

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion - Case 99HDC02057

---

**Complaint**

The Commissioner received a complaint regarding the services the complainant's mother received at a home and hospital between late December 1998 and early January 1999. In particular his complaint was that:

- *In late December 1998 the complainant noticed when visiting his mother, a resident at the home and hospital, that she had very apparent bruising on her right arm.*
- *In early January 1999 the complainant again visited his mother and found her in a distressed state with obvious bruising to the left side of her face, and left eye.*
- *The consumer told her family that a nurse had entered her room, and hit her, stating "that will learn you". The consumer said that she yelled out and cried and was very frightened and scared to sleep for fear that the nurse would return and assault her again.*
- *A meeting was arranged and attended the following day by the consumer's family, hospital staff and a public hospital respite care co-ordinator to discuss the consumer's injuries.*
- *The hospital and home management agreed to investigate the incidents and report back to the consumer's family in two to three weeks.*
- *The family did not accept the home and hospital doctor's explanation as to the cause of the consumer's bruised eye.*

**Investigation Process**

The Commissioner received the complaint on 22 February 1999 and an investigation was commenced on 4 May 1999. Information was obtained from:

The complainant/son of consumer  
Provider, nurse/manager, home and hospital  
Respite care co-ordinator, HHS  
Provider, director, nursing bureau  
Team leader, home and hospital

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Investigation  
Process  
*continued***

Two caregivers, home and hospital  
Provider, general manager/licensee, home and hospital  
General practitioner

Copies of the consumer's clinical records and documents relating to the home and hospital management's investigation into these incidents were obtained and viewed. A videotape of the consumer describing the incidents was viewed.

---

**Information  
Gathered  
During  
Investigation**

The home and hospital is a large complex providing care for 68 low and medium level care residents and 76 high level care patients.

The consumer attended day care at the home and hospital from mid-November 1998 following her discharge from that facility two days earlier. She was readmitted to the home and hospital in late December 1998 as a respite care client. The consumer resides with her daughter when not in respite care. The consumer has fixed contracture of both hands. She also has age-related dementia and fluctuates from being agitated and upset at times to being more calm.

The manager of the home and hospital informed the Commissioner that:

*“... [the consumer] was cared for as a day care client each Sunday then as a respite care client – a total of three years. During that long association with [the consumer] until [late] December 1998 there is no record as far as I know of any complaints by [the consumer] or her family members. ...”*

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

The general manager of the home and hospital informed the Commissioner that:

*“... [O]n each of [the consumer's] 15 visits to [the home and hospital] between 1996 and 1999 mental cognitive tests were carried out by an occupational therapist to give an MSQ score. The score reached by [the consumer] was zero out of 10 on each occasion until the final visit when she was a little more alert and achieved a score of two out of 10. We note that [the consumer's] increased score was recorded in [the home and hospital's] clinical notes manifesting as alertness accompanied by aggression. We are instructed that an MSQ score below four out of 10 is widely considered to indicate serious cognitive impairment. ...”*

The general manager stated that she:

*“... considers that the degree of [the consumer's] dementia, and its effect on her behaviour, have been underestimated in assessing both the nature of [the consumer's] bruising and the appropriateness of responses by [the manager] and [the home and hospital] during the period [late] December 1998 to [early] January 1999.”*

The consumer's hands required daily dressings. The clinical notes by the nursing staff record, in late December 1998, the daily treatment that was required for the consumer's hands. The team leader informed the Commissioner that to care for the consumer's contracted hands, staff would wrap a flannel round her arm before holding it, peel back the fingers, a finger at a time, and wash and dry the skin in the palm of her hands.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

The manager stated that:

*“... [the consumer’s] care was complex particularly due to her fixed contracture of both hands. Often when admitted to [the] Home and Hospital her hands were full of debris. ... [A] caregiver, was assigned each Sunday to care for [the consumer] to provide continuity of care, especially understanding how to open [the consumer’s] hands and clean them. ... [the] charge nurse/team leader had known [the consumer] since her commencement at the facility in 1997 and knew [the consumer’s] needs very well. ...*

*[S]ystems I had implemented ensured the charge nurse/team leader was only responsible for 20 clients to enable close supervision and care. The charge nurse/team leader was with each client on numerous occasions during the shift, for medication administration and other direct client care. My understanding was that [the consumer] required a high level of skill. I ensured experienced caregivers were caring for her. ...”*

In late December 1998 the complainant visited his mother and found that she had bruising to the right forearm, 8cm in length, and also some bruising to the upper surface of her wrist.

He reported the bruising to a member of staff and was requested to complete a ‘Client Complaint Form’ which was accepted by the manager/senior team leader. The manager told the complainant that the incident would be investigated.

Later that day the consumer was seen by the doctor visiting the home and hospital, who recorded in the notes that the consumer did not know how the injury occurred and was not in pain. The general practitioner (GP) spoke to the complainant about the injury, and “*explained about bruising and frail old skin*”. The complainant expressed his concern that the bruising had been caused by rough handling.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
*continued***

The management of the home and hospital carried out an investigation into the cause of the consumer's injuries. Staff involved in the care of the consumer were spoken to. It was suggested that the bruising may have been caused either by the consumer injuring herself by knocking her arm against her bed or furniture, or by an inexperienced bureau caregiver placing undue pressure on the consumer's arm.

The general manager informed the Commissioner that:

“ ...

*From the outset, [the home and hospital] acknowledged that bruising had been caused to [the consumer's] right arm, and that the bruising was likely to have arisen through treatment in cleaning her contracted hands. However, [the home and hospital] does not accept that while [the consumer] was in its care it failed to provide her with services consistent with her needs. ...It was not inappropriately short staffed or staffed by unsuitable casual bureau staff. ...[B]y far the majority of staff engaged [late] December to [early] January were permanent [home and hospital] staff. In addition, we are instructed that each shift's complement of staff included two registered nurses who were permanent staff members. The agency responsible for providing bureau staff is a widely known and respected agency. The staff which it supplied were qualified and well informed of [the home and hospital's] procedures and the specific needs of its clients.*

...”

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

The Client Complaint Form follow-up comment, completed after the investigation by the manager in late December 1998, notes:

*“I have spoken to [the charge nurse/team leader] who ensures all staff will be encouraged to take great care when looking after [the consumer]. It appears a/some caregivers have wanted to undo [the consumer's] contracted fingers (inside the hand the skin is damaged) in order to clean the hand and while doing so have placed too much pressure on the wrist causing the bruise. As the bruise takes a little time to manifest itself, it is impossible to know on which shift it occurred.”*

The manager was interviewed as part of the Commissioner's investigation and stated:

*“Although it was difficult to care for [the consumer's] hands our personnel were able to achieve the expected care as far as we can determine. A bureau caregiver may have unknowingly placed undue pressure on [the consumer's] right arm. It was decided no bureau staff would be assigned to [the consumer's] care.”*

The manager informed the Commissioner that:

*“... [T]he systems in place which I had implemented, two caregivers always were assigned on day shift to 10 clients, doing much of their work together. When a bureau caregiver gave direct client care it would be either in the presence of, or under the direct supervision of one of the experienced [...] home and hospital caregivers. An inexperienced bureau caregiver may have 'placed undue pressure on [the consumer's] arm' without the experienced caregiver noticing at the time that it occurred.*

*...”*

When the complainant visited his mother in the afternoon on a day in early January 1999 he found her in a distressed state with obvious bruising around the left side of her face and a blackened left eye.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
*continued***

When the complainant questioned his mother about the bruising to her face, she replied “*a nurse hit me, she could have blinded me*”. The complainant stated to the Commissioner that his mother is not creative enough to be able to make something like that up. He said that his mother also said that the nurse had said to her “*that will learn you*”. The complainant said that his mother told him that she yelled out and cried. She was very frightened and too scared to sleep for fear that the nurse would re-enter her room and assault her again.

The complainant immediately spoke to a nurse who told him that the injury was thought to have occurred some time previously. The complainant had not been informed by the home that his mother had sustained another injury. The complainant asked to speak to the manager and informed her that he was removing his mother from the home.

The manager advised the Commissioner that the injury to the consumer's face occurred two days previously. The Accident/Incident Complaint Report form recorded that the bruising was noticed by a member of staff on the morning it occurred. This staff member reported the bruising to the Charge Nurse after breakfast that day. The Charge Nurse documented this on the incident form the day later, noting the presence of bruising to the consumer's left eyelid, and requesting staff to check her at night to ensure that she was not hitting herself.

The nursing notes showed that the consumer's left upper eyelid was noticed to be slightly swollen and blackish-blue in colour on the day it occurred, and that night had changed colour to reddish purple.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

The manager stated that:

*“... There was no bruising on the left side of [the consumer's] face. There was bruising on the left eyelid as reported by staff and checked by me. I remember noticing the size of the bruising – a small (one cm in size) bruise only on the inner eyelid area. It did not look like a black eye or having been punched, particularly due to where it was on the eyelid. The combination of the physical characteristics of the bruise, its size and situ, and [the consumer's] mental state led me to consider that the injury was probably accidentally self inflicted. [The consumer's] skin was very fragile and easily bruised. [The consumer] at the time of the injury was very unsettled, hitting her head on the side of the bed with uncontrolled movement of her arms and hands.*

*...”*

On the day before the complainant visited, one day after the incident occurred, the GP recorded that the consumer *“has small haematoma left upper eyelid, no history of trauma, not extensive. Probably occurred from minor trauma”*.

The GP advised the Commissioner that *“It certainly was not an extensive bruise and I felt it had occurred from some minor trauma or may even have been spontaneous”*.

The incident form shows that the manager checked the consumer the day the complainant visited and she noted: *“The bruise on her left eyelid has been caused either by an accident by [the consumer] hitting herself on something or by handling of staff. Nobody knows when the damage exactly occurred. This is being followed up”*. The form also records that the relatives were not informed of this incident.

As a result of the complainant's complaint about the bruising, a meeting was arranged for the following day. It was attended by the consumer's family, the co-ordinator community health services, the respite care co-ordinator from the local public hospital, the manager of the home and the home's team leader.

---

*Continued on next page*



---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
*continued***

Notes were taken of the meeting. The notes record that a video clip of sixty second duration taken by the consumer daughter, was shown of the consumer describing what had happened to cause her injuries, which confirmed the comments that she had already made to her son at the time.

The respite care co-ordinator is reported in the notes to have commented that there was no reason to disbelieve the consumer's words as she was alert.

The manager informed the Commissioner that:

*“... At the family meeting [the team leader] gave a description of the eyelid bruise and also drew its size. Neither [the team leader] or I remember the video having [the consumer's] voice with it. ... From my perspective [the consumer] was slightly more alert than previously but still had quite severe dementia and was confused. E.g. it is recorded [in early January 1998] in the nursing notes by [a] registered nurse [...] that at 4:00 [the consumer] was confused and shouting, asking about her baby’.*

*...”*

It was noted at the meeting that the consumer's eyesight was poor, and that she was unable to identify by name the staff member who hit her. However, the consumer was able to describe the person as *“fat with black hair, and bossy”*.

Prior to the meeting taking place the manager had sent out a notice to staff informing them that there was a family meeting taking place to discuss the injuries sustained by the consumer, and requesting any staff who may have information on the matter to contact her. She informed the meeting that no staff member had stated that they were involved in the injuries.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
*continued***

The consumer's family expressed their concern that the bruising to the consumer's eyelid had not been reported to the family immediately. The manager is reported as stating that the team leader had in her discretion not advised the family immediately and had followed correct procedure.

The general manager stated that:

*“... Usual procedures were followed in relation to [the consumer's] care. A formal handover to incoming staff takes place at the beginning of each of three daily shifts. It includes registered nurses, caregivers and any bureau staff. It is standard practice [at the home and hospital] to report on all clients at handover, including emphasis on any concerns raised throughout the preceding shift, and doctors' visits which are due to take place, current medical status and the individual plan for that shift. This would have included briefing on [the consumer's] special needs. On each shift two caregivers are together allocated 10 patients each, with supervision by a registered nurse or team leader. Each registered nurse or team leader supervises the care of 20 patients in total. ...”*

The manager advised the meeting that she had conducted an investigation into the consumer's injuries sustained in late December 1998 and early January 1999. She stated that the bruising to the consumer's arm had obviously been caused by a caregiver. However, when commenting on the consumer's eye injury, the manager said she did not believe that the bruising had necessarily been caused by staff, as that type of injury can easily be caused by patients themselves. She said that she had spoken with staff about who may have been responsible for the consumer's injuries, but as there were a number of staff involved in the consumer's care she was not able to establish any one person as being responsible.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

The manager stated that:

*“... After the bruising of [the consumer's] eyelid when I spoke with her she never answered me and never said that somebody had hit her. When it was raised by the family that they felt it could have been a possible case of patient abuse I did take it very seriously. ... [I] discussed the issue with [the GP]. We both agreed that it was improbable somebody had hit [the consumer] due to reasons mentioned previously re the characteristics of the small bruise and the mental state of [the consumer]. Therefore I believed the small eyelid bruise required further investigation but did not believe it was necessary to advise family members. When I acknowledged in the incident form documentation that a member of staff may have been responsible I meant that in the daily care it could have been a caregiver using a flannel, wiping [the consumer] eyelid and could have caused the bruising of her very fragile skin. Overall I consider it more likely that it was accidentally caused by [the consumer].*

*...”*

The manager stated at the meeting in early January 1999 that as there was a possibility that a bureau caregiver may have been involved in the bruising to the consumer's arm, but that from the time of the consumer's first injury, no bureau staff had been assigned to care for her.

The consumer's daughter stated at the meeting that she would like the manager to report the consumer's injuries to the Police. There is no evidence that this request was complied with.

The manager gave the complainant an undertaking that she would continue to investigate the events surrounding his mother's injuries and report back to him in two to three weeks.

The day after the meeting, the manager wrote to the manager of the bureau outlining both the issues relating to the consumer, and informing her that there was a possibility that one of the bureau staff may have been involved and asking her to make inquiries.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
*continued***

The manager of the bureau replied to the manager, enclosing a copy of a staff notice distributed one week after the incident occurred, requesting staff to provide any information they may have regarding the injuries sustained by the consumer at the home over the Christmas period. The manager of the bureau informed the manager of the home that if any relevant information was forthcoming, it would be passed on to her immediately.

The manager of the bureau was interviewed on in late August 1999 as part of the Commissioner's investigation. The manager stated that most of her staff are women from the Pacific Islands who could fit the description. She described her Pacific Island staff as "*big and dark*". She said that she employed forty to fifty casual staff and that she knew her staff well, so felt confident in vouching for them. However, she admitted that as an employer she "*can't know everything*". She said that her staff are "*good at picking up on things that they see or hear that they don't like, they tell me*". The manager said that she thought that if her staff had seen or heard anything about the incidents relating to the consumer, they would have told her.

The respite care co-ordinator from the public hospital was interviewed as part of the Commissioner's investigation. The co-ordinator stated that there was no prior knowledge of the consumer fabricating stories due to her dementia. She said that the consumer had been very happily going to the home for respite care for three years, so her sincere reaction and the statements the consumer made indicated that she was scared to stay at the home for some reason. The co-ordinator said that in her opinion the explanation that the home's staff gave for the bruising on the consumer's arms was reasonable, and the consumer's family also accepted this explanation. She said that in her opinion the explanation given for the subsequent injury to the consumer's face and eye was not reasonable.

The general manager of the home informed the Commissioner that:

“ ...

[The home and hospital] *does not accept that it failed to provide services in a manner consistent with [the consumer's] needs. ...*

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

[The home and hospital] *accepts that [the consumer] sustained bruising to her right arm. However, it considers the bruising to have resulted from the difficult task of cleaning [the consumer's] contracted hands combined with the fact that frail, aged skin bruises easily. It does not accept that the bruising was attributable to insufficient staff coverage or care by insufficiently experienced or inadequately supervised staff.*

*... Despite [the respite care co-ordinator's] suggestion that there was no prior knowledge of [the consumer] fabricating stories due to her dementia, the nursing notes for the period during which [the consumer] was at [the home] refer to an agitated state of mind. ...*

The general manager stated that:

*“[The home] considers that the significant weight which has been given to [the consumer's] report of having been assaulted by a staff member fails to take account of surrounding circumstances such as [the consumer's] level of dementia, the nursing notes, and the incident report. ...*

*[The consumer's] complaint and the concerns of her family were also considered very seriously. [The general manager] concluded that [the consumer's] bruising was most likely to have been caused by damaging herself with her hands, particularly given the fixed contracture of her hands, or by hitting her head. [The GP] reported in the medical notes [in early] January that the small haematoma was not extensive. He noted that it had probably occurred from minor trauma or was spontaneous. ...”*

The manager and the home's staff members who were all involved in the care of the consumer the home, were interviewed in early September 1999 regarding the incidents involving the consumer.

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

The team leader stated that they were short staffed at that time, and “*there were heaps of bureau staff working*”. The staff were not able to contribute any further information or explanation for the events.

The manager of the home informed the Commissioner that:

“ ...

*I believe I was very responsible in the management of staff and systems to ensure safe and adequate day-to-day care of clients.*

...

*During 1998 I requested from [the] general manager permission to increase the number of registered nurses. That request was granted. Systems were changed which ensured there was close supervision by team leaders/charge nurses in direct client care. I also ensured systems were in place for the provision of upgraded and adequate care plans, integrated clinical notes, competent team leaders and charge nurses, and experienced registered staff on night duty to ensure quality of care.*

*All the job descriptions and task documentation were upgraded in 1998 with the involvement of staff members at every level. All staff members had annual performance appraisals. All staff members were attending the weekly inservice education classes regularly. This included sessions on responsibility, accountability, dealing with distressed older people, ethics and many other related topics.*

*Following changes early in 1998 adequate staff covered each shift. Experienced staff was always assigned to care for [the consumer]. Written instructions re the detailed care of [the consumer's] hands was documented clearly. ...*

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

*I took every incident form seriously and followed carefully our written policy/procedure for incident form follow-up and client complaint. The cause of the bruising on [the consumer's] face was carefully investigated. The incident form documentation was recorded as per policy. I interviewed the charge nurse/senior team leader [...]. I spoke personally with the doctor in attendance. [The team leader] interviewed all staff members involved with [the consumer's] care at the time of the incident. I organised the family meeting and took full notes at the meeting.*

*There was not a staff shortage at the time of the incident and there was appropriate experienced supervision. (See my earlier comments from pages 1 and 2 on staffing issues). With the continuity of care by experienced staff members, by the charge nurse, other registered nurses and caregivers, I believe [the consumer] did receive services which minimised any potential harm.*

...

*For three years of day care on a Sunday and then respite care, open communication was maintained with the [consumer's] family. Prior to [the day the complainant complained in late] December 1998 there had been no complaint regarding [the consumer's] care. I was available at all times. [The team leader was the] charge nurse at the time of the eye bruising incident also continued to maintain open communication with [the consumer] and her family. The family was not notified of the small eyelid bruising [the day the incident occurred] by the charge nurse or by me due to its situ/characteristics and [the consumer's] mental state. In the following days, with continued investigation and in consultation with [the] general manager, and visiting general practitioner [...], we believed the investigation did not indicate the need to notify police.*

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

*All caregivers involved in [the consumer's] care were interviewed. I do not understand the meaning in the report of 'a plan to involve all caregivers should have been implemented to prevent further distress and injury occurring to [the consumer]'. The care plan and clinical notes were upgraded regularly and were used by all staff attending [the consumer].*

*I believe the [consumer's family] were long standing receivers of co-operation and systems were in place ensuring quality and continuity of services.*

*...”*

The general manager informed the Commissioner that:

*“[The home and hospital] acknowledges that the bruising sustained by [the consumer] between [late] December 1998 and [early] January 1999 was unfortunate. However, it is concerned at suggestions in your provisional report that these injuries either occurred as a result of short staffing, or through inexperienced or inappropriate care. [The home and hospital] takes structured steps to ensure that its team members are adequately trained and supervised at all times. These practices were in place when [the consumer] was in [the home's] care and resulted in detailed nursing notes being kept from which it is clear that [the consumer] was agitated during her visit. The quality of care of [the home's] clients is a paramount importance to it.*

*In addition, [the consumer's] family and [the home] have previously agreed that the bruising to [the consumer's] wrists may have occurred as a result of cleaning [the consumer's] hands in circumstances made difficult by their contracture. [The home] does not accept that this occurred in circumstances amounting to a breach of [the consumer's] rights. It considers that services were provided in a manner consistent with [the consumer's] needs, albeit insufficient to prevent damage to [the consumer's] frail skin on this occasion.*

---

*Continued on next page*



---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Information  
Gathered  
During  
Investigation  
continued**

...

*It is [the home's] belief that adequate and appropriate steps were taken to record and respond to [the consumer] during her time at [the home] between [late] December and [early] January. ...*

*[The home] has accepted from the outset that it would have been preferable for [the consumer's] family to have been informed about her bruised eye immediately, particularly given concerns previously voiced regarding her arm. ... [The home] does routinely inform families of any significant injury. ... [The manager] and [the home] concluded that a bruise on the eyelid, of unknown origin, was not so significant as to require the family to be notified. ... [I]n the event of a similar incident, all care providers will be automatically included in a communication strategy to prevent distress or injury to the client, or distress or confusion to the family. [The home] has apologised to [the consumer's] family previously for its handling of this communication issue."*

The complainant informed the Commissioner that he does not want the home and hospital to acknowledge liability, but he would like them to acknowledge that an incident occurred which resulted in bruising to his mother's eye. He said that he would like them to apologise to him and his mother for this incident and for not informing him immediately they discovered the bruise to his mother's eye in early January 1999.

The complainant stated that he would like assurances from the home that they have put systems in place to ensure that staff notify the families of patients if similar injuries occur in the future, so that the family may have the option of taking whatever action they feel is appropriate.

---

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Code of Health  
and Disability  
Services  
Consumers'  
Rights**

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

*RIGHT 4*

*Right to Services of an Appropriate Standard*

- 3) *Every consumer has the right to have services provided in a manner consistent with his or her needs.*
  - 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.*
  - 5) *Every consumer has the right to co-operation among providers to ensure quality and continuity of services.*
- 

**Opinion:  
Breach  
Manager,  
home and  
hospital**

In my opinion the manager of the home and hospital has breached Rights 4(3), 4(4) and 4(5) of the Code of Rights.

**Right 4(3)**

The nurse/manager of the home and hospital was responsible for the management of staff and systems to ensure safe and adequate day-to-day care of patients and residents.

*Bruising to the consumer's right arm*

On her admission to the home and hospital, the plan for the care of the consumer's hands was specified in the nursing notes. The manager stated that it was difficult to care for the consumer's hands. However, there was an expectation that staff assigned to care for the consumer were sufficiently skilled and competent to achieve the expected care.

Management acknowledged that some of the casual staff employed at the home did not have the necessary skills to perform the care required for the consumer. The manager stated at the early January 1999 meeting that the bruise on the consumer's arm had obviously been caused by a caregiver. She acknowledged it could have been done by someone inexperienced in caring for the consumer, while not being supervised.

*Continued on next page*

---

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Opinion:  
Breach  
Manager,  
home and  
hospital  
*continued***

The home and hospital's nurse/manager failed to provide adequate experienced staff to perform the specialised task of caring for the consumer. The casual caregivers who were assigned to care for the consumer were not always adequately informed or supervised. In my opinion the manager did not provide the consumer with services consistent with her needs and therefore breached Right 4(3).

#### **Right 4(4)**

##### *Bruising to the consumer's face*

It is apparent that there is an element of doubt as to the true cause of the trauma to the consumer's face. The consumer's testimony recorded on videotape leaves no doubt as to who the consumer believes is responsible. The respite care co-ordinator stated that in her opinion there is no reason to disbelieve the consumer. The manager conducted an investigation into the incident and spoke to the staff who were involved in the consumer's care, but was unable to identify the person responsible for the injuries. At the meeting in early January 1999, the consumer's daughter was not satisfied with the explanations for the consumer's injuries and requested that the matter be reported to the Police.

There was a staff shortage over the Christmas/New Year period, and limited supervision of staff as a consequence. Although efforts were made to establish the reason for the injuries to the consumer's arm, her testimony about the bruising to her face was not taken seriously and the alternative explanation of a self inflicted injury was accepted.

However the injuries occurred, the consumer incurred bruising on two occasions within a short period of time. On both occasions her son had to bring this to the attention of the home. In my opinion, the consumer was not adequately supervised and the as the home and hospital's nurse/manager, the manager did not provide services to the consumer in a manner that minimised the potential harm to her and therefore breached Right 4(4).

---

*Continued on next page*

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Opinion:  
Breach  
Manager,  
home and  
hospital  
continued**

**Right 4(5)**

*Family and caregivers not notified of injuries to the consumer*

The consumer was admitted to the home and hospital for respite care. The consumer's family were her primary caregivers and as such should have been informed on all matters relating to her wellbeing.

When the complainant found his mother to have bruising to her right arm in late December 1998, he made a formal complaint to the manager.

In early January 1999 the complainant found his mother again in a bruised and distressed state. The records show that this bruising had already been noted, recorded and reported to management by staff two days previously, however the manager had, in her discretion, not immediately advised the consumer's family of this subsequent injury.

Given that the manager had previously acknowledged that a member of staff may have been responsible for the consumer's injuries, and that the complainant had previously complained about bruising, in my opinion it was unreasonable not to inform the complainant immediately the subsequent injury was noted. A plan to involve all caregivers should have been implemented to prevent further distress and injury occurring to the consumer. I therefore conclude that the manager breached Right 4(5).

---

---

## Home and Hospital / Manager / General Manager

---

### Report on Opinion – Case 99HDC02057, continued

---

**Opinion:** Under section 72(2) of the Health and Disability Commissioner Act 1994, employers may be vicariously liable for any act or omission of an employee. Under section 72(5) it is a defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do the thing that breached the Code.

**Breach**

**Licensee, home and hospital**

The home and hospital employed the manager. The general manager/licensee of the hospital is responsible for ensuring employees comply with the Code of Rights. In my opinion, in the absence of any evidence that as licensee/employing authority she took reasonable steps to ensure that employees at the home and hospital complied with the Code, The licensee is vicariously responsible for the manager's breaches of the Code.

---

**Actions**

I recommend the following actions:

- The (former) nurse/manager of the home and hospital apologises in writing to the complainant for her breaches of the Code. This apology is to be sent to the Commissioner who will forward it to the complainant.
  - The general manager/licensee of the home and hospital apologises in writing to the complainant for the failure to provide his mother with a safe environment, and for failing to inform him promptly of his mother's injuries. This apology is to be sent to the Commissioner who will forward it to the complainant.
  - The home and hospital reviews its policies and procedures for informing relatives or representatives of any adverse event (such as an injury) involving residents or patients.
- 

**Other Actions**

A copy of this report will be forwarded to the Board of Trustees for the home and hospital, the Health Funding Authority, the Licensing Office at the Ministry of Health, the Nursing Council of New Zealand, and the New Zealand Private Hospitals Association.

---