

Report on Opinion - Case 98HDC17399

Complaint

The Commissioner received advice from the Police of a matter of concern relating to a general practitioner's consultation with a consumer at a residential facility in July 1998. The matter of concern was that during this consultation, the provider removed the consumer's stockings and brushed his lips up and down her legs.

Investigation

The advice from the Police was received on 26 August 1998 and an investigation was undertaken on the Commissioner's own initiative. Information was obtained from:

Criminal Investigation Branch, New Zealand Police

The consumer's caregiver

The provider/General Practitioner

The consumer's daughter-in-law

The Commissioner received advice from a General Practitioner.

Continued on next page

Report on Opinion Case 98HDC17399, continued

Outcome of Investigation

The Caregiver/Team Leader at the residential facility reported being concerned about the oedema [swelling due to fluid retention] occurring in the consumer's legs one day in mid-July 1998. The next day the caregiver observed that the oedema had reached the stage of being "pitting" oedema. The caregiver explained in her statement to the police that this is where a finger pressed against the leg leaves a dent that remains visible for some time. The General Practitioner/provider was called to see the consumer. The provider was the doctor on call and not the consumer's usual doctor. He had not seen the consumer before.

The provider informed the Commissioner that he had been advised by phone that the consumer had cellulitis.

The provider advised the Commissioner that following examination of the consumer to exclude congestive heart failure as a diagnosis, he examined the consumer's legs with the flats of his fingers to see if he could feel heat. He could not and there was no redness of the legs. Further to this, the provider advised he was concerned to exclude the diagnosis of cellulitis. The provider states that his understanding is that the lips are the most heat sensitive area of the body and he stated that he briefly applied his lips to the consumer's left knee and shin to see if he could feel any heat.

The caregiver reports in her statement to the Police that during the consultation, the provider removed both of the consumer's thigh-high "stay up" stockings. He then picked up the left leg and held the foot. While he did this he brushed his lips up and down her leg. He started at the ankle and went to above her knee and back down. The provider repeated this action on the consumer's right leg from the ankle to just below the knee. The provider then repeated the action again on the left leg. The caregiver informed the Commissioner that she is certain that the events occurred exactly as reported in the Police statement.

The consumer reports in her statement to the Police that the provider applied his lips to both her legs.

Continued on next page

Report on Opinion Case 98HDC17399, continued

Outcome of Investigation continued

Following his examination of the consumer, the provider diagnosed the consumer as having dependent oedema, rheumatoid arthritis and congestive heart failure. He prescribed Frusemide for the congestive heart failure.

The general practitioner advising the Commissioner commented that *“in this clinical situation it is important to test for temperature but using the back of the hand should be sufficient.”*

The provider has advised the Commissioner that he accepts that the manner in which he tested the consumer’s skin was inappropriate.

The consumer’s daughter-in-law informed the Commissioner that the consumer died in mid-September 1998.

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.

Opinion: Breach

In my opinion the provider has breached Right 4(2) of the Code of Health and Disability Services Consumers’ Rights.

The provider applied his lips to both the consumer’s legs. The provider’s method for testing skin temperature changes was both highly unorthodox and inappropriate. While the provider’s diagnosis may have been correct, the method of testing skin temperature does not meet the professional standard expected of a general practitioner in this situation.

Continued on next page

Report on Opinion - Case 98HDC17399, continued

Actions

A copy of my opinion will be sent to the consumer's son and daughter-in-law, the residential facility and the New Zealand Police. A copy will also be sent to the Medical Council of New Zealand.

I have decided to refer this matter to the Director of Proceedings for the purpose of deciding whether any action should be taken in accordance with section 45(f) of the Health and Disability Commissioner Act 1994.
