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## General Practitioner

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### Report on Opinion - Case 98HDC12774

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**Complaint**

The Commissioner received a complaint from the complainant about treatment her daughter, the consumer, received from the general practitioner. The complaint is as follows:

- *In mid-January 1998, during a consultation with the general practitioner, he slapped the consumer on the face, called her a stupid bitch and pulled her by her hair back down onto the table, when she sat up.*
  - *The consumer's cousin, the camp volunteer and a nurse, complained to the manager about the incident at the time that it happened. The complaint was brushed off and they were told to put their complaint in writing and to send it to the medical centre.*
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**Investigation**

The Commissioner undertook an investigation of the complaint upon her own initiative after the complaint was received on 17 March 1998. Information was obtained from:

The Consumer  
The General Practitioner  
The Complainant                      Consumer's Mother  
The Consumer's Cousin/Witness  
The Registered Nurse/Witness  
The Camp Volunteer/Witness

Statements given to the Police by all those listed above, except the complainant, were obtained and viewed.

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### Report on Opinion - Case 98HDC12774, continued

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**Information  
Gathered  
During  
Investigation**

During January 1998 the consumer was staying at a Christian Youth Camp. In mid-January, members of the group visited a lake where the consumer got sand in her eyes. She was attended by a registered nurse working at the camp, who then decided to take the consumer to a nearby medical centre for further assistance.

At the medical centre the consumer was attended by the general practitioner. The consumer was supported by the nurse, the consumer's cousin, and a camp volunteer.

The general practitioner began by explaining to the consumer that he was going to put some anaesthetic drops into her left eye to numb the area so that he could remove the sand. He asked her a few questions about school in an attempt to calm her and then asked the consumer to get up onto the examination table, which she did. He put drops into the consumer's eye and after giving them a little time to work, began cleaning her eye. The consumer began to wriggle and move her head. The general practitioner told the consumer to keep still. She moved again, at which point the general practitioner called the consumer "*a bitch*" and slapped her face with his open hand. The consumer tried to sit up and got part way up before the general practitioner pulled her back down by her pony tail onto the examination table. At this point the consumer started crying. She left the consultation room and then the medical centre, swearing as she went.

The camp volunteer and the nurse had a brief discussion with the manager of the office who, it seemed to them, brushed the incident off. The manager told them if they wanted to make a complaint then they needed to write down what had happened and send it to the office. Alternatively, he said, the manager could get a nurse to speak with the consumer. At that stage it was decided that as the consumer was so upset and still had sand in her eye, they would take her elsewhere, which they did. The sand was removed by rinsing her eye.

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### Report on Opinion - Case 98HDC12774, continued

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**Information  
Gathered  
During  
Investigation,  
*continued***

Subsequently the complainant complained to the Police. An investigation was undertaken by the Police. Statements were taken from the various parties involved and it was decided, in consultation with the complainant, that the matter would be resolved out of Court. It was resolved with the general practitioner apologising to the consumer by way of letter and financial restitution of \$160.00 given to her mother to cover expenses associated with the travelling costs related to incident. Upon learning the outcome of the Police investigation the Commissioner decided to commence an investigation on her own initiative.

In response to the Commissioner's letter, which notified him of her investigation, the general practitioner forwarded a copy of his statement to the Police. In this statement the general practitioner denies swearing at the consumer. He acknowledged smacking the consumer and pulling her by her hair back down onto the pillow.

The general practitioner advised the Commissioner that he deeply regrets the incident and does not have any excuse for his actions.

He has subsequently advised that the centre did not have a complaints procedure in place and this was their first complaint.

The general practitioner is self-employed and is a member of the Medical Association.

***Disputed Facts***

As stated above, the general practitioner denies swearing at the consumer. All of the other four present during the consultation mention swearing by the general practitioner.

In her statement to the Police the nurse said:

*"[The general practitioner] was telling her [the consumer] to keep still. I could see he was becoming agitated. He said, "Keep still you little bitch" and slapped her face".*

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## General Practitioner

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### Report on Opinion - Case 98HDC12774, continued

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**Information  
Gathered  
During  
Investigation,  
continued**

In her statement to the Police the consumer said that the general practitioner called her cousin "a stubborn bitch" and in relation to what he said to her:

*"He was getting angry and rough with me. He slapped me on the face, over my sore eye and said "You naughty bitch".*

In her statement to the Police the camp volunteer said:

*"That's when the Doctor slapped her [the consumer]. He slapped her on the cheek. It is hard to say how hard it was. She sat straight up and was hysterical. The Doctor said "you silly little bitch" and he pulled her back down onto the table by her pony tail.*

In her statement to the Police the consumer's cousin said that the general practitioner swore at the consumer.

In response to my provisional opinion the general practitioner advised:

*"While not admitting that I called [the consumer] a "bitch" I would categorically deny that this expletive would have been used prior to my inexcusable actions... I would also say that there is no way that I slapped [the consumer] over her sore eye as stated on page 1.4."*

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## General Practitioner

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### Report on Opinion - Case 98HDC12774, continued

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**The 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 10*

*Right to Complain*

- 1) *Every consumer has the right to complain about a provider in any form appropriate to the consumer.*
- ...
- 6) *Every provider, unless an employee of a provider, must have a complaints procedure that ensures that -*
- a) *The complaint is acknowledged in writing within 5 working days of that period; and*
  - b) *The consumer is informed of any relevant internal and external complaints procedures, including the availability of -*
    - i *Independent advocates provided under the Health and Disability Commissioner Act 1994; and*
    - ii *The Health and Disability Commissioner; and*
  - c) *The consumer's complaint and the actions of the provider regarding that complaint are documented; and*
  - d) *The consumer receives all information held by the provider that is or may be relevant to the complaint.*

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## General Practitioner

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### Report on Opinion - Case 98HDC12774, continued

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

- 7) *Within 10 working days of giving written acknowledgement of a complaint, the provider must, -*
- a) *Decide whether the provider -*
    - i *Accepts that the complaint is justified; or*
    - ii *Does not accept that the complaint is justified; or*
  - b) *If it decides that more time is needed to investigate the complaint, -*
    - i *Determine how much additional time is needed; and*
    - ii *If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it*
- 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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## General Practitioner

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### Report on Opinion - Case 98HDC12774, continued

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**Opinion:  
Breach** In my opinion the general practitioner breached Rights 1(1), 4(2), 10(6), 10(7) and 10(8) of the Code of Rights as follows:

**Right 1(1)**

For the following reasons I accept that the general practitioner swore at the consumer:

- There were five people, including the general practitioner, present during the consultation. Four of the five say that the general practitioner used the word "bitch".
- Three of the five say the general practitioner called the consumer this at the time she moved her head. A fourth was silent on this point, but confirmed that the general practitioner used this term earlier in the consultation.
- At least one of the witnesses was independent, as she was unknown to the consumer prior to the incident.

It is therefore my opinion that the general practitioner swore at the consumer and therefore breached Right 1 of the Code by failing to treat the consumer with respect.

**Right 4(2)**

According to Principle 5 of the New Zealand Medical Association's Code of Ethics a doctor is to:

***Respect for Patient***

*Ensure that all conduct in the practice of the profession is above reproach...*

In my opinion by slapping the consumer's face, swearing at her and pulling her down by her hair, the general practitioner's conduct was not above reproach and he was therefore in breach of a standard set by his profession.

The manner in which the general practitioner treated the consumer breaches the standard of professional conduct required of all general practitioners.

As a consequence, in my opinion, the general practitioner breached Right 4(2) of the Code.

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## General Practitioner

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### Report on Opinion - Case 98HDC12774, continued

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**Opinion:  
Breach,  
continued**

**Rights 10(6), 10(7) and 10(8)**

In my opinion the general practitioner breached Rights 10(6), 10(7) and 10(8) of the Code of Rights.

As a health service provider the general practitioner is required to have a complaints procedure in place. Rights 10(6), 10(7) and 10(8) set out the minimum requirements of such a procedure. As no such procedure exists, the general practitioner breached Rights 10(6), 10(7) and 10(8) of the Code.

I wish to highlight that according to Right 10(1) a consumer, or someone entitled to consent on their behalf, has the right to complain about a provider in any form appropriate to the consumer. This means that a consumer can make a complaint orally rather than in writing, if they prefer.

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**Actions**

I recommend that the general practitioner undertakes the following actions:

- 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. Further, the general practitioner should view the video *The Health and Disability Commissioner, the Code of Rights and the Advocacy Service* and should make arrangements to purchase a copy from the Commissioner's office.
- Develops a complaints procedure and advises the Commissioner of the details of the procedure.
- Confirms in writing to the Commissioner that the above actions have been taken.

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

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

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