

18 September 2002

Dear Ms A

Following an investigation I have now formed my opinion on your complaint about Dr B, which I have summarised as follows:

### **Complaint**

#### ***Dr B***

*Dr B, General Practitioner, did not provide services with appropriate care and skill to Ms A. In particular, in July 2001 he administered or authorised the administration of Polio and Measles, Mumps and Rubella (“MMR”) vaccines to Miss A:*

- *without obtaining the informed consent of Miss A’s mother, Ms A, who is one of her legal guardians*
- *without sufficient knowledge of Miss A’s medical history*
- *when it was inappropriate for a child of Miss A’s age (10) to be administered an oral Polio vaccine.*

### **Information**

During the course of my investigation I have carefully reviewed information from you and Dr B. I also sought independent expert advice from Dr John Cheesman, a general practitioner. I enclose a copy of his advice.

### **Decision**

In my opinion Dr B did not breach the Code of Health and Disability Services Consumers’ Rights in his provision of services to Miss A on 24 July 2001 when he authorised the administration of the oral Polio vaccine to her. In this case the applicable parts of the Code are:

- Right 7(1), which states that services can only be provided to a consumer if he or she gives informed consent.
- Right 7(2), which states that every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.
- Clause 4, which states that the definition of “consumer” includes a person entitled to give consent on behalf of a consumer.

---

*Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person’s actual name.*

18 September 2002

- Clause 3, which states that a provider is not in breach of the Code of Rights if he or she has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in the Code.
- Right 4(2), which provides that every consumer has the right to have services provided that comply with legal, professional, ethical and other standards.

***Informed consent – Right 7(1)***

In light of Miss A's young age (10 years) and the nature of the decisions (consent to immunisation), there were reasonable grounds for Dr B to believe that she was not competent to make an informed choice and give informed consent (see right 7(2)). Dr B was therefore obliged to obtain the consent of a parent/guardian. I accept that you are one of Miss A's guardians and you did not consent to the immunisations. However, in my opinion Dr B did not breach Right 7(1) of the Code for the following reasons:

- Mr E, who is Miss A's other parent/guardian, consented to the immunisations. The law does not require that providers obtain the consent of both parents/guardians to treat children who are not competent to make their own decisions.
- Although I consider it is probable that Dr B was not aware of Mr E's consent at the time the immunisations were administered to Miss A on 24 July 2001, he made reasonable efforts in the circumstances to ascertain the wishes of a guardian and therefore satisfied the requirements of Clause 3 of the Code. Dr B has told me that Miss A was being cared for on a day-to-day basis by her grandmother, Mrs C, with the consent of Mr A. Dr B also told me that when he first realised that Miss A was coming to him with her aunt, Mrs D, he requested that she bring a letter from Miss A's guardian confirming she had permission to bring Miss A for treatment.

On 23 July 2001 Miss A's aunt gave Dr B a letter from Mrs C in which she claimed she was Miss A's guardian and gave him permission to have her "seen" by him. I consider it probable that Mrs C made this claim without full knowledge of the legal definition of guardianship, but nonetheless it was reasonable for Dr B to rely on this letter, particularly because Mrs C was caring for Miss A on a day-to-day basis.

- I acknowledge that Dr B did not gain your consent to the immunisations. It would have been prudent of him to have done so. However, he sought the approval of the person he reasonably thought was a guardian and he was unaware that you were opposed to immunisation.
- Dr B has apologised to you for his actions, and told you that he will endeavour to contact you about health issues affecting Miss A in the future and will not undertake further vaccinations without your approval.

***Administration of Polio and MMR vaccines – Right 4(2)***

I accept the advice of my expert advisor that it was appropriate for Dr B to authorise the administration of the MMR and Polio vaccines concurrently to Miss A as this complies with the recommended schedule in the Immunisation Handbook published by the Ministry of Health in February 1996. My expert advisor also confirmed that, as Miss A was aged 10 years and six months, the immunisation was conducted within an acceptable time-frame.

Therefore, in my opinion, Dr B did not breach Right 4(2) of the Code of Rights by authorising MMR and Polio vaccines to be administered concurrently to Miss A.

***Medical records and history – Right 4(2)***

I accept the advice of my expert advisor that frequently in general practice written records are not available and that it is acceptable to receive verbal information from the caregiver about the immunisation history of a patient.

I also accept the statement made by Dr B that he had no reason to doubt Miss A's previous immunisation history. You have now sent Miss A's medical notes to him, which you previously held.

Therefore, in my opinion, Dr B did not breach Right 4(2) of the Code of Rights by authorising Miss A's immunisation without checking her medical records.

However, although I have decided that Dr B's actions did not breach the Code, I propose to recommend that Dr B consider the following comment from the present Immunisation Handbook, which came into force on 1 February 2002: "Parental recall is not a reliable source of information of immunisation history."

***Response to my provisional opinion***

You told me that you did not intend to respond in writing to my provisional opinion. However, you said that you considered my opinion was fair and that you had put the matter to rest.

You also said that you were surprised that I had not made recommendations to ensure that other health providers did not immunise children without the consent of their parents or guardians. I consider that the best way to achieve this is through education. Therefore I will send a copy of my opinion to the bodies listed below and place it on the Health and Disability Commissioner website.

**Actions**

- A copy of this opinion will be sent to the Medical Council of New Zealand.
- A copy of this opinion, with identifying features removed, will be sent to the Director of Public Health and the Royal New Zealand College of General Practitioners and placed on the Health and Disability Commissioner Website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.

Yours sincerely

Ron Paterson  
**Health and Disability Commissioner**

Enc

Ref:01/12269/AM