached Rights 1(1), 5(2), 7(1) and 4(2) of the Code of Rights as follows:

Right 1(1)

The consumer is clear in her evidence which I accept that in her telephone conversation she requested her views to be considered if at all possible. Age and domestic status are irrelevant to any decision for a hysterectomy and in reporting to the consumer's GP that the hysterectomy was performed on the basis of the consumer's age and domestic status, the gynaecologist did not treat the consumer with due respect.

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**Opinion:
Breach,
*continued***

Informed Consent

The informed consent of the consumer is essential before any procedure is provided. In terms of the Code of Rights, informed consent is not a one-off event, but a *process* containing three essential ingredients, namely:

- effective communication between the parties
- provision of all necessary information to the consumer (including information about options, risks and benefits), and
- the consumer's freely given and competent consent.

These ingredients work together and are represented in the Code by Rights 5, 6 and 7 respectively. Based on the evidence provided to me, in my opinion the gynaecologist did not follow the process of obtaining informed consent from the consumer to a sufficient extent to meet the standard required by the Code of Rights. For the sake of clarity, I have referred below to breaches of Rights 5(2) and 7(1) separately.

Right 5(2)

In my opinion the gynaecologist breached Right 5(2) of the Code. The gynaecologist's response to the Commissioner in respect of the original consultation showed that the gynaecologist held views regarding fertility issues, which were insufficiently explored with the consumer. This original miscommunication was exacerbated by the subsequent telephone conversation in late May 1997. While the gynaecologist denies that this telephone conversation took place, based on the independent person's signed statement, in my opinion the conversation did take place. The consumer attempted to discuss her concerns with the gynaecologist, who failed to appreciate the nature of the consumer's concerns about a total hysterectomy and the effect of these concerns on her earlier unconditional consent to a hysterectomy, and merely reassured her.

The effect of this miscommunication between the consumer and the gynaecologist was to create an atmosphere where communication was ineffective and subsequent discussions between the gynaecologist and the consumer were tainted by their earlier failures to communicate effectively.

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**Opinion:
Breach,
*continued***

Right 7(1)

In my opinion the gynaecologist breached Right 7(1) of the Code. The consumer indicated her consent to a total hysterectomy at the consultation in mid-May 1997. However once the consumer had time to consider the forthcoming operation, she changed her mind and attempted to convey this to the gynaecologist in a telephone conversation ten days after the consultation, but was unsuccessful. In this conversation the consumer asked the gynaecologist to take a conservative approach to the removal of her uterine fibroid(s).

This telephone call to the gynaecologist effectively modified the consumer's earlier unconditional consent to a total hysterectomy. The consumer had the right to change her mind, necessitating a conservative approach to the procedure, even though the gynaecologist may have considered that a total hysterectomy was clinically indicated.

The gynaecologist indicated in his post-operative letter to the consumer's general practitioner that the option of a myomectomy was discussed but that a hysterectomy was performed on the basis of the consumer's age and domestic status. There is no mention anywhere else in the notes or hospital records that the consumer had stated she would prefer a myomectomy.

The gynaecologist did not allow the consumer the choice of having a myomectomy rather than a hysterectomy and therefore prevented the consumer from exercising her right to make an informed choice of procedure. Furthermore the gynaecologist has given no clinical reason for going on to perform a hysterectomy once the fibroids were removed. While the gynaecologist is adamant that the consumer could have advised the nurses of this prior to the operation, I accept that she was vulnerable at the time. Such vulnerability is usual amongst consumers who are about to undergo surgery. Further, the consumer had the right to expect conservative treatment following her discussion with the gynaecologist. The combination of this breach of the Code and the breach of Right 5(2) of the Code meant that any consent subsequent to that telephone conversation was not an unconditional consent to a total hysterectomy.

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**Opinion:
Breach,
*continued***

Right 4(2)

In my opinion the gynaecologist breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights. In view of my opinion that the gynaecologist breached Rights 5(2) and 7(1) of the Code, it follows that the gynaecologist breached reasonable professional standards, which is a breach of Right 4(2) of the Code.

Actions

I recommend the gynaecologist takes the following actions:

- provide a written apology to the consumer for breaching the Code. The apology should be sent to this Office and the Commissioner will then forward it to the consumer.
- attend a communication training course to develop his knowledge of how to communicate effectively.

I have decided to refer this matter to the Director of Proceedings for the purpose of deciding whether any action should be taken in accordance with section 45(f) of the Health and Disability Commissioner Act 1994.

Other Actions

A copy of this opinion will be sent to the Medical Council of New Zealand and the Royal New Zealand College of Obstetricians and Gynaecologists.

A copy with names removed will also be sent to the Royal New Zealand College of Obstetricians and Gynaecologists with a request that the opinion be published to reinforce that women have the right to make an informed decision and their decision must be followed.
