

Council of Chinese Medicine 15 April 2026

# Consent

## When patients demand a refund

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Medical  
Protection



# HDC case: The importance of consent and good documentation.

- Ms A went to acupuncturist Ms B for a left arm and wrist injury
- At one appointment Ms A was also had pain at the jian jing area on both sides and some shortness of breath (SOB) which Ms B treated.
- Ms B advised the HDC that she explained the treatment, the risks of a bent needle, bleeding and bruising and the small chance of pneumothorax. This explanation was not documented.
- Ms B said Ms A consented
- Information pamphlets are provided but no evidence this was given to the patient.
- Signed consent is required at the clinic but was not signed.



# HDC case: The importance of consent and good documentation continued

- According to Ms A, when the needles were removed she experienced sudden onset of right sided chest pain and SOB. But the clinical notes state that the patient had a 'stuffy' chest after the 2nd adjustment and slight chest pain. All needles were withdrawn and other treatment provided. Ms A improved but still had some pain.
- Ms B advised Ms A to rest and contact her again if she felt worse
- Ms A later went to ED and was diagnosed with bilateral pneumothorax in both apices



# HDC case: The importance of consent and good documentation.

- Ms B was found in breach of right 6(2) of The Code of Health and Disability Services Consumers' Rights:  
(2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.
- Ms B had to perform an audit to identify whether consumers had received the brochure and signed a consent form and report to the HDC
- Ms B had to undertake further training on acupuncture techniques.



# When outcome is poor consent is cited as an issue



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TE TOIHAU HAUORA, HAUĀTANGA

When all issues raised in complaints are considered – not just primary issues – the most common complaint issue categories in 2024/25 were:

**78%** Care/treatment

**15%** Consent/  
information

**68%** Communication

**15%** Medication

**16%** Access/funding

**12%** Facility issues



# Consent requirements:

- Competence
- Full information
- Free from coercion (not pressured)



# Consent – competence

- Presumption of competence in NZBORA
- HDC

Right 7 - Right to make an informed choice and give informed consent

(2) Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.

Competence is

- dynamic.
- time specific and decision specific.



# Consent – competence

Four parts:

- Take in information
- Weigh it up
- Make decision
- Communicate decision

True or false: If a patient makes a bad decision, they are not competent



# Consent: Full information

How much information do you need to provide the patient as part of the consent process?



# Consent: Full information

Right 6 Right to be fully informed including

(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;**

(2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.



# Consent: Full information

- How much information you provide depends on:
  - Health literacy
  - The potential for serious complications/side effects of the treatment
  - Is there a special risk for this patient in front of you?
- How has the information been presented?
  - Verbal
  - Written
  - Video
  - Translation



Verbal



Nonverbal



Visual



Written

# Consent: Give them time to make the decision

- Some patients will be very nervous having treatment if it's new to them. Some patients are needle phobic. Taking in information can be difficult when stressed.
- Ensure they are not feeling pressured into making a decision. Making a decision under pressure means patient is not able consent (coercion)
- If necessary ask them to come back once they've thought about the options and discussed it with family, if they want



# Consent: those who can't consent

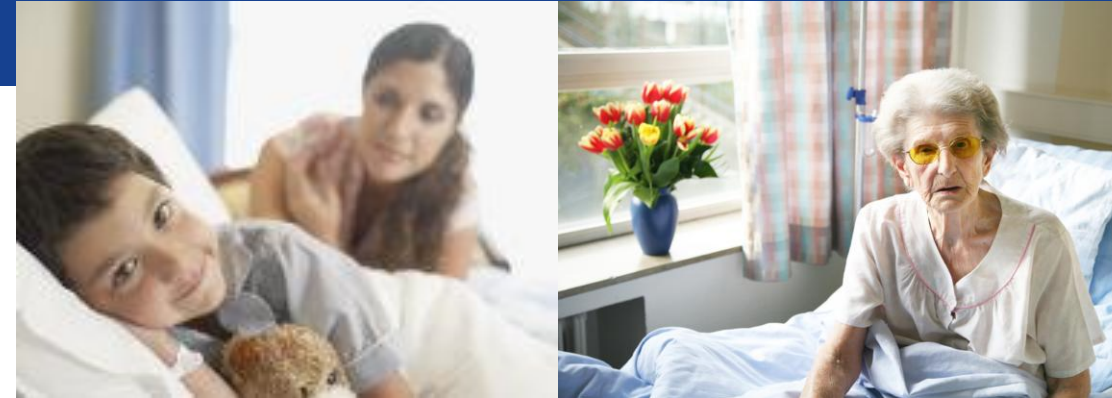
- Parent if a minor, Welfare guardian or EPOA  
Otherwise treat under Right 7(4)

a) It is in the best interests of the patient, and

b) You have taken reasonable steps to ascertain the views of the patient [**find out what the patient thinks**], and

c) Either:

- i. Having ascertained the patient's views and having regard for them, you believe, on reasonable grounds, that providing the care is consistent with the informed choice the person would make if they were competent, [**believe that if they were competent they would consent**] or
- ii. Having been unable to ascertain the patient's views, you consider the views of other suitable persons interested in the person's welfare and are available to advise you [**find out what their closest family/friends think**].



# Pitfalls in consent: language and cultural differences

- A daughter brings her elderly mother for acupuncture.
- The mother speaks Tongan and very little English.
- The daughter translates for the mother.
- When you take the history, you notice that the daughter doesn't ask the mother many questions but speaks for the mother.
- What do you do?



# Pitfalls in consent: language and cultural differences

- May be interpreting, not translating
- Assumptions
- Can't check understanding
- Pacifica often answer yes when kiwis would say no, but mean the same thing
- Body language different eg Māori averting eyes
- Different authority structures
- Different pain thresholds





# Pitfalls in consent: language and cultural differences

What do you do?

- Explain to the daughter the importance of hearing from the mother
- Find a professional interpreter
- Information pamphlets in different languages
- If you aren't confident about proper consent do not proceed.



# Documentation



- Ms A and Ms B disagreed about what happened at the consultation.
- How does the HDC work out who's right?
  - Clinical notes
  - If there are no notes it comes down to credibility:
  - Ms A did not seek medical attention despite ongoing pain for 7 hours despite increasing pain which is consistent with her statement that she did not know about the risk of pneumothorax.



# What would you say about clinical competence of this clinician?

Summer 1972  
1972  
C. 4  
preparative 3/52  
Hawing planig.  
psychological problems  
Dell 3-4 yr  
Crested GP  
called off/rev. 16 day sp  
→ Crest 10 day 60  
+ Rashed  
2 like uterine  
Friday 3/2/72  
1 bin + blood  
Pv Sp. uterine  
Monday 7/2/72  
2 2/2/72 still bleeding  
odd/pan  
22  
29/2/72  
P. 7/2/72  
no letter //

# Clinical Records Standard includes:



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- The presenting complaints
- The principal/primary diagnosis
- Relevant associated conditions or additional diagnoses
- Relevant family or personal history
- Medications
- A comprehensive subjective and objective assessment
- Analysis of clinical signs and symptoms
- Relevant outcome measurements
- Treatment goals and management plan
- Information given to tangata whai ora
- A record of a signed consent form or refusal
- Treatment provided
- herbal formula/prescriptions
- The dates of all treatment/s, referrals, and any other interventions
- Progress made and discharge plan
- Letters and reports to, or from, referring health professionals or other involved parties, and any
- clinical photographs and/or digital images. These need to be dated
- Note of risks and/or problems that have arisen and the action taken to rectify them

Questions??

# Patients who demand a refund

## Scenario: Patient demands a refund

- You provide a series of treatments for a patient who was well consented.
- The patient was aware that there was a risk (low) that the treatment would not work and that he may experience some side effects. He seemed happy to proceed.
- You provide 4 consultations and prescribe dispense herbal medicines
- A month later the patient storms into the clinic demanding a refund because the treatment hasn't worked.
- He threatens you with bad Google reviews and an HDC complaint.

What do you do?



# Patient demands a refund

What do you do?

- A. Shout back and say no then push them out of the clinic
- B. Say no and tell them to complain
- C. Give them a full refund to get them out of the clinic
- D. Panic



# Patient who demands a refund

- CMC and HDC do not have jurisdiction over business matters
- They do have jurisdiction over the clinical care you provided and your professional conduct.
- Treat this as a complaint and provide a written response after reviewing the notes.
- Always be professional in all verbal and written communication
- **Council Standards: Demonstrate professional and ethical conduct, showing respect and empathy towards clients**



## Our reaction to stressful situations:



## Don't react, respond

- Give yourself time to think
- Control the physiology... breathe slowly
- Tune into your thoughts – what are you telling yourself that isn't helping you?
- Remember patients are often under a lot of stress: financial, feeling unwell etc





# Patient who demands a refund

**A gentle answer  
turns away wrath,  
but a harsh word  
stirs up anger.**

**Proverbs 15:1**

- Stay calm and professional, warm and conciliatory but firm
- 'I'm sorry that you are unhappy with my care. I am very happy to review the file and consider the care I provided. Would you like to write a formal complaint to my clinic? Here is the form/website'
- If the patient is shouting and swearing in the waiting room
  - Calmly ask them to stop and if they don't ask them to leave the clinic.
  - If they refuse, advise that you will call the police
  - If they won't leave, call the police.
- If they are threatening in their behaviour (verbal or physical) do as above and speak to the police about a trespass order.

# Sorry: hard to say but so powerful



**I AM SORRY**

- Is always important
- Needs to be sincere
- Sometimes “I’m sorry that you ...”
- Sometimes “I’m sorry that I ...”

Repeating you are sorry multiple times takes the heat out.

# Patient who demands a refund

- Explain the treatment provided and why it was offered.
- Remind them of the information provided and that there was a risk that this treatment would not work or have possible complications etc.
- **Council Standards: Provide evidence-informed care and ensure clients are well-informed about their treatment**
- Consider if further or alternative treatments can be offered
- If you decide to refund, follow the clinic's refund policy.
- **Council Standards: Handle complaints and disputes professionally, adhering to ethical and professional standards**



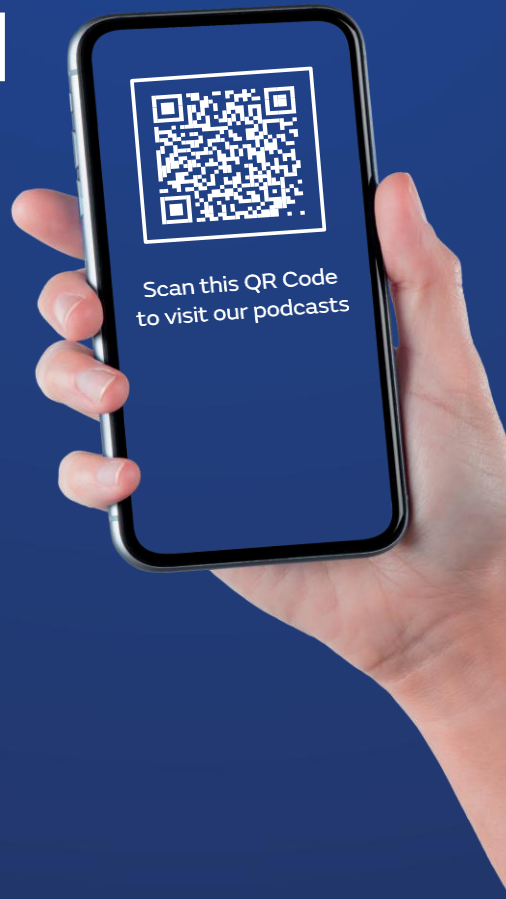
Questions??

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