
Clinical Dental Technician

Report on Opinion - Case 97HDC5753

Complaint

The Commissioner received a complaint from a consumer about treatment he received from the provider, a clinical dental technician. The complaint is that:

- *In late April 1997 the consumer went to the provider to be fitted for new dentures. The provider made impressions of the consumer's mouth.*
 - *The following day the consumer went back to have the teeth fitted.*
 - *The consumer found the dentures ill fitting and painful and made several visits to the provider, the last being in early May 1997. The provider made no alterations to the teeth nor did he look at the teeth, he told the consumer to persevere.*
 - *When the consumer asked to cancel the contract, the provider became argumentative and refused to refund his money.*
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Investigation

The complaint was received by the Commissioner on 7 May 1997 and an investigation was undertaken. Information was obtained from:

The Consumer
The Provider/Clinical Dental Technician
The Chairman, Dental Technicians Board

The Commissioner received independent advice from a clinical dental prosthetist.

Details of Investigation

In late April 1997, the consumer went to the provider to have a new set of dentures made. This initial appointment lasted 2 hours. During that time all primary measurements were taken and a wax impression made.

The following day, the consumer returned to get the new dentures fitted. The consumer said he found them ill fitting and painful. The provider said they were fine and to come back in 8 days time.

The consumer said that after 6 hours of wearing the new dentures, the top of his mouth and gums were so sore and raw that he could no longer continue to wear them.

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**Details of
Investigation,
*continued***

Two days after the first consultation, the consumer said he rang the provider to tell him that he could not wear the dentures because they were hurting his mouth and gums. However, it was a public holiday and the consumer said he was informed by answer phone that the provider was unavailable for four days.

One week after the first consultation, the consumer said he went back to the provider and informed him the new dentures made his gums raw and sore and the bottom dentures didn't fit. The consumer said the provider looked inside his mouth and said it was healthy. The consumer said it was healthy because the rawness healed up 2 days after he removed the dentures.

The consumer said the provider placed the dentures back into the consumer's mouth and said they were fine. The consumer said the provider told him the problem lay with his functioning with the new dentures. The provider told the consumer to persevere in trying to function with the dentures.

The consumer said he persevered with the top teeth for the eight days as the provider had suggested. The consumer said the bottom plate was so poor fitting it "*rattled around*" and the consumer can not wear them at all.

The consumer said he made several visits to the provider, the last being in the first week of May 1997. During these visits, the provider did not make any alterations to or do any remedial work on the dentures.

In his fax to me of 30 October 1997, the provider states that his "*records extend only to the original appointment dates*".

The provider said that in his opinion the dentures fitted the consumer's dental ridges 100% and explained that this does not mean that the dentures will not move around. He added, "*[the consumer] refuses to either believe or understand these issues when considering his dentures. This has been fuelled through his visit to another dental professional who apparently sympathised with his concern.*" The provider said the consumer was "*armed with this support*" and alleges it prompted his last visit to the provider in May 1997.

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Details of Investigation, continued

The consumer advised he never consulted any dental professional about his dentures nor did any discussion take place with the provider about such advice. He said that if he had received such advice he would have included such support in his complaint to the Commissioner.

The provider stated, *“the size of one’s dental ridge is not prohibitive to successful function with dentures and it was [the consumer] who solicited my services to construct dentures he considered necessary. Neither of these opinions are supported by any constructive or professional literature and therefore did not alter my opinion that [the consumer’s] problem was one of expectation and not a problem with the dentures.”*

At the last appointment, the consumer said he asked the provider for a refund and a cancellation of the contract. The consumer said the provider became argumentative and refused to refund his money and as the provider did not offer to do any remedial work on the new dentures, the consumer left.

The provider stated that at the end of that last visit, *“reasonable understanding was impossible and [the consumer] left my studio”*.

The consumer continued to wear his old dentures, explaining that he could not use the new dentures and that they sat on a shelf, looking good but utterly useless to wear.

The Commissioner was advised by an independent clinical dental prosthetist who advised that the overall workmanship of the dentures was satisfactory, but the bite was out on the consumer’s left side which would cause tipping of dentures while eating which would cause sore spots and discomfort and could be remedied by alterations to the lower denture.

Background

The consumer advised he had worn dentures for longer than he cared to remember. He had at least 2 pairs of dentures before and had never had any trouble in functioning with new dentures in the past.

The consumer paid for his dentures at the time of the first appointment. He stated that as a superannuitant he could not afford to buy a new pair of dentures to replace the old dentures he was forced to continue using.

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

The following Rights in the Code of Health and Disability Services Consumers' Rights apply:

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.

3) Every consumer has the right to have services provided in a manner consistent with his or her needs.

RIGHT 10

Right to Complain

(1) Every consumer has the right to complain about a provider in any form appropriate to the consumer.

5) Every provider must comply with all the other relevant rights in this Code when dealing with complaints.

8) As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of -

- i. The reasons for the decision; and*
- ii. Any actions the provider proposes to take; and*
- iii. Any appeal procedure the provider has in place.*

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**Opinion:
Breach** In my opinion there has been a breach of Right 4(2), Right 4(3), and Right 10(5) of the Code of Health and Disability Services Consumers' Rights.

Right 4(2)

The consumer had the right to have services provided that comply with professional standards. The provider is a registered clinical dental technician. The independent advice the Commissioner obtained advises that these dentures would cause tipping of the dentures while eating and that this would cause sore spots and discomfort. This is consistent with the consumer's story that after 6 hours of wearing these dentures his mouth and gums were so sore that he could no longer continue to wear them. The remedy to alter the lower dentures is no longer available as the consumer recently passed away.

The Chairperson of the Dental Technicians Board informed me that there are not any written standards of practice or ethics, which I can use as a yardstick to measure the requirements of the profession. In the absence of such professional standards, I consider that any standards would include a high standard of workmanship to ensure the outcome for the consumer is a functioning pair of dentures. That outcome did not occur for the consumer. The dentures were no good to the consumer sitting on a shelf.

In my opinion, the provider is also in breach of Right 4(2) of the Code for failing to keep adequate records of his consultations. In reaching my final opinion, I requested details for the third time from the provider and was advised that sometimes he takes loose note "jottings" if there are problems with a patient. Such notes were then faxed through to me which recorded the consumer's complaint of April 1997. The provider's lawyer stated *"we are advised by our client that it is not his normal practice to take such notes. In most cases he will make no notes at all. He deviates from this normal practice if he suspects that there may be problems with a particular patient."*

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**Opinion:
Breach,
*continued***

Right 4(2), *continued*

The notes produced record short details of the complaint. No notes of any of the consultations with the consumer were taken or available. The standard procedure for any health professional is to record details of consultation, advice given and actions taken. In my opinion, the absence of appropriate record keeping of consultations is a breach of Right 4(2) of the Code.

Right 4(3)

Under Right 4(3), the consumer was entitled to receive services provided in a manner consistent with his needs. His needs were for a pair of dentures with which he could function. The provider said the consumer must persevere with the dentures. On repeated occasions, the consumer visited the provider and complained that he could not function with these dentures.

In the absence of any written record of these visits, I accept the consumer's advice that he went back for several subsequent visits and complained about the new dentures and the provider made no improvement to them.

The provider states he sees the problem as one of the consumer's expectation. The consumer had an expectation that he would receive a pair of dentures that he could use and I do not find that expectation unreasonable. The provider did not consider that the problem may lie with the dentures themselves, particularly when the consumer had never experienced such problems with previous dentures. The consumer persevered in trying to function with these dentures with no improvement and the provider made no alteration to the dentures. In my opinion the provider did not provide a service that met the consumer's need.

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**Opinion:
Breach,
*continued***

Right 10(5)

The consumer exercised his right to complain that the dentures he received did not fit. Under Right 10(5), the provider has a duty to comply with all other relevant rights in the Code when dealing with the complaint. The onus is on the provider to show he took reasonable actions in the circumstances to give effect to the rights and comply with the duties in this Code. The consumer had the right to be treated with respect when making his complaint, but did not want to approach the provider again as the provider was so rude to him when he asked for his money back. The provider said that '*reasonable understanding*' was impossible prior to the consumer leaving the provider's studio. In my opinion, the provider was in breach of Right 10(5) by not treating the consumer with respect.

Right 10(3)

The provider has not shown that he met his obligations to facilitate the fair speedy efficient resolution of the consumer's complaint. The consumer's complaint was not given any credence by the provider and resolution was unlikely when the provider continued to insist that the consumer persevere with the dentures despite the consumer repeatedly saying that he could not. This led to the tense situation on the last visit when the provider said reasonable understanding became impossible and the consumer said the provider was rude. In my opinion, the consumer was not afforded his right to a fair speedy efficient resolution of his complaint.

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**Opinion:
Breach,
*continued***

Right 10(8)

The Code sets out the steps a provider must follow whether or not a provider accepts a complaint is justified. There is no evidence that the provider complied with his obligation as set out in Right 10 of the Code. Even if the provider considered the complaint was not justified, he had an obligation to ensure that he informed the consumer of the reasons for his decision, any actions he proposed to take and any appeal procedure that was in place.

Actions

I recommend the provider take the following actions:

- Provide a written apology to the consumer's wife for his breach of the Code. The apology is to be sent to this office and will be forwarded to the consumer's wife.
- Immediately refunds the cost of the dentures. As the consumer has now passed away, payment should be made to the consumer's wife and sent to this office. I will forward it onto her.
- Reads the Code of Health and Disability Services Consumers' Rights and confirms in writing to the Commissioner that he fully understands his obligations as a provider of health services and, in particular, his obligations under Rights 4 and 10.
- Commences taking clear concise notes of all consultations with consumers, including details of actions taken, advice given and decisions made by both the consumer and himself.
- Provides written documentation of his complaints procedure ensuring that it meets the requirements set out in Right 10 of the Code.
- Confirms to the Commissioner within 10 working days that the above actions have been taken.

A copy of this opinion will be sent to Mr Warren Hawke, Chairperson of the New Zealand Dental Technicians Board, and Income Support Services. This opinion will also be published by the Commissioner.

The matter will be referred to the Director of Proceedings who will decide whether or not to take any action under section 45(f) of the Health and Disability Commissioner Act 1994.
