
Surgeon

Report on Opinion - Case 97HDC9756

Complaint A health insurance company complained about the provider, a surgeon. The complaint was that:

- *The provider charged one of the health insurance company's members \$1,100.00 instead of the quoted \$330.00.*
 - *The explanation given was that the bill was based on what the health insurer would pay as opposed to what work had actually been performed.*
-

Investigation The complaint was received on 5 November 1997, an investigation commenced and information obtained from:

The Provider / Surgeon
A Representative from the Health Insurance Company
The Provider's Receptionist

Relevant documents viewed as part of the investigation included the health insurer's Schedule of Payments, invoices issued by the provider and addressed to the consumer, and letters of complaint from the consumer's wife to the health insurer. Relevant clinical records were also obtained and viewed.

Outcome of Investigation In late July 1997 the consumer was referred by his general practitioner to the provider for a vasectomy. Three weeks later the consumer received an appointment card from the provider in the mail. The card recorded that an appointment had been arranged for August 1997 and a quote for \$330.00 was written on it.

The consumer's wife telephoned the health insurer to arrange for approval of the costs. She then telephoned the provider's office to change the appointment, as her husband was not available on the date given. The appointment was changed to early September 1997. The health insurer then sent the consumer a letter advising the maximum available and advising they would pay 80% of qualifying costs.

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**Outcome of
Investigation,
*continued***

The consumer's wife accompanied her husband to the appointment in early September 1997. The provider asked if they were there for a consultation or to have the vasectomy performed. The consumer and his wife indicated that they were there for the procedure and the provider said that he would get this organised. The provider explained the procedure and they chatted briefly.

Following the procedure, and while the consumer was having a blood test, the consumer's wife asked the provider if he needed the health insurer's approval letter. The provider responded that he did not, but as the consumer's wife had taken it out of her bag he expressed interest in seeing the letter.

The consumer's wife described the provider's reaction to the letter as follows: *"...he seemed very interested in the letter. I asked him if he needed the second page and without looking at it he said no, but he seemed very engrossed still in the first page. He asked me if he could photocopy it, I said yes..."*

The first page of the health insurer's letter explained maximum costs. The consumer's wife said the issue of fees was not discussed. When interviewed, the provider explained that this was because the issue of costs did not arise and the consumer had already decided that he wanted the procedure.

Two days later the consumer's wife received an account in the mail and was shocked to see that it totalled \$1,100.00, and included a consultation fee. She confirmed the original quote with her husband and telephoned the provider's office and left a message, as the receptionist was unavailable. As the call was not returned the consumer's wife rang back and spoke with the receptionist. The discrepancy between the original quote and the invoice that had been issued was discussed and the consumer's wife was advised that as the health insurer was prepared to pay more, the decision was made to charge higher. The consumer's wife objected, noting that she had to pay 20% and the receptionist agreed to send out a replacement bill for the amount originally quoted, that is, \$330.00. The consumer's wife then complained to the health insurance company.

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**Outcome of
Investigation,
*continued***

The provider advised that when he arrived in New Zealand two years ago, he made enquiries with the health insurer regarding costs and was advised that vasectomies could range from \$250.00 to \$500.00 but that surgeons could charge any fee for procedures. The provider said that, because he wanted to build up his practice, he charged \$330.00 for the procedure, which included an \$80.00 consultation fee.

The provider said that he did charge more if consumers were able to afford it because \$330.00 includes all sundries necessary for the procedure, leaving a small profit margin. He said he would usually discuss a consumer's ability to pay and that charging more when a consumer was able to pay the higher amount offset his costs when the consumer was only able to afford the lower amount.

The provider said the consumer's letter from the health insurer was the second or third he had seen detailing the amount the health insurer was prepared to pay for vasectomies and that he had no idea that the amount the health insurer set covered all surgical procedures, not just vasectomies. He said the letter specifically stated "vasectomy" so he had no reason to question whether this meant the rates for all surgeries, not just vasectomies. The provider said he thought that perhaps he was undercharging for vasectomies. He said that the \$330.00 he usually charged included the cost of local anaesthetic, gloves, cleaning solutions, swabs, material, sterile equipment, suture material and the use of a quartering machine. He said he questioned the logic of charging \$330.00 if the health insurer was prepared to pay more and that, as a surgeon new to New Zealand, he was guided by the health insurer's fee schedule, although vasectomies were not specifically stated in the schedule. The provider said he thought that if the health insurer was prepared to pay more for the procedure it was appropriate for him to charge an amount that reflected the actual cost of the procedure and that, guided by the consumer's wife's letter, he estimated \$1,000.00 to be a fair price.

The provider's receptionist said at interview that it was usual for her to inform people calling for appointments of the cost of vasectomies. She said the price quoted was based on a set charge and that if the provider received a query about another surgical procedure she would refer the caller to him. She said the provider was aware that she sent out quotes for vasectomies.

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Outcome of Investigation, continued As a result of this complaint the provider said he no longer charges according to the health insurer's figures and has reverted to a fee of \$330.00 and did this before the health insurer or the Commissioner became involved.

Code of Health and Disability Services Consumers' Rights

The following rights are applicable:

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 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.*

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**Opinion:
Breach** In my opinion the provider breached Right 4(2) and Right 6(1) of the Code of Rights as follows:

Right 4(2)

Rule 26 of the New Zealand Medical Association's Code of Ethics addresses fees to patients and states that doctors should "*be responsible in setting a value on [their] services and consider the personal service rendered when determining any fee. Be prepared to discuss any fee with the patient.*"

The provider breached ethical standards by charging a higher fee to a consumer with health insurance than he would to a consumer who had no health insurance. The provider explained that the situation arose because as a recent arrival in New Zealand, he was uncertain about the fee structures here. The provider denied that he was attempting to gain financially because the consumer was insured and noted that the \$1,100.00 invoiced more properly reflected the actual cost of the procedure.

In my opinion, the provider's confusion with the fee structures to be charged in New Zealand does not adequately address the issue. The health insurer provided information demonstrating a general charge of \$267.00 over 32 claims where the provider had undertaken vasectomies. In my opinion the provider breached Right 4(2) of the Code and did not act in an ethical manner by altering his fee when he became aware that his patient was insured.

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**Opinion:
Breach,
*continued***

Right 6(1)

The provider's receptionist confirmed the consumer's appointment by sending him an appointment card. The consumer's wife had previously had discussions with her regarding the cost of the procedure and, as a result, the receptionist had written a figure of \$330.00 on the appointment card. The provider denied that he had authorised the written quote and said he was unaware that his receptionist had quoted this amount. Right 6(1) of the Code sets out the information a consumer should expect to receive without having to ask their provider. While the provider has explained the confusion that resulted, he did not even attempt to discuss cost, and made assumptions that the consumer was going to proceed without cost being an issue. The provider is responsible for the actions of his employees and in my opinion breached Right 6(1) of the Code by not discussing the costs prior to performing the operation.

**Future
Actions**

I recommend that the provider take the following actions:

- Provides a written apology to the consumer and his wife and the health insurance company for his breach of the Code. These are to be sent to the Commissioner's office and will be forwarded to the parties. Copies will be retained on the file.
- 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.
- Discusses fees with his patients, along with all other necessary information to ensure they are fully informed.

A copy of this opinion will be sent to the consumer, the health insurance company, the Medical Council of New Zealand and the New Zealand Medical Association.

The matter will be referred to the Director of Proceedings for the purposes of deciding whether to take any action under section 45(f) of the Health and Disability Commissioner Act 1994.

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Response: The provider responded to my provisional opinion as follows:

Thank you for giving me the opportunity to comment. I am aghast that my handling of this matter has been seen in this light and that it is considered I have been in breach of the Code in these two respects. I can only reiterate the point that I gained the impression that the higher charge could be made. As is pointed out, I was not justified in that impression and for that I regret. I would not like it to be thought that I was acting in a dishonourable way, and I trust the fact that I took steps to remedy the matter immediately it was brought to my attention, goes some way to put matters in context.

I readily concede that I owe an apology to the patient and his wife, and to [the health insurer]. I will readily provide that.

This upsetting matter has been a salutary lesson to me and I will confirm understanding of the Code and that discussion of fees with patients is entered into to ensure they are fully informed.
