Commissioner's Comment

Follow-up of specialist referrals

Ron Paterson, Health and Disability Commissioner

The responsibility of general practitioners to follow up patient test results has been the subject of extensive debate, with HDC decisions and College consultation leading to interim guidelines on *'Minimising Error in Patient Test Results'* (RNZCGP, 2003). Follow-up of specialist referrals raises similar issues. GPs who refer patients to a specialist also need to take reasonable steps to follow up the referral, especially if the patient's need for specialist assessment has become more urgent. A recent case, which progressed to HDC, ACC and the District Court, illustrates the problems that can ensue when a GP fails to follow up a specialist referral adequately.

Mrs P's progressive breast symptoms

In May 1999 Mrs P, aged 53 years, consulted her GP, Dr H, concerned about the 'changing' nature of a swelling under her left arm, which had begun to spread into the side of her left breast, creating a 'thickness'. Mrs P told Dr H that her sister had been diagnosed that week with breast cancer. Dr H ordered a mammogram, which showed no evidence of malignancy, but did not order a needle biopsy. Mrs P consulted Dr H again in May, and two months later, when the results of the mammogram were discussed. Dr H offered no further treatment and reassured Mrs P that there were no problems.

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Referral

Mrs P consulted Dr H again in September as the swelling had become a lot worse and was restricting her left arm movements. The GP sent a letter of referral to Palmerston North Hospital requesting surgical review but, as there was nothing in the letter to denote urgency, the referral was accorded low priority, and Mrs P received an appointment for May 2000.

On 21 January 2000, Mrs P again consulted Dr H because her breast was greatly out of shape. On examination, Dr H found the breast irregular to the feel and moderately oedematous, and the left nipple had retracted. On 27 January Dr H wrote to Wanganui Hospital asking that the *'appointment be expedited'*. On 8 March Mrs P consulted Dr H once more because of further changes in her breast and aching. She still did not have a hospital appointment. At the 8 March consultation, Dr H realised she had sent the letter of 27 January to Wanganui Hospital rather than Palmerston North. She sent a copy of the misdirected letter to Palmerston North Hospital, where it was received on 30 March. (Dr H claimed she faxed a copy on 8 March, but the hospital had no record of receiving the fax.)

Self-referral to private care

By this time, having become increasingly concerned and scared, Mrs P contacted a private general surgeon, Dr W, on 18 March. When requested by Dr W's nurse, Dr H provided a referral letter noting *'clinical findings of advanced breast cancer'*. Dr W immediately took a core biopsy, which showed infiltrating lobular carcinoma. Mrs P underwent chemotherapy prior to a mastectomy and, subsequently, six weeks of radiotherapy treatment.

ACC claim and HDC complaint

In August 2000, Mrs P lodged a claim with ACC for personal injury caused by medical misadventure as a result of misdiagnosis and delayed diagnosis of left breast cancer. Dr Baird, ACC's independent general practice advisor, stated that Dr H *'should have had a much higher level of suspicion'* (given the family history) and *'should have shown a greater degree of urgency in her management'*. In March 2001, ACC accepted Mrs P's claim, holding that Dr H's medical error had delayed diagnosis and treatment of her advanced breast cancer, and worsened her prognosis.

Dr H sought a review of ACC's decision. Soon after, in May 2001, Mrs P laid a complaint with HDC. During the course of the HDC investigation, the ACC review occurred. Dr H obtained supportive opinions from three specialists from the University of Otago: Professor Doyle (radiology), Professor Tilyard (general practice) and Associate Professor Reid (medicine). ACC sought further advice from Dr Baird, and Dr Dady, a specialist oncologist. The reviewer

found that the weight of evidence did not support a finding of medical error and, in April 2002, ACC's decision in favour of Mrs P was quashed.

In December 2002, on the basis of my own independent advice from Dr St George (general practice), HDC concluded that Dr H had breached the Code of Consumers' Rights in her management of Mrs P, noting that Dr H *'seems to have assumed that putting a letter in the mail was all that was required to fulfil her professional responsibility to respond to a potentially life-threatening situation'*. Meantime, Mrs P appealed against the ACC review decision to the District Court. The Court received a copy of the HDC report upholding Mrs P's complaint (01HDC04864, 19/12/02).

What the experts said

All the experts agreed that at least by 21 January 2000, the symptoms Dr H noted were highly suspicious of breast cancer, and a medical practitioner should be aware of the possibility of cancer with such symptoms. However, there were sharp variances of opinion regarding the extent of a doctor's duty to follow up a specialist referral. The doctors for the defence took a benign view of Dr H's actions. Professor Tilyard noted that Dr H had written a further referral asking that Mrs P's appointment be expedited, and considered that the GP *'could not be faulted in her management of the case'*, which conformed to *'currently accepted best practice in New Zealand'* – even though the request was not made until six days later on 27 January, and was sent to the wrong address! Professor Doyle thought Dr H acted *'entirely appropriately'* and that it was *'quite unreasonable to suggest that she was remiss in not trying to harass "the system" over the phone'*. Associate Professor Reid thought that the *'deaf ears'* of the public hospital system had failed Mrs P.

The independent experts took a less charitable view. Dr Baird advised ACC: *'I strongly maintain that any reasonable doctor who suspects an advanced breast cancer does not send out missives to hospitals without having an aggressive follow-up mechanism in place to assure both the patient and themselves that timely intervention will occur. To be uncertain of such an obvious diagnosis, to be uncertain of the destination of a crucial referral letter, to have no apparent concern over the continued delays in having Mrs P seen, and to not facilitate alternative referral would suggest failure to provide a standard of care and treatment to be expected.'*

Dr Dady advised ACC: *'In my opinion a telephone call by the surgeon requesting an appointment within a few days would have been more appropriate.'*

Dr St George advised HDC: *'By January [Dr H] must have been aware her patient had cancer, and she should have discussed it with her patient and made direct contact with the surgeon...In such a situation most general practitioners would phone the surgeon for an early appointment.'*

District Court Judge's decision

Judge Beattie was very critical of Dr H's failure to follow up the referral. The Judge commented that Professor Tilyard's advice (that Dr H's advice could not be faulted) *'defies belief'* and rejected his advice entirely. He stated: *'In all the circumstances I find that the acts and omissions of Dr H on 21 January and following, when she failed to identify the degree of urgency that was required to have [Mrs P] seen by the appropriate specialists and thereby given over to the appropriate treatment without delay, was inexcusable and constitutes a falling below the standard of care expected in the circumstances. I cannot emphasise too much that the circumstances of this case were that of a life-threatening disease and which any competent general practitioner ought to have identified and taken far more direct action and follow-up if necessary.'* (P v ACC, District Court Palmerston North, No. 129/04, 27 April 2004). Unlike Professor Doyle and Associate Professor Reid, Judge Beattie did not think it too onerous to expect a GP to telephone the hospital to speed up an appointment given the suspected malignancy and the fact that time was of the essence. *'[A] degree of aggression'* was called for in following up the referral.

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Unhappy outcome for the doctor

It is obviously important that doctors are able to pursue their legal remedies, including appealing an ACC finding of fault. (Happily, ACC medical error findings will become a relic of history once the proposed medical misadventure reforms are enacted in 2005.) Yet by appealing the ACC decision, Dr H had to endure the stress of the claim for a further three years. Earlier resolution of the ACC claim may also have avoided the HDC investigation, which led to two years of stress (from notice of investigation to notice of decision by the Director of Proceedings not to prosecute), and the very duplication of process that doctors rail against. Unlike ACC and HDC processes, District Court judgments are publicly available (consistent with the principle of open justice), so Dr H's dogged fight resulted in her name being published in her local newspaper. She may have been better advised to accept responsibility for her mistakes, which so clearly had a significant impact on her patient. A simple written apology, and an assurance that her practice had instituted systems to ensure timely follow-up of specialist referrals, could have avoided the stress of protracted investigation and litigation, and the harmful publicity.

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