IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

[2023] NZACC 187 **ACR 233/21**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	JULIE BRUNTON Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing:	8 May 2023
Heard at:	Auckland
Appearances:	J Brunton, appellant in person (by AVL, audio only as video unavailable) I Hunt for respondent
Judgment:	17 November 2023

RESERVED JUDGMENT OF JUDGE I C CARTER
[Treatment Injury, Accident Compensation Act 2001, s 32]

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Introduction

[1] The appellant, Ms Brunton, claimed accident compensation on the basis that she suffered a treatment injury (or injuries) when undergoing an upper gastrointestinal endoscopy procedure at Tauranga Hospital on 1 July 2021.

[2] The Corporation, in a decision dated 16 March 2021 (the Decision), declined to grant cover for a treatment injury on the basis that there was no evidence to establish any physical

injury caused by the upper gastrointestinal endoscopy treatment, not being a necessary part or ordinary consequence of that treatment.

[3] Ms Brunton sought a review of the Corporation's decision. In a Review Decision dated 20 September 2021 (the Review Decision), the Reviewer found no evidence of any specific physical injury suffered by Ms Brunton and concluded that Ms Brunton's case did not meet the criteria for cover to be granted for a treatment injury.

[4] Ms Brunton appeals against the Review Decision on the ground that it was incorrect and that both the Reviewer and the Corporation should have determined that she had suffered a treatment injury (or injuries) for which she had accident compensation cover.

Issue

[5] The issue on appeal is whether the available evidence establishes on the balance of probabilities that Ms Brunton suffered physical injury caused by the upper gastrointestinal endoscopy treatment she received at Tauranga Hospital on 16 March 2021, not being a necessary part or ordinary consequence of that treatment.

Law

[6] Section 20 of the Accident Compensation Act 2001 (the Act)[1] states that a person has cover for a personal injury that is a treatment injury. Section 26 defines "personal injury" to include physical injuries suffered by a person.

[7] "Treatment injury" is described in s 32 as personal injury[2]

(a) suffered by a person receiving treatment from one or more registered health professionals; and

(b) caused by treatment; and

(c) is not a necessary part, or ordinary consequence of the treatment taking into account all the circumstances, including:

[1] All section references are to sections of the Accident Compensation Act 2001 unless otherwise stated.
[2] *C v Accident Compensation Corporation* [2014] 2 NZLR 373 (CA) at [40].

[i] the person's underlying health condition at the time of the treatment; and

[ii] the clinical knowledge at the time of the treatment.

[8] Treatment injury does not extend to personal injury that is:

(a) wholly or substantially caused by a person's underlying health condition;

(b) solely attributable to a resource allocation decision;

(c) a result of a person unreasonably withholding or delaying their consent to undergo treatment.

[9] Treatment that did not give a desired result does not, of itself, constitute treatment injury.

[10] "Treatment" is defined in s 33(1) to include (amongst other things):

(a) the giving of treatment;

(b) a diagnosis;

(c) a decision on the treatment to be provided (or not to provide it);

(d) a failure to provide treatment, or to provide it in a timely manner;

(e) obtaining, or failure to obtain, a person's consent to undergo treatment, including any information provided to the person … to enable the person to make an informed decision on whether to accept treatment.

[11] Whether or not an injury amounts to a treatment injury is a question of law to be decided on the factual matrix of the case.[3]

[3] *Accident Compensation Corporation v Baker* [2009] NZACC 70 at [3].

[12] For cover to be granted for a treatment injury, it must first be established whether a claimant has suffered a personal injury. In a treatment context, the kind of personal injury suffered is typically physical injury. "Physical injury" is bodily harm or damage having some appreciable and not wholly transitory impact on the person.[4] "Physical" means "of or relating to the body, as distinguished from the mind or spirit" and must involve physical damage or hurt – that is, bodily harm or damage.[5]

[13] It is necessary to precisely identify the underlying physical injury that is personal injury in order to know whether cover for treatment injury exists. The issue in *Accident Compensation Corporation v Studman* was the identification of a personal injury and the High Court held:[6]

> [26] …. Although both pain and stiffness may well be symptomatic of an underlying (and potentially qualifying) physical injury, that is not necessarily so. Most obviously, I suppose, pain could just as easily be caused by disease, for which (in general terms) coverage is not extended. It is for that reason that it is, in my view, necessary separately to identify the underlying physical injury with some precision.

[14] If it is established that the personal injury has been suffered, it must be shown that there is a causal link between that injury, and the treatment received.[7] However a temporal connection does not prove causation of itself. As observed in *Coombridge v Accident Compensation Corporation* [2012] NZACC 360[8] :

> The claim has to be decided on the basis of the medical evidence. From the claimant's standpoint, there was a distinct event that resulted in pain and level of disability that appeared to be an injury. However a medical view takes account of more than the occurrence of acute symptoms.

[15] The onus is on Ms Brunton to satisfy the Court that the legislative criteria are met. What is required is described in one case in these terms:[9]

> The appellant must establish, on the balance of probabilities, that his ongoing symptoms are the result of personal injury for which he has cover; he is not entitled to the benefit of any doubt; he cannot rely on possibilities; and he cannot call on the

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[4] *Accident Compensation Corporation v Monk* [2012] NZCA 615 citing *Allenby v H* [2012] NZSC 33.
[5] *Teen v Accident Rehabilitation and Compensation Insurance Corporation & Anor* [2002] NZACC 244, affirmed by the High Court in *Teen v Accident Rehabilitation and Compensation Insurance Corporation & Anor* [2003] NZHC 1006.
[6] *Accident Compensation Corporation v Studman* [2013] NZHC 2598, [2013] NZAR 1347 at [26].
[7] *Barron v Accident Compensation Corporation* [2008] NZHC 1947 at [16].
[8] *Coombridge v Accident Compensation Corporation* [2012] NZACC 360.
[9] *Sarten v Accident Compensation Corporation* [2004] NZACC 2 at [26].

> respondent to prove that it is not liable to provide cover. It is up to the appellant to prove his case.

[16] Ms Brunton is not entitled to ask the Court to speculate.[10] A degree of precision is required.

[17] The balance of probabilities means more probable than not and higher than 50 per cent. However the courts do not engage in mathematical calculations, but rather form a general impression of the sufficiency of the law and scientific evidence and the presumptive inference which a sequence of events inspires in a person with common sense.[11] The Court should not place too much emphasis on the onus as the question is whether the evidence as a whole justifies a conclusion that the necessary causal nexus between injury and medical condition exists.[12]

[18] The question of causation is answered by determining whether there is a sufficient basis that points to proof of causation on the balance of probabilities for a Court to draw a robust inference of causation between the treatment and any injury to Ms Brunton.[13]

[19] The Court of Appeal in *Accident Compensation Corporation v Ambros*[14] recognised that a legal assessment of causation differs from that of a medical or scientific approach and stated:

> [67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the court to draw robust inferences of causation in some cases of uncertainty …. However. a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture ….. Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence. and not be limited to expert witness evidence ….

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[10] *Accident Compensation Corporation v Ambros* [2007] NZCA 304 at [63] and [70].
[11] *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR3 40 at [65].
[12] *Wakenshaw v Accident Compensation Corporation* [2003] NZAR 590.
[13] *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR3 40.
[14] *Accident Compensation Corporation v Ambros* [2007] NZCA 304 at [67], [70].

> [70] …. It must, however, always be borne in mind that there must be sufficient material pointing to proof of causation on the balance of probabilities for a court to draw even a robust inference on causation. Risk of causation does not suffice.

[20] In *McEnfeer v Accident Compensation Corporation,*[15] the issue was identified as being as to the time at which the assessment of whether a personal injury is a "necessary part" or "ordinary consequence" of the treatment is to be made. The Court noted, at [20] that:

> ... s 32(1)(c) requires an analysis that is rooted in the facts of the particular case - what was the injury suffered? Was it suffered in the course of the treatment undertaken? Was that injury a necessary part or ordinary consequence of that treatment? The third question in particular requires expert opinion, but not expert opinion in the abstract; rather, it requires, expert opinion reflecting what actually occurred.

[21] Proper and logical reasoning needs to be provided in order to establish causation. Less weight will be given to a medical opinion that is not presented with proper medical explanation.[16]

[22] The Court of Appeal further considered the treatment injury provisions in *Adlam v Accident Compensation Corporation*,[17] and stated:

> [40] The drafting of ss 32 and 33 means that both must be applied together for the purpose of ascertaining whether a person has suffered a treatment injury. A treatment injury must involve some act or omission that has a causative effect in producing the personal injury.
>
> [41] Once an event has occurred that can properly be considered as within one of the paragraphs in s 33(1), it must then be asked whether that event has given rise to a personal injury that qualifies as a treatment injury under s 32(1). And the requirements of s 32(1) are cumulative in the sense that all must be satisfied for there to be a treatment injury. Thus it is not enough for this to be established by pointing to a personal injury that a person has suffered while receiving treatment. It must also be shown that the personal injury has been caused by treatment. Then it must be demonstrated that the injury was not a necessary part or ordinary consequence of the treatment taking into account all the circumstances in which the treatment has occurred.

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[15] *McEnfeer v Accident Compensation Corporation* [2010] NZCA 126
[16] *McFadden v Accident Compensation Corporation* [2012] NZACC 238.
[17] *Adlam v Accident Compensation Corporation* [2017] NZCA 457 at [40], [41], [42], [62].

> [42] The way in which a treatment injury arises can be illustrated by considering individual paragraphs in s 33(1). Take first the giving of treatment itself, referred to in para (a). In most cases the application of this provision will be straightforward, but it must be read together with s 32(1)(b) and (c). Assuming s 32(1)(b) is satisfied there will be a personal injury. That then leads to the question of whether the injury suffered was not a necessary part or ordinary consequence of the treatment, taking into account the matters referred to in s 32(c)(i) and (ii). That is a question of fact.
>
> …..
>
> [62] Taken as a whole the provisions indicate a legislative intent to limit cover for persons who suffer injury while undergoing treatment, rather than providing cover for all those who suffer. The injury said to be a treatment injury must be the consequence of a departure from appropriate treatment choices and treatment actions. The drafting could have simply provided for cover for all injury suffered while a person undergoes treatment. But that course was not taken. Rather, boundaries were set out that have the effect of limiting the availability of cover for injury during treatment. A failure in the sense of omitting to take a step required by an objective standard is necessary.

[23] Later in the judgment the Court[18] favoured an approach assessing whether there has been a departure from a standard or benchmark, as distinct from negligence-based reasoning:

> [65] As is always the case, it is necessary to focus on the words Parliament has actually used. It will be apparent from our reasoning that we have discerned a legislative policy that, while not requiring a finding of negligence, still operates on the basis that a treatment injury will only have occurred where there has been some departure from a standard and that departure has caused a personal injury.
>
> [70] ….
>
> ... it is entirely logical that, in order to reach a conclusion on whether there has been a failure or delay in diagnosis or treatment causative of injury, one needs to measure what actually occurred against an appropriate benchmark; and to determine what might otherwise have been the course of the patient's injury, given appropriate treatment or care.
>
> [71] We agree. These observations tend to support our conclusion that the decision as to whether there has been a treatment injury will often turn on whether some other course of treatment should have been taken other than the treatment in fact provided or withheld. But on the Court's approach there must be some indication of the need to take the alternative course before the course taken can be regarded as causing the injury.

[18] *Adlam v Accident Compensation Corporation* [2017] NZCA 457 at [65], [70], [71], [72], [73].

[72] Professor Manning goes on to discuss Scandinavian patient schemes under which compensation depends upon whether an injury could have been avoided or prevented. She notes, however, that under those schemes compensation is not contingent on, and no assessment is made of, whether the injury was due to error or negligence on the part of the medical professional. Rather:

> The guiding principle used to determine whether or not an injury was avoidable is "the experienced specialist standard". According to this principle, compensation will be paid for an injury if it can be assumed that an experienced specialist in the field in the circumstances would have acted differently during examination, assessment or treatment, at the time of assessment of the claim, thereby avoiding the injury. The classic fault principle is not relevant.

[73] There was no suggestion of a breach of an experienced specialist standard in this case. There were no observable indications prior to the fever that warranted medical intervention and there were no indications for a different treatment course in the circumstances. We are bound to act on those factual findings, set out in the case stated.

[24] In *Accident Compensation Corporation v* Ng,[19] the Court of Appeal analysed the phrase "ordinary consequence" in s 32 of the Act and said that the phrase "not an ordinary consequence" should be interpreted as meaning:

> [68] … an outcome that is outside the normal range of outcomes, something out of the ordinary which occasions a measure of surprise....
>
> [69] Whether an adverse consequence is inside or outside the normal range of consequences of the medical treatment given to a particular claimant is ultimately a matter of judgment for the decision maker. It is to be exercised on a case-specific basis taking into account all the circumstances of the treatment and the particular claimant. Thus, relevant circumstances will include not only the nature of the harm suffered but also its duration and severity as well as any other circumstances pertaining to the patient which may have rendered them more or less susceptible to the adverse consequence. The decision may be informed by medical studies including relevant statistical analysis (subject to the reservations detailed below) as well as the clinical experience of the treating physician(s) and other specialists.

Evidence

Ms Brunton's consultation with her General Practitioner and referral to a gastroenterologist

[25] On 17 January 2020, Ms Brunton saw General Practitioner Dr Geoffrey Dunn, with a feeling as if something was stuck in her throat. Dr Dunn was not her regular General Practitioner but is in the same medical practice as her regular General Practitioner, Dr John Aiken. Dr Dunn referred Ms Brunton to the gastroenterology department at

[19] *Accident Compensation Corporation v Ng* [2020] NZCA 274, [2020] 2 NZLR 683 at [68], [69].

Tauranga Hospital. Notes from his consultation with her were recorded in the referral as follows:

> **Re:** feeling of something in throat/gullet, dysphagia, no regurgitation
>
> **Reason for referral/Diagnosis/Problem**
> feeling of something in throat/gullet, dysphagia, no regurgitation
>
> **Clinical Details**
> 17-Jan-2020
> naturopath - some difficulty getting history as she interprets everything in naturopathic way, and prefers to give her interpretation of problem instead of symptoms
> swollen belly on and off -describes this as ascites fatigue, constipation, bad teeth
> hungry
> took 'cleanse' recently
> something in throat- thinks it is a 'fluke' ie parasite says it moves
> would like it removed
> took mebendazole 100mg bd x 3 days without success
> has some difficulty swallowing, variable, can feel like tab or capsule stuck in throat
> does not regurgitate food voice sounds ok
> shows photos from toilet of various things she has passed in last month or so - non-identifiable dark objects and material, which she interprets as parasites
> bloods 3 weeks ago= FBC, LFT, TFT all ok oe well looking lady \wt 63
> p reg \BP 130/60 HS 1-2 chest clear abdo nad last overseas Bali for 2 weeks mid 2019
> has taken dessicated pig thyroid -last 6m ago
> thanks for considering seeing/investigating on basis of dysphagia full blood tests and feces for parasites requested
>
> **Long Term Medications**
> n/a
>
> **Recent Medications**
> n/a
>
> **Current Problems**
> [X]Moderate depressive episode Acquired hypothyroidism - TSH 37.8
> Acute reaction to stress -
> Acute reaction to stress
> Ex smoker
> Anxiety states -
>
> **History**
> FH: Family history - heart disease father? age
>
> **Medical Warnings/Allergies**
> (NKA)
> **Investigations**
> n/a
> **attachments**
> **Administrative Detail**
> **Patient/Guardian consent** Yes
>
> Consent Comment n/ a

Consent to surgery/procedure/treatment and anaesthesia

[26] Due to COVID-19 restrictions in early 2020, Ms Brunton did not have her appointment at the hospital until 1 July 2020. There is in evidence an informed consent form taken from

the Bay of Plenty District Health Board file. It is headed “Consent to the Surgery/Procedure/ Treatment”. It is signed by Ms Brunton for the gastroscopy procedure and records that she had been able to discuss the form with an identified registered nurse, who co-signed the form. The form described the procedure as "Gastroscopy +/- Biopsy". It noted Ms Brunton had been provided with an "OGD patient info booklet". The booklet itself was not in evidence.

[27] The form noted that the risks and benefits of the procedure had been explained to Ms Brunton including "Bleeding, Perforation, Infection, Medicine Reaction & Aspiration". It also noted that Ms Brunton agreed to "further procedures or measures that my surgeon considers necessary and essential during the procedure". When asked whether Ms Brunton would like any body parts or tissue removed during the procedure returned to her, Ms Brunton ticked "N/A". Ms Brunton did not agree to have her procedure "delegated to a specialist in training".

[28] A second consent form, for anaesthesia, was also on the Bay of Plenty District Health Board file. This form is blank and of itself does not indicate what Ms Brunton consented to, if anything, in respect of anaesthesia. However in the treating gastroenterologist’s report of the procedure (set out in the next paragraph) it is noted “Pre-Anaesthesia Assessment: The risks and benefits of the procedure and the sedation options and risks were discussed with the patient. All questions were answered and informed consent was obtained. Routine symptoms.”

Mr McGouran conducted the procedure on 1 July 2020

[29] The procedure was conducted the same day by gastroenterologist David McGouran. His report of the procedure recorded:

Indications:	Describes difficulty in swallowing that originates in lower throat. Abdominal bloating. Recent H.pylori serology positive - prescribed tripple therapy.
Medicines:	Midazolam 3 mg IV, Fentanyl 50 micrograMs IV, Xylocaine spray
Procedure:	Pre-Anaesthesia Assessment: The risks and benefits of the procedure and the sedation options and risks were discussed with the patient. All questions were answered and informed consent was obtained. Routine symptoms

	After obtaining informed consent, the endoscope was passed under direct vision. Throughout the procedure, the patient's blood pressure, pulse, and oxygen saturations were monitored continuously. A time out was completed. The scope was introduced through the mouth, and advanced to the second part of the duodenum. The upper GP endoscopy was accomplished without difficulty. The patient tolerated the procedure well.
Findings:	The examined oesophagus was normal. Biopsies were taken with a cold forceps for histology. The entire examined stomach was normal. Biopsies for histology were taken with a cold forceps for histology. The examined duodenum was normal. Biopsies for histology were taken with a cold forceps for for (sic) evaluation of coeliac disease.
Complications:	No immediate complications
Impression:	- Normal oesophagus. Biopsied. - Normal stomach. Biopsied. - Normal examined duodenum. Biopsied.
Recommendation:	- Await pathology results. I think biopsies will be normal. If that is the case, then as her difficulty swallowing appears to be in her throat, please consider contrast swallow assessment.

[30] Ms Brunton's admission assessment and discharge planner noted no issues. It states that the procedure was well tolerated by Ms Brunton and that she was very comfortable post-procedure.

[31] On 8 July 2020, consultant histopathologist Duncan Lamont reported all the biopsied specimens to be normal.

Ms Brunton returned to her General Practitioner with new symptoms

[32] Ms Brunton presented to Dr Aiken on 21 August 2020. He noted that her throat had "only modestly improved since H pylori eradication", that she had a "windy tummy" and that prior to her hospital visit she was "getting more energised". They discussed the option of a barium swallow, but Ms Brunton was "not keen at this stage". Dr Aiken recorded that Ms Brunton had emailed him a photo of her "premed". He recommended "pre and probiotics for gut health".

[33] Ms Brunton returned to Dr Aiken on 9 October 2020. He noted the following:

> Has had a rough time since her gastroscopy.
> Feels traumatised, talks in terMs of 'soul leaving body'. 'been microchipped'.
> Feels her trust is undermined.
> Not wanting any medical procedures.
> Had to quit job, wants to do nothing and do nothing (sic). Still has a sore stomach.
> Iodine helps. son is 19.
> a/ Julie classifies her ill health in a non medical framework. she believed she has been poisoned by her gastroscopy, including exposure to mercury, aluminium and radioactive iodine as evidence by kinesthetic testing.
> p/WINZ.
> Encourage a focus on working to wellness rather than looking for and pursuing blame.
> See I (sic) mth for winz and progress r/v

[34] On 7 December 2020, Dr Alex Lampen-Smith, Consultant Gastroenterologist and Hepatologist, reported:

> **Problem list:**
> 1. Possible globus +/- parasite infection.
> 2. Traumatic experience with gastroscopy.
>
> I had the pleasure of catching up with Julie in Gastroenterology clinic today. She is a 42 year old NZ European lady, who was referred to our Service earlier this year by a doctor in primary care who is not her usual GP.
>
> She had been concerned about symptoms in her throat and feeling like there was something in her throat. This had been going on for a couple of years. In the past she has felt that she has had thyroid problems and was taking desiccated pig thyroid therapy. This eased some of her symptoms but other symptoms came on, and so she stopped the pig thyroxine and took a parasitic cleansing diet in late 2019. She felt that a lot of parasites did come out with that treatment.
>
> Since then though the feeling of there being something in the throat has remained and she saw a doctor querying this. She recalls that what she was wanting (if I understood her correctly) was to potentially have a consultation with a specialist in parasites, about the possible things that could be affecting her. However the doctor that day, noting her throat symptoms, referred her through to Gastroenterology. Her referral was graded to gastroscopy via our direct access to endoscopy referral pathway.
>
> She had her gastroscopy and the findings were of a normal oesophagus, stomach and duodenum. Biopsies were taken from the lower and middle third of the oesophagus, the gastric body and the duodenum - these were all normal.
>
> Julie has significant concerns about the consent process and the procedure itself. She submitted a complaint with our Service. We have previously met with her to listen to her concerns, and responded as best as we were able to. We acknowledge that she does not feel that our consent process was adequate in terms of the symptoms that would be experienced during the procedure (she felt the biopsies were like she was being "punctured"), or the medications that we used, as she was not specifically informed of the names of the medications (fentanyl and midazolam). These medications are routinely used for moderate sedation in New Zealand and

internationally, therefore Julie didn't get a chance to do research on them herself. Julie informed us that she had not wanted mind altering agents given to her.

Julie feels that the procedure on the whole was deeply traumatising for her. She is attuned to her body and believes that she has been poisoned with heavy metals by contamination in the intravenous medicines administered that day.

I have apologised to Julie again today for her experience, apologies have also been conveyed verbally in our initial meeting and in writing associated to Julie's formal complaint.

With regards to the pharmaceutical agents that were used during her procedure. It is standard practice that fentanyl and midazolam as used for this procedure to Facilitate 'moderate sedation'. Previously Julie has requested vials of midazolam and fentanyl to independently test for contamination and the batch numbers for the vials of midazolam and fentanyl used for her gastroscopy procedure so quality factsheets can be obtained from the pharmaceutical manufacturers. Detailed documentation was provided to Julie explaining that that batch numbers are not recorded for intravenous medicines unlike immunisation administration, we also explained the process for administrating intravenous medication. I was unable to answer her questions as to where the drugs are sourced from (locally or internationally) or able to state what the quality assurance processes are in the pharmaceutical factory. As medical professionals I and my colleagues do implicitly trust the supply chain for pharmaceuticals used in New Zealand hospitals. We have been unable to provide her with samples of fentanyl and midazolam to independently test as a prescription can only be issued for the purposes of therapeutic treatment and as per the misuse of drugs legislation a licenced authority is necessary for the subject of research and analysis of medication.

From a medical perspective, I am not aware of any parasites that could be causing throat symptoms. Her symptoms could relate to globus (a feeling of a sensation of something in the throat on swallowing when there is nothing present). In terms of further evaluation, I have offered a stool test for ova, cysts and parasites which she has declined at this time. If she did want to see an expert in parasites I could refer her to the Infectious Diseases Department or she could see Dr Massimo Gioia, Specialist in Infectious Diseases, privately.

An outstanding issue is the *Helicobacfer pylori* stool antigen test for which she was prescribed a course of antibiotics. I neglected to mention to her in our wide ranging conversation that best practice is to do a stool test to check that this bacteria has been successfully eradicated. I will send her out a laboratory form for that with this letter, if she would like to do that.

At this stage I have not made any further follow up arrangements for her in Gastroenterology clinic. She has requested and been provided with all of the medical correspondence relating to this referral, admission and procedure. I again apologised that we have not met her expectations in terms of our consent process, and that she had a such a bad experience in our Unit for her gastroscopy.

[35] The General Practitioner notes from Dee Street Medical Centre Limited, recorded the following:

21 Aug 2020 Dr John Aiken (JA)
Throat Sx only modestly improved since H pylori eradication. Windy tummy.
Prior to hospital was getting more energised.

de option of Ba swallow but not keen at this stage.
email photo of her premed.
recommend pre and probiotics for gut health.

09 Oct 2020 Dr John Aiken (JA)
has had a rough time since her gastroscopy.
Feels traumatised, talks in terms of 'soul leaving body'. 'been microchipped'.
Feels her trust is undermined.
not wanting any medical procedures.
Had to quit job, wants to do nothing and do nothing.
Still has sore stomach.
Iodine helps.

son is 19.
a/ Julie classifies her ill health in a non medical framework, she believes she has been poisoned by her gastroscopy, including exposure to mercury, aluminium and radioactive iodine as evidenced by kinesthetic testing.

p/WINZ
encourage a focus on working to wellness rather than looking for and pursuing blame.
see 1 mth for winz and progress r/v

Form: Healthlink Forms

14 Dec 2020 Dr Daniel McIntosh (DMC)
Presents tearful and feeling like she has been injured and poisoned.
Dates back to endoscopy - drugs used to medicate her and then scope crashed into her stomach causing her solar plexus to break open. Her hear is being squeezed by an energy.
Not keen to ever have medical investigation or procedures again.
Wants to complain and file with ACC - have suggested HDC as an avenue but needs to follow this up with regular doctor.

IMP delusions

P Review with concerns

22 Dec 2020 Dr John Aiken (JA)
Offered f/u H pylori test, but declines.
Continues to formulate hypothesis of a reaction to drugs given for endoscopy.
Requests to complete ACC form for medical misadventure.
Concerned about administration of fentanyl, and having biopsies. Decribes [sic] her symptoms as akin to 'vaccine reaction'. Feels like she has been 'microchipped'
I attempted to raise as differential diagnosios [sic] the possibility [sic] of a psychiatric explanation, but this was not well received.
p/lodge ACCclaim.

ACC45: ACC45 - MX73479 - unusual reaction following endoscopy. Dx: [X]Complicatns medic/surg care (U6.00) (Interim) - Not applicable

26 Jan 2021 Dr John Aiken (JA)
Hi,
Well I would like a ivermectin for on going treatment, this is a serious matter relating to contaminated pharmaceuticals more recently the fentanyl I received without consent. You can call me any time or if so required for your own safety make me a phone or in house appointment. I will leave that up to you. However I know my body and I'm requesting lvermectin for repeated doses to combat infiltration.
Thanks John

On 26/01/2021, at 2:08 PM, John Aiken [email address redacted] > wrote:
Hi Julie, I have prescribed ivermectin occasionally for the likes of treatment resistant scabies. So the answer is a tentative yes, but would want to see and discuss it with you thoroughly
?? J
From: Julie Brunton [email address redacted] Sent: Tuesday, 26 January 202112:58 pmTo: John Aiken < [email address redacted] > Subject: Re: Follow Up

Hi John,
Can you prescribe me ivermectin or not?

28 Jan 2021 Dr John Aiken (JA)
Phone consult conducted, currently Level I in Covid 19 response, Identity confirmed, limitations understood and consent to proceed
julie is requesting Rx ivermectin, see email train. Not taking whole thyroid tabs.

Declining bloods
Testing 'various machines' showing up flukes in body.
Wgt 65kg
asks for up to 3 doses. email to C Pde.
I have explained thoroughly that I am prescribing because she is asking for it, using a differernt [sic] and divergent health system, but am willing with reservations to given the accepted low risk profile. I am not recommending this as a treatment.
I am trying to work with her rather than at odds, to maintain a helpful
therapeutic relationship.

Rx: Ivermectin 3mg Tab - 4 tabs, Immediately, and repeated as directed. NB no special authority. - 12

Claim for accident compensation

[36] The original accident compensation claim form was completed and submitted to the Corporation on Ms Brunton's behalf on 23 December 2020 by Dr John Aiken. No specific diagnosis of any injury was indicated or identified. Rather, cover was sought for "complications/medical surgical care", in the context of an "unusual reaction following endoscopy".

[37] The Corporation's initial investigation included contact with Ms Brunton on 5 February 2021. The initial client contact summary states the following:

Initial client contact summary:

After completing privacy and introductions I explained I was calling because we had received a claim form from the GP but, from looking at the form, it wasn't entirely clear what had happened, or what we were being asked to cover. I asked Julie if she could give me a bit of detail about what kind of injury she was claiming for here.

Julie noted that she wasn't surprised about the form. She said that the doctor had been quite reluctant to lodge a claim initially. I asked why, and she explained that she thought it was because what had happened to her was a bit strange. She explained that she would walk me through what happened, but wanted to give me a bit of background first so that I understood that she knows what she is talking about when it comes to healthcare.

She explained that she was first introduced to healthcare at a very young age because her cousins were studying to be occupational therapists. As a teen she was introduced to healing modality including yoga. She began her naturopathic studies at age 19 and has practiced natural medicine. She also practices meditation and yoga regularly.

She noted that wellbeing is very important to her. She explained that she knows a lot of about the human body, and is very conscious of her body.

She explained that for the past couple of years she had been having symptoms - the sensation of something being stuck in her throat. She went to her GP and was seen by a locum. She was given a referral to the hospital. Julie explained that she had wanted to speak to a specialist, and so was a bit frustrated when she got a letter from the hospital saying she had an endoscopy appointment. The appointment ended up being cancelled anyway due to lockdown.

During the lockdown, Julie went through some healing, and advised that she felt better than she had in a long time. She had been going to the gym (post level 4), got a job etc. Things were going really well, and she felt good.

Eventually she received another letter from the hospital to let her know that she had been booked in again for an endoscopy appointment. She ended up going, and unfortunately the endoscopy she had was the most horrific experience of her life. This appeared to be quite a difficult subject for Julie to speak on.

She said that when she got to the hospital they gave her a number of consent forms to sign. The first one was to do with consent re risk of introducing infection into her body. Julie noted that from her medical training she thought she would be OK since there is already a lot of bacteria inside the digestive tract. In hindsight however, she noted that she thinks this consent was obtained so that the hospital could put all sorts of random crazy things into her body.

She advised she also consented to a fine needle biopsy, and now also feels that this was a mistake. She advised that biopsies were taken during the procedure, but that she didn't actually want them to be taken.

The final consent, which was to do with sedatives, she initially refused. She said that she didn't want any mind altering substances in her body and instead asked to speak to the doctor.

After that she was admitted, and spoke to the doctor. She noted that when she was telling him about her problems he said that he "doesn't do throats". He explained that he was a gastroenterologist, and throat issues are more the purview of an ENT.

Ultimately Julie decided that since she was there anyway, she would go ahead with the endoscopy so they could take a look at her throat. She once again told the doctor that she didn't want to take any mind altering substances. She noted that he appeared confused by this. The doctor told her he thought she should have a sedative to relax her, and Julie noted that she has had benzodiazepine before for knee surgery, and that seemed ok, so she eventually consented.

She noted she asked for a copy of the recording of the procedure and that the doctor seemed confused by the request.

She said that the doctor told her that she would forget everything, but she managed to stay conscious and coherent throughout the procedure, despite having been given fentanyl as a sedative. She said she felt that the doctor telling her that she was going to forget everything was "brainwashing".

She recalls that she was told that the endoscopy found nothing wrong with her throat. She noted she thinks she blanked out a little bit towards the end of the procedure, but during the procedure she "felt her stomach being punctured" and "felt her solar plexus explode".

She said that her understanding is that during the procedure she "was given a lethal dose of poison", specifically fentanyl. She noted that she did not consent to being given fentanyl.

She said she doesn't understand why they took several large biopsies of her digestive system, why she felt her stomach puncture, or why they "used thread during the procedure that has RFID technology in it".

She said that since the procedure she has felt like a cyborg, noting that "this is what it feels like to be trans-human.

She said she feels like she had been vaccinated and microchipped, but fortunately was able to find someone who helped her deactivate the microchip. She said she also saw a woman who had a machine that was able to show that she had huge amounts of heavy metals and dioxin in her system, as well as sodium chloride and radioactivity.

She said she bought a RISE machine which scans her frequencies which confirms these findings.

Julie had a meeting at the hospital to share her concerns. Unfortunately, she felt that they dismissed her concerns. As she explained however, her consciousness told her that they had poisoned her. She noted that she had asked the hospital whether they independently test all of the drugs that they use, and they confirmed they did not. She is particularly concerned as she understands that much of the fentanyl produced globally comes out of China.

She said she had someone make her a sample of her bodies secretions to try and create a remedy to start her detoxing. During her detox she said she struggled to get out of bed, and felt like she was dying. She described feeling like she had significant liver and kidney dysfunction during the detox process.

She noted she had seen an osteopath who told her that "her nerves aren't switched on".

She has also been having headaches, and had an issue with her thumb. While she didn't describe the issue with her thumb in detail, she noted that when it happened she fell to her knees and the first thing to go through her head as she did so was the phrase "blood sacrifice". She felt that this was her body trying to tell her something, and so did some research on line. She found that the days that these things happened to her were all on "satanic ritual abuse days".

Julie explained that since the endoscopy she has had kidney and liver problems, and that it feels like she has had a bomb go off in her stomach.

I asked her which providers she has seen so far and she gave the list as follows:

Dee Street Medical Centre Tauranga DHB

Osetopath Tracey Livingstone (not currently ACC registered, but has been previously)

Elsie –[telephone number redacted], www.mwellbeing.org Wayne Rush - Shiatsu

She noted that there were other people she had seen, although she couldn't recall their names at present.

She also noted that she has spent a lot of time with her friend who is a yoga teacher. Her friend has watched her throughout this whole ordeal.

In terms of upcoming appointments, she advised she will be going back to see Tracey. She wants to try and avoid further "barbaric experimental medical care".

I asked what kind of support she was hoping for from ACC.

She explained that she has been injured by vaccines twice before, and feels she has been injured by a vaccine again. She said that she "had hopes and dreams that just totally got annihilated" and is looking for whatever kinds of help or financial support she can get. She said her doctor told her she should consider going on a sickness benefit, but that she doesn't want to do this because she isn't sick. She said she has been fighting for her life, and that it has cost her everything. She had to quit her job so that she could put all of her energy into healing her body.

I explained that what she had described sounded unfortunately like a situation that would be very tricky for ACC to handle. I explained our normal assessment process, and how we are given a diagnosis, obtain medical records, and then consider that information along with the legislation. I explained that situations like this, where the exact diagnosis is 'up in the air' can be very tricky.

She advised that the diagnosis is up in the air because that's how the medical system works. She said that the way they admit that something is true is by ignoring it. She said that since having this experience she has figured out how the medical system works, and noted that their response to her questions about the fentanyl they use (assuring her it wouldn't do the things she said, but also that they hadn't independently tested it) confirmed this.

Julie said she believes that the evidence of her injury is there, as is the evidence that the hospital intentionally caused it, so long as someone cares to look. She said she had also mentioned to the hospital during their meeting that it would have been useful if they had given her IV vitamin C during the endoscopy.

> She said that initially the DHB had told her that they would be able to give her a sample of the fentanyl to test, but then later when she went to pick it up they told her that they couldn't. She believes that this is because someone high up told them not to give a sample to her. She believes that the hospital was given this instruction because someone wants to hide evidence, and that if she had been given the fentanyl sample and had been able to test it it would have proved to have been full of poison. She noted that due to the poisoning she felt that "if I wasn't who I am I would probably be dead".
>
> I explained again about the difficulties that I foresaw proceeding with this claim. I explained that while we could go through our process of requesting notes, I didn't want her to get her hopes up. I explained that the decisions that ACC makes are based on the medical evidence that we can obtain. I said that I felt, from what she had told me, that it would be unlikely that the medical records we would receive for her from the hospital would confirm that they poisoned her with fentanyl. She agreed that the records were unlikely to say that although she does feel that the evidence to prove her case is there - it would just require getting and testing a sample of the fentanyl. I advised that that was not something we were going to be able to do.
>
> She noted that this situation was very similar to a 'rape case' in that neither the rapist, nor the hospital, is going to tell us the truth. She said that she thinks this situation is very important and does want to proceed with the assessment process. She noted that when a person has been attacked in the way that she has, it is important for them to stand up and have a voice. She noted that she doesn't want to stand up just for her, but also for all of the other people who will no doubt have also fallen prey to this kind of treatment. She said she knows how to find the truth, and has done a lot of research over the years. She said that if ACC declines her claim, it will prove to her that ACC is in bed with the medical community conspiracy. She said that if she doesn't do something about this, it would make her complicit in a war crime.
>
> I advised that I would get started on the assessment for her, and send her out the initial Tl pack, as well as request notes from her GP. I asked that, along with the consent form, she also send us a full list of everyone that she has seen for treatment in relation to this issue so that we can get in touch with them if needed. She was happy with this, thanked me for my time.

The Corporation's Decision

[38] The Corporation applied its treatment injury cover decision tool assessment, which noted the documents referred to above but identified no physical injuries over and above the necessary parts of the procedure undertaken. To the extent that exclusionary criteria applied, the only identified physical injury was the necessary biopsies taken, to which Ms Brunton plainly consented and the extent of any injury was a necessary part or ordinary consequence of that treatment.

[39] It was as a result of this assessment that the decision of 16 March 2021 issued, which recorded in relevant part:

ACC is unable to accept your claim for treatment injury

After assessing the available information on your claim, we are unable to accept it for cover. The following injuries are unable to be accepted under treatment injury legislation:

- Fentanyl poisoning
- Punctured stomach
- Kidney problems
- Liver problems

The reason we are unable to accept this treatment injury is defined in Section 32 of the Accident Compensation Act 2001 as 'personal injury suffered by a person seeking treatment or receiving treatment and caused by treatment; and not a necessary part, or ordinary consequence, of the treatment, taking into account all the circumstances of the treatment, including the person's underlying health condition at the time of the treatment; and the clinical knowledge at the time of the treatment'.

ACC cannot evidence a definite physical injury in this case based on the information currently available. Therefore, this claim does not meet the legislative criteria.

ACC received information about your claim

ACC received this treatment injury claim from your GP who provided the relevant notes. ACC also requested records from Bay of Plenty DHB.

The claim related to a suggested unusual reaction following endoscopy.

You were referred to Gastroenterology in January 200, as you had the feeling there was something in your throat.

The gastroscopy was done in July 2020; it is reported that risks and benefits of the procedure and sedation options and risks were discussed with you. A consent form was signed.

Clinical records report you tolerated the procedure well; biopsies were taken to identify if there were any abnormalities. Findings of the gastroscopy were normal, the biopsies reported on no abnormalities.

Following the procedure, you advised of your concerns regarding the consent procedure and the procedure itself. You advised ACC that you regret that you consented to the biopsies being taken and you experienced concerns with your solar plexus. You advised you feel you have been given a lethal dose of fentanyl and did not consent to this. You have advised you are experiencing kidney and liver problems due to the procedure.

We have assessed the relevant clinical information

When we assess a treatment injury claim for cover, we need to identify from clinical records that there is a physical injury (tissue damage/harm), caused by treatment, not being a necessary part or ordinary consequence of that treatment.

In your case, we are only able to identify a physical injury from the biopsies taken; these were considered a necessary part of the procedure at that time and therefore we are unable to provide cover for this physical injury.

> We have been unable to identify any other physical injury from the gastroscopy procedure or medication provided as suggested.
>
> Although you have advised you didn't want to have the biopsies taken, you did consent to this procedure. We are unable to provide cover for decisions that in hindsight wouldn't have been made.
>
> On this basis, we respectfully decline this claim for cover.

The Review Decision

[40] The Review Decision records that a case management conference had been held on 22 June 2021, nearly two months prior to the review hearing, when it was pointed out that for cover to be granted, there would need to be evidence of the injuries claimed to amount to a treatment injury. The Reviewer indicated, by way of example, that if Ms Brunton felt her stomach was punctured, the Reviewer would need to see evidence showing, or at least strongly inferring that her stomach was punctured.

[41] The Reviewer suggested to Ms Brunton that her General Practitioner was probably her first port of call to discuss gathering evidence in support of her claim. The Corporation provided details of navigation services that could assist and support Ms Brunton through the review process. Following the case management conference, the Corporation requested further General Practitioner notes, but did not receive a response.

[42] At the Review hearing, Ms Brunton gave evidence and made submissions and she was supported by Tracy Livingston, an osteopath, and Phillip Bolten, who practises reiki. Ms Livingston and Mr Bolten gave evidence as witnesses at the hearing.

[43] During the 10 August 2021 Review hearing, Ms Brunton referred to further documents and submissions which she had not previously filed. The Reviewer adjourned the hearing part heard until 23 August 2021 in order to receive and consider the additional information and for the Corporation to make further submissions if required. The Corporation did not seek to make further submissions on the further material filed by Ms Brunton.

[44] The Review Decision correctly summarises the relevant law, with reference to decisions including *Accident Compensation Corporation v Monk*[20] *Allenby v H,*[21] *Teen v Accident*

[20] [2012] NZCA 615.
[21] [2012] NZSC 33.

Rehabilitation and Compensation Insurance Corporation & Anor [22] as affirmed in the High Court in *Teen v Accident Rehabilitation and Compensation Insurance Corporation & Anor;*[23] *Accident Compensation Corporation v Studman,*[24] *Accident Compensation Corporation v Ambros,*[25] *Coombridge v Accident Compensation Corporation,*[26] and *McFadden v Accident Compensation Corporation.*[27]

[45] In a comprehensive, careful and empathetic analysis, the Reviewer noted that the issue before her was whether Ms Brunton suffered a physical injury by reason of her treatment on 1 July 2020, which was not a necessary part or ordinary consequence of that treatment. She also noted an additional question concerning consent but indicated that, first, an injury had to be identified.

[46] The Review Decision acknowledges Ms Brunton's difficulties and the symptoms she had reported, and that the truthfulness of her account was not questioned. The Reviewer then goes on to state, correctly, that "It is simply a fact that objective evidence of her condition is required in order to meet the requirements of the legislation, which is the framework of the accident compensation scheme". The Reviewer noted Ms Brunton's concern that the medical "system" had not met her needs or aligned with her own approach to holistic medicine.

[47] The Reviewer noted that questioning at the Review hearing had been aimed at establishing the exact nature of the physical injury that Ms Brunton claimed had been caused during her gastroscopy. Ms Brunton challenged how she was meant to establish that, when her treatment providers did not disclose any injury or accept that anything untoward had happened during the procedure. The Reviewer noted, however, that the decision must be based on medical evidence that there had been an injury. She also noted that, even after repetitive questioning, that:

> I could not establish from Ms Brunton exactly what she considered to be the injury. Perhaps the most specific claims were of a stomach perforation and poisoning. In terms of a stomach perforation, Ms Livingston said it is not common, but it is a possible injury arising from biopsy. Ms Livingston [who was the appellant's supporter at the review hearing] points Ms Brunton in the right direction in terms of

[22] [2002] NZACC 244.
[23] [2003] NZHC 1006.
[24] [2013] NZHC 2598.
[25] [2008] NZLR 340.
[26] [2012] NZACC 360.
[27] [2012] NZACC 238.

investigating an injury, but unfortunately, she has not formally treated her and the suggestion that there may have been a puncture is not supported by any other evidence from the doctors.

[48] The Reviewer continued to state:

> Looking to the medical evidence, there is simply no physical injury identified. Dr Aiken lodged an ACC claim for an unusual reaction to endoscopy. I presume from his notes that the reaction is the plethora of symptoms Ms Brunton complained of, but again, that does not disclose an injury causing them. Mr McGouran's operation notes indicate the procedure went as expected. The post-procedure notes record Ms Brunton as being very comfortable. Ms Brunton has expressed a view that the notes are covering up for an accident that did happen during the procedure, or that she was subjected to some kind of inappropriate procedure, or that she was poisoned, vaccinated, or microchipped. Those are grave allegations and from the information before me are entirely baseless.
>
> Mr Bolten gave reasoned evidence of Ms Brunton's symptoms, but again, no physical injury is disclosed or proposed. A significant amount of his statement was information given to him by Ms Brunton, he having met her after her procedure. He raised important questions though about being denied a video recording of the procedure and doctors not taking her complaint seriously. As far as I am aware ACC recovered all relevant information from the DHB to provide to me for the review. I am not sure whether Ms Brunton specifically made an official information request of the hospital.
>
> Mr Bolten also raised that Ms Brunton was to have an MRI to check out her back. That is a positive step towards piecing together what is causing her symptoms and as stated in the hearing, if further information comes to light that points to a particular injury, Ms Brunton is welcome to submit it to ACC for further consideration.
>
> In terms of the treatment aspect of the test for cover, without identifying an injury, it is impossible for me to determine what treatment caused it. This applies to the consent process too. Without knowing what the injury is, it is impossible to determine whether consent was appropriately given or not given to the aspect of treatment said to have caused that injury. ACC has not made a decision on informed consent, so there is not one before me for review. However, I will say this is an area that the parties should not lose sight of, if a more specific claim is made at a particular date. I say that with regard to the consent to anaesthesia, which it appears Ms Brunton did not consent to in writing, nor was it captured in detail by Mr McGouran in his procedure note.
>
> For the above reasons, I dismiss Ms Brunton's application. I wish her well in getting to the bottom of what is causing her current condition.

Post-Review medical reports

[49] Subsequent to the Review Decision of 20 September 2021, Ms Brunton submitted further medical reports, including:

(a) A report of Dr David Kieser dated 25 March 2022. However, this report - which seems to have been sought by Ms Brunton's former solicitor, Ms Maria Bagnell of

John Miller Law - has nothing to do with the present appeal, being focused on a diagnosis and question of, and questions about, Ms Brunton's lumbar spine condition.

(b) A further medical report of Mr Richard Keddell, orthopaedic surgeon. This report - on a self-referral - also seems to be directed to a lumbar disc protrusion at L5/S1. It has nothing to do with the issue on appeal in connection with the claim for a treatment injury.

(c) Reports of Dr Warren Leigh dated 18 August, 23 October and 24 November 2021. These reports also appear to be primarily directed to an L5/S1 disc protrusion, although in the first of them, the history refers to Ms Brunton having been to Tauranga Hospital in July 2020, for an investigation in respect of a problem with her throat and that, during the procedure allegedly undertaken without her consent "things went wrong and she developed significant symptoms within her abdomen and then low back".

[50] There is no indication in any of these reports that they have been addressed to an alleged treatment injury. A separate claim for accident compensation by Ms Brunton for a lumbar sprain injury was the subject of a different decision by the Corporation dated 5 October 2021, declining cover for a lumbar sprain. That decision was upheld in a further review decision dated 26 May 2022. The lumbar sprain evidence relates to a claim and subsequent Review Decision that is different to those the subject of this appeal.

Further opportunity to provide further medical evidence on appeal

[51] Ms Brunton's appeal against the Review Decision was filed on 19 October 2021. Ms Brunton was provided with the opportunity over a period of more than 16 months to file any further medical evidence she wished to rely on. This is reflected in case management minutes dated 19 October 2021, 5 December 2022, 31 January 2023 and 3 March 2023. Ultimately no evidence additional to what is described above was ultimately filed and on 3 March 2023, the appeal was timetabled for submissions and a bundle of documents to be filed and to be set down for hearing.

Appellant's submissions

[52] The documents filed by Ms Brunton from which her submissions in support of her case on appeal fall to be distilled are:

(a) Notice of Appeal dated 18 October 2021.

(b) Five-page written rebuttal/analysis of the Review Decision (attached to the Notice of Appeal).

(c) ACR Submission dated 20 March 2023 (10 pages of text) with attachments (an additional 44 pages).

(d) Review Hearing Submission (10 pages) with attachments (57 pages) – described in the Review Decision.

(e) Affidavit of Truth, Denial of Consent, Claim of Right and the Restoration of my "common law on the land unalienable rights" dated 30 June 2021 (12 pages).

[53] Having regard to this material and the oral submissions made by Ms Brunton at the hearing of this appeal, I understand Ms Brunton's arguments in essence to be:

(a) She felt something in her throat which she thought might be a parasite and had difficulty swallowing.

(b) She did not consent to the endoscopy procedure and/or a fine needle biopsy at Tauranga Hospital on 1 July 2020.

(c) She was sedated without consent and during the endoscopy procedure she was assaulted, her stomach was perforated, she was poisoned by contaminants including a Covid 19 vaccination, Fentanyl, other drugs and radiation. She was subjected to a barbaric experimental medical practice, nearly died, and while in hospital suffered other multiple serious injuries when undergoing the endoscopy procedure.

(d) She was microchipped during the procedure and still has nanotechnology coming out of her head.

(e) Tauranga Hospital "deleted" her vaccination records and other medical records.

(f) The medical profession follows orders from the Corporation and lies and needs to be investigated.

(g) Her personal testimony should be preferred to that of medical professionals.

(h) She is a "sovereign person" who is not subject to any government control, jurisdiction of the courts or laws of New Zealand without her consent (Affidavit of Truth, Denial of Consent, etc).

Respondent's submissions

[54] Before the Corporation can consider whether a treatment has caused an injury, a physical injury must first be identified. Dr Aiken's diagnosis was non-specific and no other medical professional evidence has identified a physical injury.

[55] Symptoms do not attract cover, a physical injury must be identified.

[56] It is for Ms Brunton to establish on the balance of probabilities that she has suffered a treatment injury. That is, it is for Ms Brunton to point to evidence, including from medical professionals, that she suffered a physical injury caused by treatment in terms of the legislative criteria.

[57] No causal link between Ms Brunton's treatment and a physical injury has been established.

[58] For medical evidence to be given weight, it must be provided by a practitioner or specialist with the appropriate skill and expertise in the process of diagnosis. While a claimant is able to give evidence of their own symptoms, and that those symptoms came on after an accident (or treatment in this case), they are not competent to give evidence on the cause of those symptoms.

[59] There is no basis on which Ms Brunton can succeed in this appeal.

Analysis

[60] I am unable to find any error in the Reviewer's comprehensive, careful and empathetic analysis in the Review Decision, which I consider is correct, for the reasons given by the Reviewer.

[61] The issue on appeal is whether Ms Brunton suffered a physical injury by her treatment of 1 July 202, that was not a necessary part or ordinary consequence of that treatment. The first requirement for cover is whether there was a physical injury, being some form of harm or bodily damage. No such physical injury is identified in the evidence relied on by Ms Brunton, which mostly describes symptoms as distinct from a physical injury. The closest that Ms Brunton gets to a physical injury is the suggestion of a stomach perforation and poisoning, as a possible injury that might arise from a biopsy. The only identified physical effect involved the necessary biopsies taken, to which Ms Brunton plainly consented, and the extent of any "injury" was a necessary part or ordinary consequence of that treatment. The suggestion that there may have been a perforation or puncture is not supported by any evidence from the treating medical professionals.

[62] Dr Aiken lodged the accident compensation claim form describing an unusual reaction to the endoscopy procedure. This does not identify a physical injury. Ms Brunton described a large number of symptoms, but does not identify an injury causing them. Mr McGouran's operation report indicated that the procedure went as expected and the post-procedure notes record Ms Brunton as being very comfortable. Ms Brunton has suggested that during the endoscopy procedure that she was subjected to some kind of inappropriate procedure or that she was poisoned, vaccinated or microchipped and that her stomach was punctured. There is no evidence whatsoever to support these allegations.

[63] As noted by the Reviewer, without identifying a physical injury, it is impossible to determine what treatment caused it. In these circumstances it is not possible to embark on a meaningful inquiry into causation or whether or not a necessary part or ordinary consequence of the endoscopy treatment.

[64] I am satisfied that Ms Brunton clearly consented to the endoscopy procedure and biopsy, having regard to the consent form which she signed and the treating specialist's report of the operation. In addition, according to the Corporation's record of communication with Ms Brunton, Ms Brunton stated that she had consented to the endoscopy procedure, consented to the fine needle biopsy and consented to sedation.

[65] To the extent there is an issue surrounding Ms Brunton's consent based on the blank anaesthesia consent form, the available evidence described in the previous paragraph satisfies me on the balance of probabilities that Ms Brunton did indeed consent to the anaesthesia and sedation that was administered. In any event, there remains the problem for Ms Brunton that no physical injury has been identified. Without identification of a physical injury, it is impossible to determine whether consent was appropriately given or not given to the aspect of treatment said to have caused the injury. If a physical injury was identified and an accident compensation claim were to be made on the basis of lack of informed consent, the claim would need to be informed by additional evidence, which may include further evidence from the treating specialist and any additional relevant and available hospital records.

[66] I have carefully considered the voluminous papers and documents provided by Ms Brunton in support of her appeal, including her detailed rebuttal/analysis of the Review Decision, ACR Submission and Review Hearing Submission. Nowhere in this material does Ms Brunton advance any credible evidence which would warrant overturning of the Review Decision or the Decision of the Corporation.

[67] I accept that Ms Brunton genuinely felt the numerous symptoms she has described in the evidence she has advanced, her personal testimony so far as it relates to identification of a physical injury and the other requirements to establish cover for a treatment injury carries no weight.

[68] On the other hand, the medical professional and other evidence carry considerable weight - including notes of several practitioners, the specialist's post-treatment report and subsequent medical notes, the consent form signed by Ms Brunton, and the Corporation's record of Ms Brunton's confirmation of consent to treatment and sedation. The evidence overall does not establish on the balance of probabilities that a physical injury was caused by

the endoscopy procedure, biopsy or sedation and does not establish any of the other legislative criteria for a treatment injury.

[69] There is no evidence to support Ms Brunton's other allegations summarised above in paragraph [53] (b), (c), (d), (e), (f), which I reject.

[70] Finally, I turn to Ms Brunton's document described as an "Affidavit of Truth, Denial of Consent, Claim of Right and the Restoration of my "common law on the land unalienable rights"". It asserts on its face that it has been served on the New Zealand Prime Minister, the Governor General of New Zealand, the Attorney General of New Zealand, the Solicitor General of New Zealand, the Minister of Justice, the Minister of Police, and the Minister of Internal Affairs. Whether or not that is the case is unclear. Ms Brunton declares in the document that she is a "sovereign person" who is not subject to any government control, jurisdiction of the courts or laws of New Zealand, without her consent.

[71] I infer from Ms Brunton bringing and pursuing this appeal that she consents to be subject to the Accident Compensation Act 2001 and to the jurisdiction of the District Court. But nothing in her affidavit advances her claim for compensation or this appeal. It does not establish that Ms Brunton suffered an identifiable physical injury, or that it was an injury which could properly be described as a treatment injury in terms of the legal requirements in the Act.

Conclusion

[72] On the evidence as a whole, Ms Brunton has not established on the balance of probabilities that she suffered a treatment injury for which there is accident compensation cover.

Result

[73] The Decision and the Review Decision are correct in confirming Ms Brunton has no accident compensation cover for a treatment injury arising out of the treatment she received.

[74] The appeal is dismissed.

Costs

[75] Although Ms Brunton is unsuccessful on appeal, I make no order for costs.

I C Carter
District Court Judge

Solicitors: Ms J Brunton in person representing herself
Young Hunter, Solicitors, Christchurch