

**Inappropriate language and lack of respect for patient
(09HDC01315, 22 January 2010)**

*General surgeon ~ Public hospital ~ District health board ~ Inappropriate language
~ Respect ~ Communication ~ Gastric bypass surgery ~ Complaint management ~
Vicarious liability ~ Rights 1(1), 4(4), 5(2), 10*

A 44-year-old morbidly obese woman attended a public hospital's surgical outpatient clinic for assessment of suitability for gastric bypass surgery, on the referral of her general practitioner. During the consultation, the surgeon became frustrated at what he perceived as her inability to grasp the lifestyle change concepts necessary for the surgery to be successful. The surgeon insisted that the woman acknowledge that she needed to diet, while she tried to explain that because of numerous failed diets in the past she was trying to take a holistic approach and wanted to avoid using the word "diet". When she tried to explain her rationale for not wanting to use the word "diet", the surgeon told her that her "thoughts were f..ked". She interpreted his manner and language as a personal attack. Although she did not appear to be upset at the time, she became distressed when she left the hospital.

The woman was offended by the surgeon's manner and the language used, and wrote to the hospital that day to complain about him. Seven weeks later the surgeon wrote to the woman responding to her complaint. He apologised for his language and approach during the consultation. He said that it was "clearly obvious" from her letter that they did not have a therapeutic relationship, and it was not in her best interests for him to continue to offer to help her with her weight problem. As a result of these events, the woman felt denied an opportunity to improve her health.

The surgeon had previously been spoken to about his language by senior DHB staff, but because he was a skilled surgeon, the unacceptable language had been tolerated. The surgeon admitted that he used the language the woman complained about. The DHB viewed the complaint as a communication issue rather than one of professional standards, and passed the complaint letter to the surgeon to address. His written response to the complainant failed to facilitate resolution.

It was held that the surgeon treated the patient with disrespect, did not provide services in a manner that optimised her quality of life, did not communicate effectively, and failed to facilitate resolution of the complaint. He was found in breach of Rights 1(1), 4(4), 5(2) and 10. The DHB was found vicariously liable for the surgeon's breach of Right 1(1) for tolerating the unacceptable language, and Right 10 for taking insufficient steps to ensure the complaint was responded to appropriately.