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## General Practitioner

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### Report on Opinion - Case 97HDC9575

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**Complaint** The Commissioner received a complaint from a consumer that in early May 1997 the consumer's general practitioner recommended that the consumer purchase nutritional supplements to the value of around \$200 per month which the consumer later discovered to be part of a multi-level marketing scheme.

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**Investigation** The complaint was received on 24 October 1997 through the Medical Council. An investigation was undertaken and information was obtained from:

The Consumer / Complainant  
The Provider / General Practitioner  
The Provider's Partner  
A Marketing Scheme Company

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**Outcome of Investigation** The consumer advised the Commissioner that she had been seeing the provider as her family GP on a regular basis for about three or four years prior to the complaint. In early May 1997 she visited the provider with symptoms of tiredness and candida. The provider recommended she go on a yeast and sugar-free diet and that she take nutritional supplements. The consumer reported the provider further recommended a particular brand of nutritional supplements and informed the consumer that this brand was available for purchase from the receptionists. The consumer further reported she was not told these products were part of a multi-level marketing scheme or given other treatment options at the time.

The consumer continued to take the products until she needed more while on holiday. She was told by a health store proprietor that the particular brand of nutritional supplements products are a multi-level marketing product and are not generally available through retail outlets. The consumer reported to the Commissioner that she was angry to discover the provider benefits by the sale of these products and immediately discontinued taking them. The consumer further reported she was seeing a specialist whose treatment she considers has since resolved her symptoms of tiredness and candida.

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### Report on Opinion - Case 97HDC9575, continued

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**Outcome of  
Investigation,  
*continued***

In response to the Commissioner's notification of an investigation to the provider on 13 January 1998, the provider sent a letter of explanation directly to the consumer with a copy to the Commissioner on 21 January 1998. In this letter the provider explained he uses the particular brand of nutritional supplements because he believes they are a superior product, that they are not available easily or more cheaply from other sources and that he does not make a profit from their sale.

During the course of the investigation, it was discovered that the provider receives bonus payments for each product sold. This bonus payment goes to his partner, who does the accounts, and the provider has one person on the level below him who sells the same brand of products.

The provider advised that he is also a nutritional specialist as well as a general practitioner and that usually he separates these parts of his practice. People who see him for his nutritional expertise are mostly referred through word of mouth rather than from his general practice. He explained that this group often present with chronic fatigue syndrome and are highly motivated to take the supplements and undertake a special diet. The provider advised that he does not pressure them to buy the nutritional supplements.

The provider further advised that he does not have pamphlets describing this part of his practice or information about his involvement with the particular company marketing the nutritional supplements.

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### Report on Opinion - Case 97HDC9575, continued

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

*RIGHT 2*

*Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation*

*Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.*

*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.*

**4 Definitions**

*In this Code, unless the context otherwise requires, "Exploitation" includes any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence.*

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**Opinion:  
Breach**

**Right 2**

In my opinion the provider has breached Right 2 of the Code of Health and Disability Services Consumers' Rights. The provider exploited the consumer in that he received a commission for each sale of a particular brand of product and did not disclose this financial interest to the consumer. Exploitation is defined in the Code to include any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence. It is irrelevant whether the bonus paid to the provider benefited him directly or was passed on to his partner.

Without commenting on the appropriateness of the provider's advice and treatment, the provider's failure to inform the consumer that the treatment he was proposing was an alternative form of treatment, prescribed in his capacity as a nutritional specialist, amounted to an abuse of his position of trust as the consumer's General Practitioner. These products would not have been purchased at considerable cost by the consumer without the provider's advice and recommendation.

**Right 6(1)(b) and Right 7(1)**

In my opinion there has been a breach of Right 6(1)(b) and Right 7(1) of the Code of Rights. The consumer was not given options on different treatments, nor was she told that the products she purchased from the provider's practice are a multi-level marketing product with the provider receiving an indirect benefit each time a product is sold, and that these products are not available from usual retail outlets.

Furthermore, the consumer was not informed that the provider was applying his specialist nutritional medicine skills rather than his usual general practitioner skills. The consumer needed to have the opportunity to choose a nutritional specialist rather than a general practitioner to treat her symptoms. Without the full facts, the consumer could not make an informed decision.

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**Actions**

I recommend that the provider:

- Provides information to all consumers to whom he recommends nutritional supplements. This information must include a range of treatment options, the cost of each of these options as well as their benefits and his pecuniary interest in the matter.
- Makes clear to consumers whether he is acting in his capacity as a general practitioner or as a nutritional specialist. These two roles should not be combined without the full knowledge and understanding of the consumer.
- Provides a written apology to the consumer for his breach of the Code. The apology is to be sent within one month to the Commissioner who will forward it to the consumer. A copy of this apology will remain on the investigation file.
- Refunds the consumer the cost of purchasing the nutritional supplements.

A copy of this complaint with identifying information removed will be submitted for publication in the *New Zealand Medical Journal* so that debate on the matter of financial and other benefits gained by GPs might continue. There is a need for clear professional standards on this matter.

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

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