



# **Medico-legal Update**

**Christchurch GP Conference**

**7 August 2010**

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# Today's goals



- Recent Court Decisions
  - HDC complaints process
  - Health information and patient confidentiality
- Take home messages
  - HDC complaints – respond once, respond well
  - You can say “no” to patients
  - Get help with privacy issues unless sure of your position

- HDC Complaints Process
  - Minority complaints formally investigated
- Director of Proceedings
- Human Rights Review Tribunal



- Facts
  - Non curative treatment for colon cancer and liver metastases
  - Blocked port for follow up SIRT
  - Additional costs to patient
  - Complaint because not warned port might block

- HDC Findings
  - Breach re provision of information

- Complaint to Ombudsmen
- “Appeal” to the High Court through Judicial Review
  - The Commissioner’s opinion could not be successfully challenged

# HDC Complaints – make it count first time

## ■ Report

- Timeliness
- Who are you?
- What are the facts?
- What is the response to the allegations?
- What do you accept?
- What steps have been taken?
- What can you apologise for?



# Director of Human Rights Proceedings v QD (2010)



- Unsolicited Information
  - Not regulated by HIPC Code
  - Once held, subject to rules about storage, use and disclosure
  - Also subject to request for access, or correction



# Director of Human Rights Proceedings v QD (2010)

- Information about wife (W) provided in confidence by husband (H) to GP
- W requests the information from GP
- GP refuses until agreement from H



# Director of Human Rights Proceedings v QD (2010)

- Tribunal
  - Breach of the Privacy Act and Health Information Privacy Code



# Director of Human Rights Proceedings v QD (2010)

- Adding unsolicited information from a third person to the patient record
  - Have you thought through the consequences?
  - Have you verified its accuracy?
  - Should you issue a caveat to the provider?
  - Should you discuss it with your patient?

**You can say “no”**



# H v PRIVACY COMMISSIONER (2010)

- Rule 11 HIPC
- *Necessary* to prevent serious and imminent threat to health, life, safety or avoid prejudice to the maintenance of the law



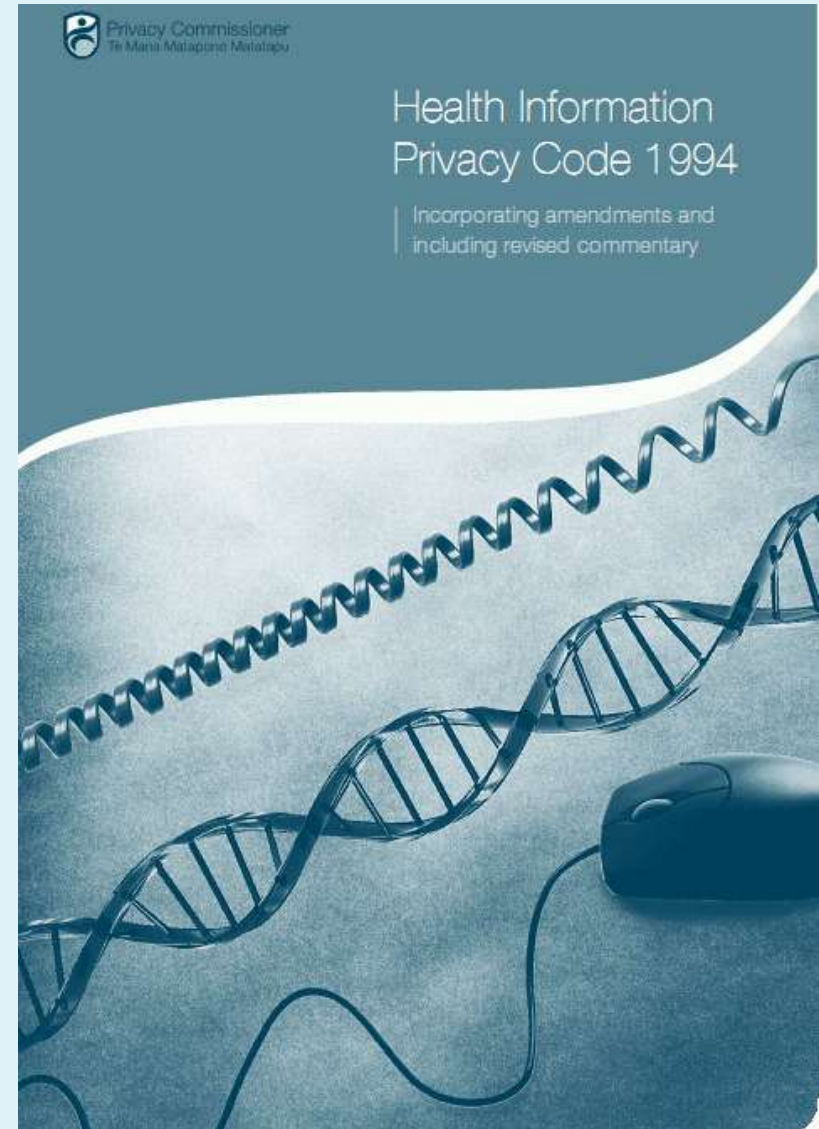
- GP discloses drug seeking behaviour to patient's workplace
- Privacy Commissioner
  - Breach Rule 11
- High Court disagrees





# H v PRIVACY COMMISSIONER (2010)

- Its complicated
- Get help unless you are certain of your position



**MPS**



# **South GP CME 2010**

**What's new in the medicolegal world?**

- What is not new
- Office of the Health & Disability Commissioner
- Coroner's Act
- Advertising



- Case
- 15 yo male seen on his own at AMC
- Toe injury 2 weeks previous
- Obvious swelling
- Xray confirmed #
- Plan – review at AMC # Clinic

- # clinic appointment not made
- Xray filed without review – significant angulation
- Review 2/52 later, referred stat
- Family verbally complained to clinic
- No response by GP after meeting & letter
- ‘to date I have had no response & I do not think this is acceptable’

- Now 2 reasons for complaint
- H&DC not investigating – but ---
- ‘appropriate for GP to send apology via H&DC’
- Clear implication that failure to apologise would have negative outcome

- 10 years under previous commissioner
- Parting shot NZMJ 14/5/10
- ‘in HDC files, doctors who are truly open to their patients – listening to them, engaging them in conversation, trying to answer their questions – are seen infrequently’.
- Validity of generalisation from specifics
- Exception proves the rule or no smoke without fire?

- ‘the doctors who appear before the HDC are a defensive bunch’
- Some doctors are very good at pointing the finger at others.
- ‘The standard motto seems to be offense is the best form of defence. This sort of approach is sometimes fuelled by the Medical Protection Society’

- Recertification –
- ‘Current MCNZ requirements for recertification are light, based on a fairly soft CME model & too much mileage given to attending update conferences’
- Education –
- ‘Is it appropriate for a medical school to invite the Medical Protection Society to talk to medical students?’
- New Commissioner

- On-call rural doctor called at 0300 by Police & requested to come & sign death certificate
- Doctor declined saying it would be OK to sort next morning.
- Family contacted own GP who signed certificate.
- Family complained saying on-call doctor should have contacted patients GP.

# Coroners & Burial & Cremation Acts

- Now MOH & new certificate – HP4720
- 1 – attending doctor **must** complete certificate **immediately** after learning of death.
- 2 – another doctor may sign if –
  - a – attending GP not available
  - b - < 24 hrs & attending GP unlikely to be able to sign
  - c - > 24 hrs & attending GP has not done certificate



- Second doctor must –
  - a – see the medical records
  - b – have regard to circumstances of death
  - c – examine the body

- RNZCGP website Clinical Practice comments from Christchurch Coroner
- Police may waste time & resources looking for you
- Body may need to be stored in a mortuary
- Delays in making funeral arrangements
- Not warranted to have unnecessary post mortems

- Implications for GPs –
- Afterhours & weekend cover
- Access to your notes
- Charging for death certificates

- New MCNZ Statement April 2010
- Particular implications for doctors doing appearance medicine
- Purpose is to protect the public from false or misleading ads.
- Includes public communications, websites, business cards etc
- Ads must be truthful & balanced, claims evidence-based & substantiated.

- *The Cincinnati Post Ohio*
- May 24, 1885

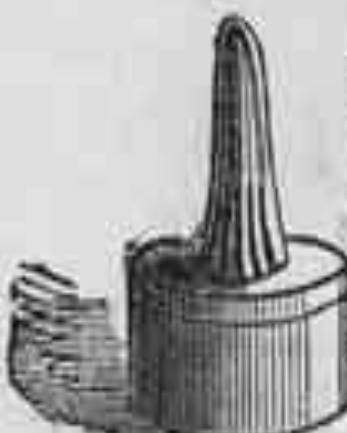
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- Must not unduly glamorise or foster unreasonable expectations.

- *Harper's Weekly, New York*
- October 6, 1866

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- May not use before & after photos.



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- Must not advertise by visiting emailing or telephoning prospective clients
- Doctors not permitted to endorse medicines, medical products or medical treatments
- No gift or discount coupons as promotion.
- No medical 'prizes' as promotion.

# Experience...



- Counts for nothing if your mind is not on the job!

# Focus



Wallis  
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KEEP CLEAR**



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FOOTWEAR**



**SAFETY  
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MUST BE WORN**



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