
Physiotherapist / Physiotherapy Principal

Report on Opinion - Case 97HDC10019

Complaint

In early November 1997 the New Zealand Physiotherapy Board notified the Commissioner of a complaint concerning the treatment the consumer received from a physiotherapist and the physiotherapy principal ("the principal"). The complaint is that:

- *On a date in late July 1997, during physiotherapy treatment, the physiotherapist used a biphasic machine in such a way that it burnt the consumer's left leg.*
 - *The physiotherapy principal did not comply with the requirements of the Code of Health and Disability Services Consumers' Rights in dealing with the consumer's complaint about this burn.*
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Investigation

The complaint was received by the Commissioner on 10 November 1997 and following an unsuccessful attempt to resolve the matter with advocacy assistance an investigation was undertaken.

Information was obtained from the following:

The Complainant
The Provider/Physiotherapist
The Provider/Principal

The Commissioner obtained advice from an independent physiotherapist. The consumer's clinical notes were obtained and viewed.

Outcome of Investigation

The consumer had a stress fracture of her left foot and had been in a below-knee plaster for six weeks. The plaster was removed in early July 1997 and the consumer started physiotherapy a little over two weeks later. The consumer's treatment involved various mobilisations and the application of electromagnetic vibrations. These vibrations help the healing process and are applied using a biphasic machine. The vibrations are applied to the injured part of the body through pads placed over clothing and through a layer of towel. These pads can become warm during operation of the machine but this is not considered part of the therapeutic effect.

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Physiotherapist / Physiotherapy Principal

Report on Opinion - Case 97HDC10019, continued

**Outcome of
Investigation,
*continued***

The consumer had her third physiotherapy treatment one week after her first treatment. On this occasion the biphasic machine was arranged with the pad underneath her ankle for fifteen minutes. Another patient receiving treatment at the same time as the consumer, complained immediately that the biphasic machine was too hot. The consumer did not feel the heat as she had little feeling in that leg. On the way home the consumer felt a sudden stinging sensation in her lower calf. She inspected the area when she got home and saw it was blistered. The consumer treated the blisters with ice and rang the physiotherapist to tell her. The physiotherapist returned the consumer's call later in the day and arranged for her to come in to see the principal of the physiotherapy practice. The consumer advised that at this meeting the principal undertook to reimburse her if she wanted to go and see her general practitioner. The principal advised the Commissioner that in sympathy he agreed to pay the consumer's doctor's treatment surcharges in the short term.

The consumer consulted her general practitioner, who referred her to a plastic surgeon. The next day, the plastic surgeon reported there was an area of superficial skin loss which bordered on deep dermal and was behaving like a full thickness burn. The plastic surgeon advised the consumer's GP to dress the area three times a week.

The consumer advised the Commissioner that in mid-September 1997 she asked the physiotherapist for the refund of her doctor's bills. The physiotherapist informed the consumer that the principal was overseas until the middle of October. The consumer said the person in charge of the physiotherapy practice posted her a cheque and computer printout the following week. At the same time, she arranged to send the accounts from her doctor directly to the physiotherapy practice.

In mid-October 1997, the principal phoned the consumer and advised that having already contributed \$228 towards her medical expenses, he was no longer prepared to continue this arrangement and that she should claim on her medical insurance.

Physiotherapist / Physiotherapy Principal

Report on Opinion - Case 97HDC10019, 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.*
- 4) *Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.*

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 -*
 - a) *An explanation of his or her condition; and*
 - b) *An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option;*

RIGHT 10

Right to Complain

- 3) *Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.*
 - 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 receipt, unless it has been resolved to the satisfaction of the consumer within 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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Physiotherapist / Physiotherapy Principal

Report on Opinion - Case 97HDC10019, continued

**Opinion:
Breach –
Physio-
therapist**

In my opinion, the physiotherapist breached Right 4(2),4(4), and Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights.

Rights 4(2) and 4(4)

My advisor considered there were inadequacies in the standard of care the physiotherapist provided to the consumer. As the consumer had been in plaster for a lengthy period, the possibility of diminished thermal sensation and therefore reduced ability to detect heat during the treatment is very real. Normal practice is to determine whether the patient has intact thermal sensation prior to the application of any treatment which involves heat. There is no indication in the notes that this was done.

The biphasic treatment was applied through the consumer's track pants and as the machine generates heat it is likely that her leg would have perspired in an effort to maintain normal body temperature. The track pants would potentially inhibit heat loss and cause retention of perspiration, particularly considering the acrylic composition of the garment, thus increasing the likelihood of a burn or scald. The region of the leg being treated should have been fully exposed to permit heat loss and prevent retention of perspiration. The body part being treated should not have been resting on the pad, as the compression of tissues can reduce the blood flow and diminish the capacity to dissipate heat.

The physiotherapist did not inspect the consumer's leg during the treatment, she simply checked her comfort level. If the physiotherapist had inspected the consumer's leg after the treatment she would have noticed the burn and immediate first aid could have been initiated.

The physiotherapist did not inspect the consumer's leg during or after treatment and in my opinion, by failing to do so the physiotherapist did not provide the consumer with services that complied with professional standards. Further, the manner in which the services were provided failed to minimise the potential harm to, and optimise the quality of life of the consumer.

Right 6(1)(b)

There is no indication in the notes that the consumer was warned about the risk of a burn from the biphasic machine.

It is normal practice to warn patients of the risk of a burn before any treatment involving the production of heat. In my opinion, the physiotherapist did not give an assessment of expected risks to the consumer concerning the treatment and breached Right 6(1)(b).

Physiotherapist / Physiotherapy Principal

Report on Opinion - Case 97HDC10019, continued

**Opinion:
Breach,
Principal**

In my opinion, the principal breached Right 4(2), 4(4), 6(1)(b), 10(3), and 10(6) of the Code of Health and Disability Services Consumers' Rights.

Rights 4(2) 4(4) and 6(1)(b)

The principal is vicariously liable for the breaches of physiotherapist under section 72 of the Health and Disability Commissioner Act 1994. The principal did not demonstrate that he had any protocols in place to prevent the breaches of the Code occurring.

Right 10(3)

Initially, the principal accepted responsibility for the costs the consumer incurred in treating her burn. In mid-October 1997, the principal told the consumer his practice would no longer pay for her treatment. The principal conceded that the consumer's burn was an adverse reaction to her treatment and contributed \$228 toward the cost of her medical treatment. He then told the consumer that she should use her medical insurance for further treatment costs.

In my opinion, the principal has not facilitated the fair, simple, speedy and efficient resolution of this complaint.

Right 10(6)

In the absence of any information regarding a complaints policy, I can only conclude that the physiotherapy practice did not have a complaints policy as required by Right 10(6).

**Actions:
Physio-
therapist**

I recommend the physiotherapist:

- Apologises in writing to the consumer. This apology is to be sent to the Commissioner's office and it will be forwarded to the consumer.
 - Confirms she has undertaken continuing education into the use of a biphasic machine.
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**Actions:
Principal**

I recommend the principal:

- Apologises in writing to the consumer. The apology is to be sent to the Commissioner's office and it will be forwarded to the consumer.
- Pays the consumer \$345 to cover her medical expenses over and above those covered by ACC.
- Institutes a complaints policy that accords with Right 10(6) and forwards a copy to the Commissioner.

A copy of this opinion will be sent to the New Zealand Physiotherapy Board.
