Dental Surgeon

Report on Opinion - Case 97HDC7665

Complaint

The Consumer complained to the Commissioner about the professional conduct of the Dental Surgeon who extracted the Consumer's wisdom teeth in mid-June 1997. Details of the Consumer's complaint are as follows:

- *In June 1997, the Consumer consulted the Dental Surgeon regarding a quote for the extraction of her wisdom teeth. The Consumer told the Dental Surgeon that the local Hospital had advised her that her bottom wisdom teeth would be difficult to remove because they went very deep and the roots were crooked. Knowing this, and based on his own x-rays, the Dental Surgeon decided to extract the teeth himself, and did so on a date in mid-June 1997.*
- *After the Dental Surgeon removed the Consumer's wisdom teeth, she was left with a numb chin, lower teeth and lip. It was later established that the Consumer had suffered bi-lateral labial paraesthesia, which was a result of nerve damage.*
- *The Consumer claims that these teeth should not have just been pulled out, but cut out and that this should have been clear from the Dental Surgeon's own x-rays. Furthermore, the Dental Surgeon failed to offer the Consumer the option of a referral to a specialist, which he should have done in the circumstances.*
- *The Consumer complains that the Dental Surgeon failed to adequately inform her of possible complications in relation to the removal of her lower wisdom teeth. In particular, she alleges that the Dental Surgeon did not explain any risk of numbness or nerve damage, neither during her consultation six days before the extraction, nor when she spoke to him about the numbness after surgery and the Dental Surgeon should have warned her of these risks.*

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Investigation

The complaint was received by the Commissioner on 23 July 1997, from the Dental Council of New Zealand, who are required to refer all complaints made to them to the Commissioner. An investigation was undertaken, and information was obtained from:

The Consumer
The Dental Surgeon
An Oral and Maxillofacial Specialist

Clinical records relating to the care of the Consumer in relation to the extraction of her wisdom teeth, and the Consumer's ACC file in relation to her claim for medical misadventure were obtained and reviewed. Advice was obtained by the Commissioner from two independent Dental Surgeons.

Outcome of Investigation

In mid-June 1997, the Consumer went to the Dental Surgeon for a consultation regarding the extraction of her lower wisdom teeth (teeth 38 and 48). The Dental Surgeon took periapical x-rays of the teeth which showed the inferior dental nerve was under the apex of tooth 38 and the mesial root was hooked. In addition, tooth 48 had three roots and the inferior dental nerve appeared to be between the mesial roots of tooth 48. The Consumer told the Dental Surgeon that the local Hospital had advised that her lower wisdom teeth would be difficult to remove because they went very deep and the roots were crooked.

The Dental Surgeon states in a letter to ACC dated mid-July 1997 that he warned the Consumer of the possible complications which could result from extraction including swelling, trismus and labial and lingual paraesthesia when he showed, and explained these x-rays. However, the Consumer is adamant that she was not told of this possibility at any time.

The Dental Surgeon decided to extract teeth 38 and 48, and after discussion with the Consumer, also teeth 18 and 28 (the upper wisdom teeth) at the same time. The Dental Surgeon gave the Consumer a quote for $240.00 for the removal of all four wisdom teeth for Income Support purposes.

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Outcome of Investigation, *continued*

Six days later the Dental Surgeon extracted all four wisdom teeth under sedation and a local anaesthetic. Teeth 18, 28 and 38 were removed without significant problems, but tooth 48 (the bottom wisdom tooth on the right side) was problematic. When the Dental Surgeon was using forceps to extract it, tooth 48 fractured and the crown and distal roots came out, leaving the two mesio buccal roots behind. The Dental Surgeon took a periapical x-ray at this point, but as the Consumer was sedated he reported that the film was unable to be positioned accurately and was too dark when developed. At this stage, the Dental Surgeon felt it prudent to stop the extraction, and he sutured the socket.

In the recovery room, the Dental Surgeon told the Consumer and her mother that tooth 48 was not entirely out and that a root was still present. The Dental Surgeon states in his letter of mid-July 1997 that he advised the Consumer that in normal circumstances he would not interfere with the root further.

The Consumer was then given prescriptions and post-operative instructions and entered into the phone record book of the Dental Surgery to be rung the next day for a follow-up.

The day after the extractions, the Consumer telephoned the Dental Surgery twice complaining of numbness in her chin, lower lip, teeth and jaw. Notes of the conversation taken by the Dental Surgeon's staff record that the Consumer was very distressed about the numbness and the conversations were fractious at best. However, the notes record that the Dental Surgeon's staff tried to reassure the Consumer that the numbness she was experiencing was a normal reaction to the extraction of wisdom teeth. During the second of these conversations, the Consumer also spoke to an associate of the clinic. She claims that the associate's only explanation was to the effect that what she was experiencing was normal and if the numbness did not go away, then she would learn to cope.

The Dental Surgeon was in Australia on holiday at this point, but he rang his surgery at around 11.00am the same day. Upon hearing of the Consumer's concerns, he left two messages on her cell phone in order to reassure her and asked her to make an appointment for early July, when he returned to work.

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Outcome of Investigation, *continued*

In early July 1997, the Consumer again saw the Dental Surgeon at his surgery, and the Dental Surgeon established that she had bi-lateral labial paraesthesia. Paraesthesia/anaesthesia is brought about by direct trauma to the nerves. If a nerve is intact, then sensation over the nerve's distribution is expected to slowly improve. However, if the nerve is severed, then it is unlikely that sensation will return, and this leaves a permanent alteration to feeling in the lip.

The Dental Surgeon arranged for the Consumer to go to a Private Hospital Radiography Department for an OPG x-ray. The Consumer immediately returned to the Dental Surgeon with the x-ray, and the Dental Surgeon explained that it showed a root and the tip of a root present in the socket of tooth 48. The Dental Surgeon also told the Consumer that the nerves had been damaged, and immediately referred the Consumer to an Oral Surgeon.

The Consumer saw the Oral Surgeon that same day, and took her x-rays with her. After viewing these x-rays, the Oral Surgeon told the Consumer the following, as reported in his letter to ACC of mid-July 1997:

> *"A post-extraction panex radiograph which she had had taken prior to coming to see me showed two retained roots on the right side and one very small spicule of root on the left."*

The next day the Oral Surgeon removed the remaining root and root tip. During this procedure, the Oral Surgeon noted that:

> *"The inferior alveolar nerve was completely separated and running through the centre of the socket* [on the right side]. *On the left side the nerve appeared to be intact but lying along the bottom of the socket."*

The Oral Surgeon states that the Consumer is likely to suffer some permanent change on the right side of her face due to the severing of the nerve. On her left side, he expects that normal sensation should return, although it may take some months.

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Outcome of Investigation, *continued*

Independent Advice and Final Decision of the ACC Committee

The Commissioner has reviewed the final finding of the ACC Committee which considered the Consumer's claim for medical misadventure. The ACC Committee was made up of three people: the Chairperson, a barrister, and a dental surgeon. The Commissioner sought and obtained advice from an independent dental surgeon, and the dental surgeon on the ACC Committee.

The periapical x-ray taken by the Dental Surgeon six days before extraction of the teeth is now damaged and unfortunately, unable to be read. However, the Dental Surgeon admits (in his letter of July 1997) that he knew prior to the extraction that tooth 48 had three roots and that the inferior dental nerve was positioned close to those roots.

The Oral Surgeon (in his letter to ACC of July 1997) states that he has reviewed a panex x-ray taken by the local Hospital's dental department in mid-August 1994. Based on that review, he advised that:

> "*The relationship of the nerves to the teeth size and position of the teeth themselves and the anatomy of the root structure would suggest that these teeth would need surgical removal rather than elevation. This would be necessary to avoid or minimise damage to the inferior alveolar nerve.*"

The Commissioner's expert noted that a periapical x-ray (ie the x-tray taken by the Dental Surgeon) does not provide as much information as a panoramic (panex) x-ray (ie the x-ray reviewed by the Oral Surgeon) about the relationship of wisdom teeth to anatomical structures (such as the inferior dental nerve). The Commissioner's expert advised that:

> "*The periapical films taken by [the Dental Surgeon] do not, unfortunately, show the relationship of the teeth to the nerve as graphically as the panex radiograph taken at the local Hospital in 1994, especially with regard to tooth 48… I feel that had [the Dental Surgeon] had the benefit of a panex x-ray he would have referred [the Consumer] to an oral surgeon for the extractions.*

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Outcome of Investigation, *continued*

This view is balanced against the Dental Surgeon's extensive experience (as outlined by him to the ACC Committee) in tooth extraction, including impacted third molars. The Dental Surgeon clearly felt that he was sufficiently experienced to extract the Consumer's wisdom teeth, and this is not contradicted by the dental surgeon on the ACC Committee, who notes that:

> *"…[the Dental Surgeon] was routinely doing a large number of dental extractions and this may have been within the normal range of abnormalities he felt able to deal with."*

The Dental Surgeon's extensive experience, with few post-operative complications, is confirmed by supporting letters sent to the ACC Committee from a number of the Dental Surgeon's dental colleagues in the area. The Dental Surgeon's recognised expertise is evidenced by the acceptance by the ACC Committee of the proposition that because of his reasonable cost, the Dental Surgeon often treats people who might ordinarily receive treatment from an oral surgeon.

The Consumer has suffered loss of sensation on both sides of her lower face as the result of complications arising from removal of her lower wisdom teeth, with the sensation on her right side likely to be permanently impaired. In relation to these complications, the dental surgeon on the ACC Committee advised that:

> *"Paraesthesia of the inferior dental or lingual nerve following the extraction of lower third molars is a well documented complication of third molar surgery."*

The Commissioner's expert also recognises that:

> *"Anaesthesia / paraesthesia is a well recognised possible consequence of wisdom tooth extraction."*

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Outcome of Investigation, *continued*

The ACC Committee also accepted that damage to the inferior alveolar nerve during extraction of impacted third molars is a recognised complication. The Commissioner's advisor goes on to say that, due to the characteristics of the Consumer's wisdom teeth, their extraction was likely to be accompanied by side effects:

> "*Nevertheless, it is highly likely that [the Consumer] would have experienced some degree of paraesthesia after her teeth were extracted, regardless of who removed them.*"

In relation to post-operative care, the Consumer was understandably upset the day following the extraction of her wisdom teeth, particularly at the extent of the numbness in her lower lip and chin. The notes from both sides indicate that the telephone conversations were fractious and emotionally charged and left the Consumer feeling even more upset and angry. The Commissioner's advisor notes that the Dental Surgeon and his staff complied with professional standards throughout the post-operative period:

> *"[The Dental Surgeon] maintained contact with the patient [the Consumer] when he realised that she had a problem and referred her for specialist advice when he returned from Australia. In my opinion the post-operative advice and treatment supplied by [the Dental Surgeon] and his staff complied with professional standards.*"

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Code of Health and Disability Services Consumers' Rights

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;

3) Every consumer has the right to honest and accurate answers to questions relating to services, including questions about –

c) How to obtain an opinion from another provider; and

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.

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Opinion: No Breach

Right 4(2)

In my opinion, the Dental Surgeon did not breach Right 4(2) of the Code of Rights in relation to the following:

Post-operative care

In my opinion, the Dental Surgeon provided appropriate and reasonable care to the Consumer in the period following the extraction of her wisdom teeth. He maintained contact with the Consumer when he realised that she had a problem even though he was out of the country and referred her for specialist advice when he saw her soon after, upon his return. Understandably, the Consumer was very upset about the numbness she was experiencing in her chin, lower lip, teeth and jaw and unfortunately her contact with the Dental Surgeon and his staff did not allay her concerns. However, both the Dental Surgeon and his staff did their best to reassure the Consumer, and maintained professional standards throughout.

Removal of wisdom teeth

The periapical x-ray taken by the Dental Surgeon provides less information about the relationship of wisdom teeth to anatomical structures then a panoramic (panex) x-ray, which is the sort of x-ray reviewed by the Oral Surgeon. However, my expert noted that not all dentists have access to panoramic x-ray machines and the Dental Surgeon is one of those. It is unfortunate that the Dental Surgeon's periapical x-ray is now so damaged as to be unreadable. While the Dental Surgeon has extensive experience and expertise in impacted tooth extraction, and he clearly felt that he had sufficient experience to extract the Consumer's wisdom teeth, this decision was based on his less graphic periapical x-ray. Both the Oral Surgeon and my advisor stated that based on a panex x-ray, the Dental Surgeon should have referred the Consumer to a specialist oral surgeon for extraction of her wisdom teeth. However, given that the Dental Surgeon had no access to a panoramic x-ray, in my opinion he did not breach Right 4(2) by proceeding with the extraction of the Consumer's teeth himself.

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Opinion: Breach

Right 6(1)(b), 6(3)(c) and Right 7(1)

In my opinion the Dental Surgeon breached Right 6(1)(b) and Right 6(3)(c) by not providing information on the risks, the options and offering a referral. Further, without sufficient information the Consumer was unable to make an informed choice which was a breach of Right 7(1).

Risks

I have received conflicting evidence on the communication of risk information.

The Consumer is certain that the Dental Surgeon failed to adequately inform her about the possibility of complications arising from the removal of her lower wisdom teeth. The Dental Surgeon states just as categorically that he warned the Consumer of all possible complications at their initial consultation, including swelling, trismus, and labial and lingual paraesthesia. This is reflected in the Consumer' treatment record, where the Dental Surgeon has written the acronym STALL, which is his abbreviation for such a discussion.

Options and Referral

The Dental Surgeon believed that the Consumer had limited financial means, based on her request for a quote for income support. The Code does not limit the information to be made available due to the consumer's financial constraints. The Consumer advised the Dental Surgeon that the local Hospital had informed her that the lower wisdom teeth would be difficult to remove and that the roots were crooked. Faced with such information the Dental Surgeon's obligation was to inform the Consumer not only of the risks, but the options available. These options included obtaining copies of X-rays from the local Hospital for his information, obtaining a panex X-ray prior to proceeding; referral to a specialist oral surgeon for further advice, a second opinion and a quote. Finally written information should have been available for the Consumer in circumstances where a high risk of paraesthesia existed so she could consider all her options and make an informed decision. No information has been provided by the Dental Surgeon to show that this occurred.

Continued on next page

Dental Surgeon

Report on Opinion - Case 97HDC7665, continued

Opinion: Breach, *continued*

In my opinion the Consumer was not fully informed in the circumstances of the risks, the options and costs (one of which entailed no cost to the Consumer), or supplied with information on obtaining a second opinion and was therefore unable to give informed consent.

Actions

I recommend that the Dental Surgeon takes the following actions:

- Apologises in writing to the Consumer for breaching the Code. This apology is to be sent to my office and I will forward it on.
- Considers obtaining access to panex or bi-molar X-rays to enable a more detailed analysis where conditions (or advice by consumers) indicate complications.
- In future atypical cases, where the situation of the teeth is problematic, panex or bi-molar X-rays are not available, and the Dental Surgeon knows the patient has been seen by the local Hospital (or another dental professional) prior to consulting him, the Dental Surgeon should make enquiries, including enquiries as to whether a panex X-ray is already in existence.
- Prepares written material for advice on risks, benefits, costs and options for extractions.

Other Actions

A copy of this opinion with identifying information removed will be sent to the Dental Council of New Zealand and the New Zealand Dental Association for education purposes.