General Practitioners, Drs A and B

A Report by the

Health and Disability Commissioner

(Case 01HDC03691)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Mrs A	Consumer
Dr A	Provider / General Practitioner
Mr B	Consumer's husband
Dr B	General Practitioner

Complaint

On 19 April 2001 the Commissioner received a complaint from the consumer, Mrs A, about the standard of care she received from the providers, Dr A and Dr B, general practitioners. The complaint is that:

- *Dr A did not inform Mrs A of the results of her vaginal swab tests that were received at the surgery on 22 February 2001.*
- *Dr A had marked on the laboratory request forms that a copy of the results were to be sent to Dr B, who is not Mrs A's doctor.*
- *Dr A misled Mrs A by informing her that her husband "could have caught it [gonorrhoea] off a toilet seat".*
- *Dr A did not follow the Sexual Health Clinic guidelines in treating Mrs A.*
- *Dr A inappropriately prescribed an antibiotic which was not strong enough to clear the sexually transmitted infection Mrs A had contracted.*
- *Mrs A's test results were earmarked for the attention of Dr A and Dr B. Dr B is Mrs A's husband's doctor.*
- *Dr B filed Mrs A's results without her being informed of the diagnosis and treatment.*
- *Mrs A believes that if she had not contacted the practice to say that she knew something was wrong with her, she would not have been informed of the results or received treatment.*
- *Dr B and Dr A conspired to keep the true cause and nature of Mrs A's infection from her to protect her husband.*
- *Mrs A received accurate information from the Sexual Health Clinic that should have been provided to her by Dr A.*

An investigation was commenced on 25 May 2001.

Information reviewed

- Mrs A's clinical records from the Centre
- A copy of the laboratory request form for Mrs A, dated 19 February 2001
- Independent expert advice from Dr Ian St George, general practitioner.

Information gathered during investigation

Background
Mrs A and her husband were both registered patients at a medical centre (the Centre). Mrs A's general practitioner at the Centre was Dr A and Mr B consulted Dr B.

At the beginning of 2001, Mr B travelled overseas on business. While he was there he was diagnosed as suffering from gonorrhoea. Mr B made a number of telephone calls to Dr B to discuss his condition. He told Dr B that he had contracted gonorrhoea and was anxious that Mrs A be checked out. Mr B was concerned to keep the nature of this infection secret from his wife.

Mr B telephoned his wife and told her that he had consulted a doctor overseas and had been diagnosed as having a fungal infection in the genital area. Mr B told his wife that the doctor advised that she should consult her own doctor in case she also had the infection.

Mrs A was examined by Dr A on 19 February 2001. Dr A did not observe any abnormality of Mrs A's genital area and told her that "everything looks very healthy". Dr A took cervical and vaginal swabs for laboratory examination, and told Mrs A that she or the practice nurse would contact her if there was anything untoward in the test results.

Mrs A said that she knew that the practice at the Centre was to inform patients only if test results were untoward: "If you don't hear anything, it is OK." Mrs A was unable to recall if Dr A had advised her to return to the surgery if she started to develop any symptoms.

Dr A's clinical records for Mrs A for 19 February 2001 note: "Husband has had fungal infxn [infection] on penis. Cx [cervix] and vag [vagina] swabs done. Looks nad [no abnormalities detected]."

At the Centre's bi-monthly practice meeting on 20 February 2001, Dr B took the opportunity to speak with Dr A about his conversations with Mr B. Dr B told Dr A that Mr B had contracted gonorrhoea before leaving New Zealand; he did not want his wife to know about this and had asked Dr B to convey this to Dr A.

On 22 February 2001 the laboratory forwarded the results of Mrs A's vaginal swabs to the Centre. The results showed that Mrs A had contracted Neisseria gonorrhoea, and that the organism was sensitive to amoxycillin. The results were logged into Mrs A's computerised clinical records.

Dr A informed me that while she is at the surgery she always clears her incoming e-mail, and that it is rare for her to have outstanding test results waiting for her assessment the next day. She was not working on 22 February 2001, when Mrs A's test results were sent through by the laboratory.

The results of laboratory tests at the Centre are received electronically. Electronic results are marked "Attention provider" in the in-box. The results are filed in the patient's computerised clinical records, and can be accessed either by the requesting doctor, or by

any other staff member in the clinic who knows how to transfer and access the results by keying the appropriate symbols. When doctors check the test results and transfer the results to the patient's clinical records, they indicate that they have seen the results by adding their initials.

Dr A said that it is the practice of the laboratory, if they have test results that are life threatening, to telephone the results through to the Centre, and one of the staff will inform the appropriate doctor, calling them at home if necessary. Dr A said that as "[Mrs A's] swab result was routine" as opposed to "urgent/life threatening", there was no need for her (or in her absence another doctor at the Centre) to be contacted. It appears that an unknown member of staff received the result and filed it in Mrs A's clinical records instead of leaving the result marked 'Attention provider'. As there were no identifying initials entered, Dr A was unable to identify who had transferred Mrs A's test results from the 'in-box' to the clinical file.

On the evening of Friday 23 February 2001, Mrs A became concerned because she had developed a green vaginal discharge and had pain in her genital area. It was too late to contact the doctor's surgery that evening, and she was not able to speak with staff at the surgery the following day as she was concerned that her son would hear the conversation. Therefore Mrs A waited to telephone the Centre around 9am on Monday 26 February. Mrs A asked if she could speak to a nurse about her test results, but was told the nurses were busy and that she would have been notified if there was anything wrong. Mrs A replied that she knew that "something was very, very wrong" and left a message with the receptionist for the practice nurse to telephone her back.

Dr A advised me that when she returned to work on 26 February after a period of leave, she looked for Mrs A's test results for the first time in response to Mrs A's message. Dr A telephoned Mrs A around 2pm and left an answerphone message to say that "the results had come back only that day" and showed that Mrs A had a bacterial, not fungal, infection and that she needed to start a course of antibiotics immediately.

Mrs A telephoned Dr A back on 26 February. Mrs A was told that she had "an infection", and that there was a prescription waiting for her at the front desk, which Mrs A was to start immediately. Mrs A said that Dr A was "quite insistent" that when she finished the course of antibiotics she was to return to the surgery for another swab to check that the infection had cleared. Mrs A said that Dr A did not tell her what the infection was, only that the results had come back that day.

Dr A later informed me that when she spoke to Mrs A on 26 February she did not have an available appointment that day; the earliest available was 28 February. Dr A said that she considered that it was imperative for Mrs A to begin her antibiotics, especially as she had developed symptoms.

Dr A said she knew that Mrs A would be returning to the Centre after completing her course of treatment, and felt that that would be a better time to discuss her condition further

and answer any questions. Dr A said: "I did not want to tell her over the telephone that she had gonorrhoea."

Dr A's clinical records for 26 February 2001 for Mrs A note: "Gonorrhoea on swab. rx@dsk [prescription at desk], TCA [to call again] 1 week after rx. Amoxil 500mg cap."

Mrs A informed me that she telephoned the Centre again on 27 February 2001 as she wanted to know what infection she had contracted. Mrs A spoke with the practice nurse, who told her the name of the infection. Mrs A replied that this "sounded like VD". The practice nurse advised Mrs A that if she required further information she should make an appointment to see one of the doctors. Mrs A said that she preferred to see Dr A, but was told that Dr A was not working that day.

Mrs A later informed me that the practice nurse responded to her query about the infection she was being treated for, with a "medical name". Mrs A said: "That sounds like gonorrhoea." She said that the nurse refused to comment further and told her that she would have to speak with a doctor.

When Dr A returned to work on 28 February 2001, the practice nurse told her about the conversation she had had with Mrs A the previous day. Dr A telephoned Mrs A and told her that she had contracted Neisseria gonorrhoea. Mrs A said that if Dr A had told her that she had gonorrhoea she would have "understood that it was VD". Mrs A asked Dr A whether this was a venereal disease and whether it was likely that she had contracted it from her husband. She also asked if it was possible that her husband had been with another woman. Mrs A recalled that Dr A "only said that it was possible my husband caught it from a toilet seat".

Dr A's clinical notes for Mrs A for 28 February 2001 record their exchange:

> "Very distressed about finding out how her husband caught gonorrhoea, and how she has been deceived by all concerned. Her husband had contacted [Dr B], requesting him to ask me not to tell her about his affair with a prostitute, for fear of marriage break-up. When [Mrs A's] diagnosis was made, she asked me if it was possible that her husband had been unfaithful. I replied that it was possible that her husband had been unfaithful. I replied that it was possible, but not necessarily so; it could also be contracted through contamination of a toilet seat (if an infected penis brushed against the seat, depositing infected discharge, and another man's penis was exposed to this, he could become infected)."

Shortly after talking to Dr A, Mrs A, who was not satisfied with the answers that Dr A had given her, telephoned the Sexual Health Clinic for information on gonorrhoea. She spoke with one of the senior nurses, who said that gonorrhoea had never been shown to be contracted from a toilet seat, and that the 10-day course of oral amoxycillin prescribed for her by Dr A was not the current recommended treatment for gonorrhoea. Mrs A's son overheard her conversation with the Sexual Health Clinic staff member, which caused Mrs A considerable distress.

Mrs A later informed me that she is unable to remember how often and for how many days she was prescribed Amoxil, but she thought that it was 10 to 12 days. She said that when she challenged Dr A with the information she had obtained from the Sexual Health Clinic, that the dose prescribed was insufficient, Dr A replied, "That is what it says in the book." Mrs A said she assumed that Dr A was referring to the *New Ethicals*.

The *New Ethicals Catalogue* (May to November 2001) recommends Amoxil (amoxycillin) for "Acute uncomplicated lower urinary tract infections, gonorrhoea, 3g as a single dose".

Dr A also recorded in Mrs A's notes for 28 February 2001:

> "[Mrs A] is understandably angry that I did not say outright that I knew her husband had had this liaison, and that that was the cause of her infection. The fact that her husband had had treatment overseas, and that he was following up on contact tracing, I felt that once [Mrs A's] infection was cleared up, it was up to her husband to be honest (or not) with her. She has since contacted the STD clinic, who would like to see her again on 9/4/01 for a cx swab – to ensure that the infection has gone, because they feel that Amoxil is inadequate as a treatment, despite the gonorrhoea being sensitive to it. [Mrs A] feels that she can no longer trust me to be her GP, so will have her files transferred."

Dr A advised me that she did not attempt to mislead Mrs A:

> "[I was] in a difficult situation, knowing the background information that [Dr B] had told me and having known [Mrs A] for some years. However, at no stage did I intend to keep any results of my patient's tests from my patient, [Mrs A]. I knew that I was in no position to make judgements, but to treat my patient's infection the best I could."

Dr A said that she thought that she was bound by the Privacy Act and patient confidentiality, so could not tell Mrs A outright what she knew about her husband. She said that she answered all questions truthfully and accurately, and had assumed that Mrs A had known that her infection was contracted through sexual intercourse, because her husband had already contacted her about him having an infection.

On 30 March 2001 Dr A wrote the following letter to Mrs A:

> "Further to our conversation on 28th March, I would like to reiterate how sorry I am that you have had to endure such distress. Being betrayed by your husband must be a bitter blow, but having contracted an infection as a result just makes matters far worse, especially if you feel that you have been inadequately treated.
>
> Due to the Privacy Act and patient confidentiality, I was unable to divulge the information that I had been told about your husband's actions. I had to treat your infection, be honest in my responses and hope that one day your husband would be honest with you and that you would be able to work things out. I can assure you that all along I have had your best interests at heart, but have been bound by professional obligations.

…

Sincerely, I wish you everything of the best for the future. It is a difficult time for you. I am saddened that our professional relationship has had to end this way, but I hope that you will be happy with your new GP."

Dr B

Dr B responded to notice of this investigation of Mrs A's complaint by writing to me as follows (letter dated 6 July 2001):

"…

I was the doctor for the […] family for many years, although at the time of the matters giving rise to the complaint, I was [Mr B's] doctor only (the rest of the family consulting [Dr A]).

…

1. [Mrs A] is correct in saying that [Mr B] contacted me from [overseas] on several occasions. He informed me that he had contracted gonorrhoea, and was anxious that [Mrs A] be checked out. He told me he was concerned to keep the nature of his infection secret from his wife. As I was not [Mrs A's] doctor, I passed on the content of these conversations to [Dr A] at our practice meeting on 20 February. That is, the day following [Dr A's] consultation with [Mrs A] who had of her own accord come to the surgery. Subsequent to that conversation on 20 February, [Dr A] and I did not discuss the matter again. I do not believe I was in a position to act in a different manner, in that I am required to treat what any patient tells me in confidence. It certainly would have been inappropriate for me to personally consult [Mrs A].

…"

Dr B informed me that Mrs A's test results were not "earmarked" for his attention, and noted that on the date when Dr A took the swabs for laboratory examination on 19 February 2001, he had not spoken to Dr A about Mr B's concerns.

Mrs A later recalled that Dr A told her that the results had been sent to Dr B. A copy of the laboratory request form, completed by Dr A, was obtained from the laboratory. There was no indication on the laboratory form that Dr A had requested that a copy of the report be sent to Dr B.

Independent advice to Commissioner

The following expert advice was obtained from an independent general practitioner, Dr Ian St George:

"**Introduction**

I respond to your letter of 18 July seeking advice in relation to [Mrs A's] complaint against [Drs A and B]. The advice sought is whether [Mrs A] received an appropriate standard of treatment, with specific reference to whether

- [Dr A] provided [Mrs A] with services with reasonable care and skill.
- [Dr B's] actions complied with professional standards.

In addition if there are any other

- Professional, ethical and other relevant standards that apply and whether they were complied with.
- Comments I consider relevant.

I have read [Mrs A's] letter to the Commissioner dated 5 April 2001, the letters of response from [Dr A] of 31 May 2001 and [Dr B] of 6 July 2001, and the file note of a phone call from [the Commissioner's investigation officer] to [Dr E], registrar at the […] Sexual Health Clinic dated 18 May 2001.

I have assessed whether the doctors' actions were reasonable in the circumstances by the standards of the profession, as far as they have been stated or previously judged, at the time of the incident. I state here I have no personal, financial or professional connection with either party that could bias my assessment.

The facts

The facts are as outlined in your document [01]HDC03691 dated 18 July. For the sake of clarity I will reiterate them as a timeline.

- ***Before 19 February*** [Mr B] phoned [Dr B] to tell him he had gonorrhoea; he was anxious he had passed the infection to his wife but did not want his wife told the nature of the infection.
- [Mr B] phoned his wife and told her he had a fungal infection of his penis.
- ***19 February*** [Mrs A] consulted [Dr A] as a result of her husband's call; swabs were taken.
- ***20 February*** [Dr B] 'passed on the content of these conversations (i.e. with [Mr B]) to [Dr A] at our practice meeting'. I note the practice is owned by [Dr B] and [Dr A] is an 'associate'. [Dr A] stated [Mr B] 'asked [Dr B] to ask me to not pass on the information that I knew that he (and possibly she) had gonorrhoea'. [Dr B] phoned the lab for [Mrs A's] results.
- ***22 February*** is the date the lab said the result would have been received by the practice. [Dr A] had taken the day off. The result showed gonococcus sensitive to amoxycillin. The result was filed by someone without any action being taken.

- ***26 February*** [Mrs A] phoned the practice, [Dr A] looked up the results, told her she had a bacterial infection and prescribed amoxycillin 500mg (daily dose and duration unstated).
- ***27 February*** [Mrs A] phoned the practice to find out what the infection was. The nurse told her it was gonorrhoea.
- ***28 February*** [Dr A] phoned [Mrs A] and told her her husband could have caught the infection from a toilet seat.
- ***Subsequently*** [Mrs A] had follow-up swabs and other STD tests which were clear. She later asked for her files to be transferred to another doctor.

The complaints

The complaints are those listed in [01]HDC03691 dated 18 July:

1. *[Dr A] did not inform [Mrs A] of the results of her vaginal swab tests that were received at the surgery on 22 February 2001.*
2. *[Dr A] had marked on the laboratory request forms that a copy of the results were to be sent to [Dr B], who is not [Mrs A's] doctor.*
3. *[Dr A] misled [Mrs A] by informing her that her husband 'could have caught it (gonorrhoea) off a toilet seat'.*
4. *[Dr A] did not follow the Sexual Health Clinic guidelines in treating [Mrs A].*
5. *[Dr A] inappropriately prescribed an antibiotic which was not strong enough to clear the sexually transmitted infection [Mrs A] had contracted.*
6. *[Mrs A's] test results were earmarked for the attention of [Dr A] and [Dr B]. [Dr B] is [Mrs A's] husband's doctor.*
7. *[Dr B] filed [Mrs A's] results without her being informed of the diagnosis and treatment.*
8. *[Mrs A] believes that if she had not contacted the practice to say that she knew something was wrong with her, she would not have been informed of the results or received treatment.*
9. *[Dr B] and [Dr A] conspired to keep the true cause and nature of [Mrs A's] infection from her to protect her husband.*
10. *[Mrs A] received accurate information from the Sexual Health Clinic that should have been provided to her by [Dr A].*

My opinion

[Dr A] acted quite inappropriately when she treated [Mrs A] without fully informing her of her conditions and its likely cause. She could have done so without divulging her knowledge of [Mr B's] infection. In ethical terms her management was paternalistic and denied [Mrs A] proper autonomy.

[Dr A] was wrong when she said gonorrhoea can be caught from a toilet seat, and even if it could, she was wrong to tell [Mrs A] this when she knew the infection had come from [Mr B].

There is no evidence that [Dr B] acted inappropriately.

[Mrs A] has not provided evidence for some of her other assertions listed below.

I will comment on the complaints –

1. *[Dr A] did not inform [Mrs A] of the results of her vaginal swab tests that were received at the surgery on 22 February 2001.* True. [Dr A] was not aware the result had been received and filed. In my opinion she can be held responsible for a result having been filed without a doctor having seen it only if she did not give clear instructions to [Mrs A] about how the result would be dealt with. If, for instance, she told [Mrs A] to phone for the report after a certain interval, she should not in my view be held culpable. …
2. *[Dr A] had marked on the laboratory request forms that a copy of the results were to be sent to [Dr B], who is not [Mrs A's] doctor.* There is nothing to support or deny whether this in fact happened, but it would be proper medical procedure to inform an interested professional colleague of the results of a test that affected that colleague's patient (in this case [Mr B]), or if the ordering doctor was likely to be absent from the practice when the result was returned.
3. *[Dr A] misled [Mrs A] by informing her that her husband 'could have caught it (gonorrhoea) off a toilet seat'.* [Dr A] is quite wrong when she suggests gonorrhoea can be caught from a toilet seat, though she appears naively to believe so herself. This is a myth. It would be a careless man indeed who allowed his urethral opening to come into contact with gleet on a toilet seat. The excuse is the invention of those wanting to hide their sexual behaviour – and in the case of 'virgin boys' in South Africa probably an attempt to hide sexual abuse of children.
4. *[Dr A] did not follow the Sexual Health Clinic guidelines in treating [Mrs A].* There are many, often conflicting, guidelines for treatments, and I am not aware of the existence of [the] Sexual Health Clinic guidelines for treatment of gonorrhoea. Sexual health clinics generally see a different clientele from those presenting at general practices. At the Clinic the patient is often new or itinerant, or at least unknown to the doctors – the diagnosis has to be made on the spot by microscopic examination of the discharge, because the patient may remain sexually active or may not return. Thus antibiotic sensitivities are not known when treatment is begun, so the treatment of choice is not amoxycillin. On the other hand [Mrs A] was well known to [Dr A], and the diagnosis could await the antibiotic sensitivities on the lab result, so the treatment could be more accurate. The usual amoxycillin dose recommended is 4Gm at once, but again, that is a recommendation from STD clinics where the patient may not be seen again. [Dr A's] treatment of [Mrs A's] infection proved to be effective.
5. *[Dr A] inappropriately prescribed an antibiotic which was not strong enough to clear the sexually transmitted infection [Mrs A] had contracted.* See 4, above. It appears [Mrs A] was misled by an employee of the Sexual Health Clinic on this matter, despite their protestations to the contrary.
6. *[Mrs A's] test results were earmarked for the attention of [Dr A] and [Dr B]. [Dr B] is [Mrs A's] husband's doctor.* See 2, above.

7. *[Dr B] filed [Mrs A's] results without her being informed of the diagnosis and treatment.* There is no evidence it was [Dr B] who did this.
8. *[Mrs A] believes that if she had not contacted the practice to say that she knew something was wrong with her, she would not have been informed of the results or received treatment.* See 1, above.
9. *[Dr B] and [Dr A] conspired to keep the true cause and nature of [Mrs A's] infection from her to protect her husband.* It appears to be true that [Dr A] tried to keep the true cause and nature of the infection from [Mrs A], but one cannot say there was a conspiracy. What should have happened at the practice meeting was that the two doctors should have agreed about how they would proceed. Above all [Dr A] had an obligation to her patient [Mrs A] to inform her fully ([Dr A] could not have known whether or not [Mrs A] had other sexual partners) and to treat her appropriately. All else is subsidiary. Certainly [Dr B] had an obligation to try to persuade [Mr B] that it was in everybody's best interest that his wife be told. He met his obligation to tell [Dr A] about the situation so she could treat [Mrs A]. He had an obligation not to interfere with [Dr A's] management of her patient, and though he passed on [Mr B's] desire that [Mrs A] not be told, there is no evidence he went further and actively sought to alter that management.
10. *[Mrs A] received accurate information from the Sexual Health Clinic that should have been provided to her by [Dr A].* While this is probably true, [Mrs A] also received information from the Sexual Health Clinic that was apt for such a clinic, but was not necessarily so for general practice – see 4, above.

Family doctors are often dragged into family disputes, and this scenario (or a variation of it) is a 'classic' ethical case that is often traversed in general practitioner case discussions or acted by simulated patients in examinations. It is sad when doctors allow themselves to become embroiled in disputes to the extent they act inappropriately in a clinical sense."

Responses to Provisional Opinion

Dr A
Dr A responded to my provisional opinion as follows:

"Thank you for your letter dated 16/4/02, enclosing your provisional opinion on the complaint made by [Mrs A]. I understand that [Mrs A] has gone to live [overseas] with her husband.

There are a few comments that I would like to make regarding your opinion:

1. *Failure to notify test results*

I was not at [the Centre] on 22 February 2001, the date that the results arrived at the Centre. But I was working there on Friday 23 and Saturday 24 February. So I had not

made arrangements for another colleague to check [Mrs A's] results. The fact that the result arrived in the e-mail on 22 February, and was filed on that day by someone else was beyond my control. It was an unfortunate turn of events. You may be interested to know that our computer system has been upgraded, so that no one other than the 'provider' is able to file a patient's results. Yes, I agree that [Mrs A] should have been treated as early as possible.

When I spoke to [Mrs A] on 26 February about her results, I did not have an appointment available to see her that day. It was imperative for her to begin her antibiotic course as soon as possible, especially since she had started to develop symptoms. I do not work on Tuesdays, so knew that the earliest appointment I could offer her was on Wednesday 28 February. This would have meant a further delay in starting her antibiotic course. Hearing the news that one has an STD, implying that one's husband has most likely been unfaithful and that one's marriage could be in jeopardy, can have as devastating an effect on one's life as would be hearing the news that one has a terminal illness. Such information should not be given over the phone. As you know, I insisted on seeing [Mrs A] for a follow-up visit, and spoke to her over the phone before that follow-up visit.

2. *Failure to explain condition*

Please see the comments in 1. above.

When I spoke to [Mrs A] on the telephone on 28 February, I confirmed to her that gonorrhoea is an STD. I had already told her that it was a bacterial infection. The comment that '[Dr A] could not have known whether [Mrs A] had other sexual partners' is untrue. [Mrs A] has been preparing to follow her husband [overseas] to live with him there. She had had an honest, open relationship with myself and occasionally told me and sought advice about her sexual relationship with her husband. At no point had she considered having a sexual relationship with anyone other than her husband. It would have been extremely unlikely for her to have ventured into a sexual relationship with another person at that time.

I did not say that the Privacy Act prevented me from informing [Mrs A] about her condition. By telling [Mrs A] that it was possible that her husband had been unfaithful, I did not divulge my knowledge of [Mr B's] infection, hence did not breach the Privacy Code.

3. *Failure to provide honest and accurate answers to questions*

The independent medical advisor stated that, '[Dr A] was wrong when she said that gonorrhoea can be caught from a toilet seat, and ***even if it could***, she was wrong to tell [Mrs A] this when she knew that the infection had come from [Mr B]'. Although I have been called 'naïve' regarding this 'myth', it is still a possible cause of spreading gonorrhoea, as confirmed by the medical advisor (see in bold italics). At no time did I tell [Mrs A] an untruth. The answer that I gave her was honest and accurate.

4. *Right 4(2)*

Please see the above comments.

When I spoke to [Mrs A] on 28 February, I confirmed that gonorrhoea was an STD, which she had developed as a result of having sexual intercourse with her husband. Thus she understood that this was an infectious disease.

[Mrs A's] case was the first gonorrhoea l case that I had had to deal with in over 7 years. I have treated a number of patients with chlamydial disease (usually asymptomatic, and picked up when doing routine cervical smears). I make it a policy to not discuss the diagnosis over the phone, but instead to ask the nurse to phone the patient, requesting her to make an appointment to discuss the diagnosis, contact tracing, the antibiotic treatment, and follow up. We have written information about chlamydia, which is given out to the patient. Because gonorrhoeal infection is seen so infrequently in General Practice, patient written information is often not directly available. Sexual Health Clinics, which deal only with Sexual Health issues, have such information readily available.

I trust that this helps to clarify a few issues, and shall await your further opinion."

Dr B

Dr B responded to my provisional opinion through his lawyer. The response provided no new evidence but noted that "the conversations between [Dr B] and [Mr B] are not as recorded in your opinion" and asked: "Why is it that inquiry was not made of the primary sources during the 12 months of investigation?" Dr B's response concluded:

"A finding of breach has been made on the basis of an allegation never put but nonetheless investigated, contrary to expert opinion, and with no evidential basis. With the greatest of respect, in those circumstances it is submitted that those matters that have been investigated by your office do not give any basis for a breach finding and the finding should be one of no breach."

Code of Health and Disability Services Consumers' Rights

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

RIGHT 4
Right to Services of an Appropriate Standard

…

2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

3) Every consumer has the right to have services provided in a manner consistent with his or her needs.

RIGHT 6
Right to be Fully Informed

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
…
f) The results of tests;
…

3) Every consumer has the right to honest and accurate answers to questions relating to services …

Other legislation

The Health Act 1956

"…

2. *'Venereal disease' means gonorrhoea, gonorrhoeal ophthalmia, syphilis, soft chancre, venereal wart, or venereal granuloma.*

89. Duty of medical practitioner as to patient suffering from venereal disease –

Every medical practitioner who attends or advises any patient for or in respect of any venereal disease from which the patient is suffering shall, by written notice in the prescribed form delivered to the patient, –

(a) Direct the attention of the patient to the infectious character of the disease, and to the penalties prescribed by this Act for infecting any other person with that disease; and

(b) Warn the patient against contracting any marriage until he has been cured of that disease or is free from that disease in a communicable form; and

(c) Give to the patient such printed information relating to the treatment of venereal disease, and to the duties of persons suffering from such disease, as may be issued by the directions of the Minister."

Other standards

New Zealand Medical Association 'Code of Ethics' (1989)

"***Patient's Right***

…

7. Accepts the right of all patients to know the nature of any illness from which they are known to suffer, its probable cause, and the available treatments together with their likely benefits and risks."

Opinion: No breach – Dr A

In my opinion Dr A did not breach the Code of Health and Disability Services Consumers' Rights in relation to the following matter:

Right 4(3)

Antibiotic prescription
Right 4(3) states that every consumer has the right to have services provided in a manner consistent with his or her needs. Mrs A had a right to have the appropriate medication prescribed for her condition.

I am advised that as Mrs A was known to Dr A, it was appropriate for her to wait for the laboratory tests to confirm the antibiotic sensitivities of the organism before starting treatment. The laboratory test results showed that the gonorrhoea organism detected in the cervical and vaginal swabs taken from Mrs A was sensitive to amoxycillin.

Mrs A contacted the Sexual Health Clinic to obtain further information about gonorrhoea and the treatment of this disease. She spoke with one of the senior nurses at the clinic who informed her that a 10-day course of oral amoxycillin was not the current recommended treatment for gonorrhoea; the recommended treatment was 4 grams as a one-off dose.

My medical advisor commented that the information about treatment given to Mrs A by the staff member at the Sexual Health Clinic was more appropriate for clients who visit such a clinic, rather than a general practice. Clients of a Sexual Health Clinic are usually unknown to the doctors; the diagnosis has to be made at the time by microscopic examination, and the antibiotic sensitivities are not known when the treatment is begun. Dr A knew Mrs A and so the diagnosis could await the antibiotic sensitivity results, to ensure that the treatment prescribed would be specific to her infection.

I accept the advice that the 10 days' amoxycillin that Dr A prescribed for Mrs A, instead of the recommended one-off dose of 4 grams, was appropriate in these circumstances. The follow-up tests conducted by Dr A on 12 March 2001 and by the Sexual Health Clinic on 9 April 2001 showed that Dr A's treatment of Mrs A's gonorrhoea infection had been effective. In my opinion, in relation to the prescription of the antibiotics, Dr A provided Mrs A with medical services in a manner consistent with her needs and did not breach Right 4(3) of the Code.

Opinion: Breach – Dr A

In my opinion Dr A breached Rights 6(1)(a), 6(1)(f), 6(3) and 4(2) of the Code of Health and Disability Services Consumers' Rights in the course of providing medical services to Mrs A.

Rights 6(1)(a), 6(1)(f) and 6(3)

Failure to notify test results
Right 6(1)(f) states that every consumer has the right to be informed about his or her test results. A patient is entitled to receive this information as of right, without asking. Test results should be communicated promptly, and in sufficient detail for the patient to understand.

The results of the tests on the cervical and vaginal swabs that Dr A took from Mrs A on 19 February 2001 were received at the Centre on 22 February. Dr A was on leave on that date but returned to work on 26 February. Mrs A telephoned the Centre on 26 February, as she had developed symptoms. Dr A returned Mrs A's telephone call and advised her that her test results had returned and showed a bacterial infection for which she needed antibiotic treatment.

Dr A had not detected any abnormality of the genital area when she examined Mrs A on 19 February. However, the day after she took the swabs (20 February), Dr A was told by Dr B

that Mr B had tested positive for gonorrhoea and that there was a possibility Mrs A had contracted the disease from her husband. In the circumstances, knowing that she would not be returning to the Centre until 26 February, and that Mrs A may have contracted gonorrhoea and could be infectious herself, Dr A should have made arrangements for Mrs A's test results to be checked upon receipt at the Centre and treatment to be started if necessary. My medical advisor confirmed that it would be proper medical procedure to inform a professional colleague of anticipated test results if the ordering doctor was likely to be absent from the practice when the result returned.

By the time that Dr A returned to work on 26 February, Mrs A had developed an unpleasant discharge as a result of her infection. Had she received her results from one of Mrs A's professional colleagues on the day the results were received at the Centre (22 February), she could have commenced antibiotic treatment four days earlier than she did.

Dr A told me that when Mrs A telephoned the Centre on 26 February enquiring about her test results, she looked at Mrs A's file for the first time and found that the tests showed a positive gonorrhoea result. Dr A telephoned Mrs A back and informed her that she had contracted a bacterial infection that required antibiotic treatment, and that she would need to be re-tested at the end of her treatment.

Dr A did not tell Mrs A that she was being treated for gonorrhoea. Dr A decided to discuss the nature of the disease Mrs A had contracted when she returned to the clinic at the end of her course of antibiotics. Dr A considered that it would be inappropriate to discuss such potentially distressing information over the telephone.

In my opinion, Dr A acted inappropriately when she treated Mrs A without fully informing her of her condition and its likely cause. As noted by advisor, "Above all, [Dr A] had an obligation to her patient [Mrs A] to inform her fully …" The Code is clear that patients are to be informed of the results of their tests. Dr A informed me that she was aware that Mr B was fearful for the survival of his marriage and that she intended to discuss Mrs A's condition with her when she returned for retesting at the end of the treatment. Dr A may have been well intentioned, but that cannot excuse her serious error of judgement in withholding important clinical information that Mrs A was entitled to receive.

By not taking steps to ensure Mrs A received her results on time and with an appropriate level of detail, Dr A breached Right 6(1)(f) of the Code.

Failure to explain condition

Patients have a right to be told about their condition. This is affirmed in Right 6(1)(a) of the Code, which provides that every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive.

Dr A did not tell Mrs A what her infection was when she telephoned on 26 February. Mrs A was told that she had a bacterial infection, but not that the infection was gonorrhoea, a sexually transmitted disease.

Dr A advised me:

> "[I was] in a difficult situation, knowing the background information that [Dr B] had told me and having known [Mrs A] for some years. However, at no stage did I intend to keep any results of my patient's tests from my patient, [Mrs A]. I knew that I was in no position to make judgements, but to treat my patient's infection the best I could."

Dr A informed me that she was bound by the Privacy Act and patient confidentiality and could not inform Mrs A outright what she knew about her husband.

My advisor commented that Dr A "acted quite inappropriately when she treated [Mrs A] without fully informing her of her condition and its likely cause". He noted that, above all, Dr A had an obligation to Mrs A to inform her fully.

I agree with the comments made by my advisor. In my opinion, Dr A should have informed Mrs A that she had contracted gonorrhoea, a sexually transmitted disease. Dr A had been placed in an awkward position by Dr B's disclosure of Mr B's gonorrhoea infection. However, as noted by my advisor, Dr A could have fully informed Mrs A of her condition and its likely cause "without divulging her knowledge of [Mr B's] infection".

The Health Information Privacy Code 1994 (issued by the Privacy Commissioner under the Privacy Act 1993) applies to patient information held by health agencies such as medical practitioners. Rule 11 of the Privacy Code would not, in my opinion, have authorised Dr A to disclose Mr B's gonorrhoea status to Mrs A. However, Dr A could and should have disclosed to Mrs A that she had gonorrhoea, a sexually transmitted disease. Dr A could not have known for certain whether Mrs A had other sexual partners, notwithstanding her "honest, open" relation with her patient.

By failing to give Mrs A adequate information about her condition, Dr A breached Right 6(1)(a) of the Code.

Failure to provide honest and accurate answers to questions

Right 6(3) states that every consumer has the right to honest and accurate answers to questions relating to services. When Mrs A became concerned about the nature of the disease she had contracted and telephoned the Centre for information, she was told by the practice nurse that she had gonorrhoea, and that she should seek further information from a doctor.

Mrs A spoke with Dr A on 28 February 2001 and asked her if she had contracted a venereal disease and whether it was likely that she had contracted this from her husband. Dr A replied that it was possible that Mr B had been unfaithful, but that the disease could also be contracted through contact with a contaminated toilet seat.

My medical advisor stated that Dr A misled Mrs A by informing her that her husband could have caught gonorrhoea from a toilet seat. Dr A was "quite wrong" and "naïve" to believe this "myth" and to misinform Mrs A.

Although I recognise that it can be very difficult to manage a situation where a patient has contracted a sexually transmitted disease and has concerns about the fidelity of his or her partner, Dr A had a responsibility to give Mrs A honest and accurate answers to her questions about the nature of the disease she had contracted.

By providing Mrs A with inaccurate and misleading information, Dr A breached Right 6(3) of the Code.

Right 4(2)

Right 4(2) states that every consumer has the right to have services provided that comply with legal, professional, ethical and other relevant standards.

The New Zealand Medical Association's 'Code of Ethics' (1989) affirms (in Patient's Right 7) that all patients have the right "to know the nature of any illness from which they are suffering, its cause and the available treatments". As noted by my advisor, in ethical terms Dr A's management of Mrs A was paternalistic and denied Mrs A proper autonomy. Dr A's unilateral decision not to fully inform Mrs A about her condition overrode her rights as a patient. Mrs A was denied the opportunity to make an informed decision about how to manage her infection.

Dr A also failed to comply with the requirements of the Health Act 1956 when she did not inform Mrs A of the nature of the disease she had contracted. The Health Act places a legal obligation on practitioners when treating patients with venereal disease. Gonorrhoea is defined in section 2 as a venereal disease. Section 89 sets out the duties required of every medical practitioner who advises any patient in respect of a venereal disease. These include informing patients about the infectious character of the disease and giving printed information about the treatment of the disease. Dr A did not inform Mrs A that gonorrhoea was a potentially infectious disease, or give her any printed matter relating to the treatment of the disease.

In failing to comply with relevant legal, professional and ethical standards, Dr A breached Right 4(2) of the Code.

Opinion: Breach – Dr B

In my opinion Dr B breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights in his handling of confidential information about Mr B's gonorrhoea status.

Right 4(2)

Conspiracy to deceive Mrs A
Dr B was faced with a difficult situation when his patient, Mr B, telephoned him from overseas to ask that his diagnosis of gonorrhoea, contracted before leaving New Zealand, be kept from his wife, but that Mrs A (Dr B's former patient) be checked out by her doctor, Dr A (Dr B's practice colleague).

Dr B admitted that "I am required to treat what any patient tells me in confidence". He acknowledged that Mr B "was concerned to keep the nature of his infection secret from his wife" and that it "certainly would have been inappropriate for me to personally consult [Mrs A]". However, Dr B felt that he had no option but to pass on the content of his conversations with Mr B to Mrs A's doctor (Dr A), and did so at a practice meeting on 20 February.

I do not accept my medical advisor's advice that "[t]here is no evidence that [Dr B] acted inappropriately". (Nor, although the scenario does not arise in the present case, do I accept that it would necessarily be "proper medical procedure to inform an interested professional colleague of the results of a test that affected that colleague's patient".)

In these circumstances, Dr B should have told Mr B that he needed to inform his wife that she had contracted gonorrhoea and that she should seek medical treatment. Mr B may well have resisted this suggestion, but Dr B should have attempted to counsel and persuade him, and could have offered to speak to Mrs A himself, if Mr B felt unable to do so.

Instead, what happened was that Mr B told his wife to get checked out by Dr A because he had a fungal infection in the genital area; and Dr B told Dr A that Mr B had gonorrhoea. Dr B acceded to Mr B's wishes and conspired to protect Mr B and to deceive Mrs A by keeping the true cause and nature of the infection from her. In my opinion Mrs A's complaint in this respect is fully justified. Dr B's conduct was unethical and inappropriate. It was conduct unbecoming a medical practitioner.

Dr B offered no justification for his actions, in responding to my provisional opinion. He queried the failure to inquire of "primary sources" during the investigation, even though he was himself a primary source and his written account to me of his conversations with Mr B is quoted verbatim at page 6 of this report.

I reject the submissions by Dr B's lawyer about the process of this investigation. My finding in relation to the allegation of a conspiracy to deceive Mrs A has been made following an investigation of a complaint notified to Dr B, on the basis of the evidence

before me, and my own careful deliberations on the appropriate standard of behaviour for a doctor in Dr B's position.

I conclude that Dr B's conduct amounted to a breach of Right 4(2) of the Code.

Opinion: No breach – Dr B

Right 4(2)

Handling of test results
In my opinion Dr B did not breach Right 4(2) of the Code of Health and Disability Services Consumers' Rights in relation to the handling of Mrs A's test results.

There is no evidence that Dr B accessed and filed Mrs A's laboratory test results, which were sent to Dr A. It has not been possible to establish who filed the test result, as no initials have been entered. Dr B did not receive a copy of Mrs A's test results. The laboratory form sent to the laboratory by Dr A did not request that Dr B be sent a copy of Mrs A's results.

In these circumstances, Dr B did not breach Right 4(2) of the Code in relation to the handling of Mrs A's test results.

Other comment: Dr B

Patient confidentiality
Dr B owed a strict duty of patient confidentiality to Mr B. Patients who consult their general practitioners about a sexually transmitted disease – information of a highly sensitive and intimate nature – must be able to trust that their confidences will be respected. Patients may otherwise be reluctant to seek necessary medical treatment and may put themselves and others at risk.

Rule 11(1)(b) of the Health Information Privacy Code permits authorised disclosures by health agencies to third parties. Rule 11(2)(d) of the Privacy Code also recognises that there are limited circumstances where confidential information may be disclosed without authorisation to prevent a serious and imminent threat to the life or health of another person. (Indeed, there may on occasion be a legal duty to warn an 'at risk' third party: see *Duncan v Medical Practitioners Disciplinary Committee* [1987] 1 NZLR 513, 521.)

I do not believe that Mrs A's risk of exposure to gonorrhoea from her husband justified Dr B breaching confidentiality to alert her, or Dr A as her agent, without first attempting to counsel Mr B and persuade him to make the disclosure himself. In reaching this conclusion

I have taken into account the nature of the disease (ie a serious, but treatable condition) and that Mr B was overseas (ie no immediate risk of infection or re-infection). Since there was no legal duty or statutory authority to warn, Dr B could disclose Mr B's infection to Dr A only if he was authorised to do so by Mr B. In this case, Dr B was indeed so authorised, so he did not breach patient confidentiality by his disclosure to Dr A. However, for the reasons set out above, Dr B's behaviour was nevertheless unethical.

Actions

I recommend that Dr A and Dr B:

- Apologise in writing to Mrs A for their breaches of the Code. The apologies should be sent to my Office and will be forwarded to Mrs A.
- Review their practice in light of this report.

Further actions

- A copy of this opinion will be sent to the Medical Council of New Zealand, the Privacy Commissioner, and the President of the Royal New Zealand College of General Practitioners.
- A copy of this opinion with identifying features removed will be forwarded to the Royal New Zealand College of General Practitioners, the New Zealand Medical Association, the New Zealand Venereological Society, and the New Zealand Charter of the Australasian College of Sexual Health Physicians, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
- This matter will be referred to the Director of Proceedings in accordance with section 45(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.

Addendum

The Director of Proceedings considered this matter and decided not to issue proceedings before the Medical Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal.