Sean Parker
Certified Spinal Health Foundation & Associates Ltd

A Report by the
Deputy Health and Disability Commissioner

(Case 08HDC14166)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Overview

In February 2007, Mr A, aged 34 years, had an accident at work which left him with pain and spasms in his left shoulder. Mr A had physiotherapy to his shoulder and was referred to an orthopaedic surgeon. The orthopaedic surgeon arranged for Mr A to have X-rays and an MRI, which confirmed a cervical disc (neck) injury, and recommended surgery. Mr A did not want surgery and sought a second opinion from chiropractor Sean Parker. Mr Parker examined Mr A, arranged for him to have spinal X-rays, and then discussed a treatment plan and payment options. Mr A agreed to pay for the total cost of treatment, $3,700, before treatment began. Mr Parker provided Mr A with 29 treatments. However, the treatment did not relieve Mr A's symptoms, so he sought a refund, which was refused. Mr A had successful corrective cervical disc surgery in September 2007.

Complaint and investigation

On 26 August 2008 the Commissioner received a complaint from Mr A about the services provided by chiropractor Mr Sean Parker. The following issues were identified for investigation:

- *The appropriateness of the care and treatment provided to Mr A by Sean Parker in 2007.*
- *The adequacy of information provided to Mr A by Mr Parker in 2007.*
- *Whether Mr Parker financially exploited Mr A in 2007.*

An investigation was commenced on 17 December 2008.

This report is the opinion of Rae Lamb, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

The parties directly involved in the investigation were:

Mr A	Consumer/complainant
Mr Sean Parker	Provider
Certified Spinal Health Foundation Associates Limited	Provider

Information was reviewed from:

Mr A	
Mr Parker	
Ms B	Physiotherapist
Ms C	Spinal Health receptionist
Dr D	Orthopaedic consultant
Dr E	Orthopaedic surgeon

Independent expert advice was obtained from chiropractor Margie Blacklow. It is attached as **Appendix 1**.

Information gathered during investigation

On 14 February 2007, Mr A damaged his left shoulder at work. Mr A visited his general practitioner who referred him a physiotherapist, Ms B.

Physiotherapy
Ms B saw Mr A on 15 February, noting that he had sustained a similar injury in September 2005. She completed an assessment and a treatment plan. Ms B provided Mr A with 12 treatments, but he continued to experience pain in his left shoulder, spasms and pain radiating down his left arm, and numbness in his left hand. Ms B suspected that Mr A had a cervical spinal disc injury and referred him to orthopaedic surgeon Dr E.

Orthopaedic assessment — Dr E
Dr E saw Mr A on 16 April 2007. Dr E noted that subsequent to the lifting episode, Mr A developed quite severe pain in his neck, which had gone on to radiate down his left arm. Dr E noted, "Those changes are fairly typical of C5–6 pathology in the cervical spine with nerve root irritation." Dr E ordered further radiological examination of Mr A's cervical spine and wrote to Ms B to advise her that Mr A would be "well advised not to force the head into extension and compression, and when lifting to carry the neck towards his chest rather than letting the head go into extension." Dr E advised Mr A that he could continue to work, and that he would be in contact again when the results of the X-rays were available.

Chiropractic assessment — Dr Parker
On 27 April, Mr A consulted chiropractor Sean Parker at Certified Spinal Health Foundation Associates Ltd (Spinal Health)[1] for a second opinion. Mr A did not want to have surgery as he was concerned about the associated risks. Mr A stated:

> "I explained what the problem was with my neck and the [diagnosis] I had received, however Dr Parker still wanted to examine me. He told me [a lot] of things that [were not] true but sounded good. At the time he explained that he had his neck fused with surgery and regretted having this procedure done and that it was unnecessary. Dr Parker told me he could have my injury fixed within a few visits and not to worry about it".

[1] During the period under investigation, Spinal Health employed Mr Parker as a chiropractor and the manager of the clinic. The Chiropractic Board confirmed that Mr Parker was a registered chiropractor during these events. However, on 1 April 2008, Mr Parker advised the Chiropractic Board that he no longer offered chiropractic options in his practice or held himself out as a chiropractor.

Mr Parker told Mr A that the problem was his neck, and explained the diagnosis he had been given. Mr A recalls that the examination lasted about 20 to 30 minutes, and he gained the impression that the treatments would take a similar time.

A health questionnaire was completed for Mr A at his initial visit. These pages appear to have been completed by the receptionist.[2] There are additions to this form in other handwriting, which seems to be Mr Parker's, which list a number of anatomical features, including various vertebrae and ribs, and note that Mr A had previously been treated by a physiotherapist. Under the heading "Chief Complaint" it is noted, "Surgeon sending for MRI X rays — something C6 pt says."[3]

Mr Parker provided a copy of Mr A's treatment record sheet. It notes that Mr A was examined on 23 April and sent for X-rays, and that he was due to have an MRI the following day.

Mr A was sent for X-rays and returned to see Mr Parker on 27 April with the X-ray films and report. Mr Parker left Mr A watching a DVD while he took the X-rays away to examine them. He returned after about 10 minutes and told Mr A the results. Mr A stated, "It didn't sound good." He said Mr Parker "did a graph" and gave him two biomechanic[4] treatment options. Mr Parker told him that Spinal Health "hand picked" their chiropractors from around the world to perform biomechanics,[5] and if he followed through with the recommended treatment, he would have a "spine that would be back to the way it should be as a baby" and he could live 10 years longer.

Mr A was given an information sheet headed, "Maintaining Proper Habits", which advised, "Since you have had biomechanic pathologies causing unfelt problems for a while, your body has become molded to that position. As the body heals with each biomechanic correction, life is restored." The information sheet outlined the biomechanic treatment options. The options were:

> "**Option A** Clients: Our Specialized biomechanic correction protocol returns the leverage of the body itself, greatly increasing your ability to rise with life. The stability gained returns your body's effectiveness against gravity.

[2] The handwriting on this document is the same as on the Engagement Agreement, which was signed off by a person (not identified) who followed the signature with "(receiptionist [sic])".
[3] Ms C, who worked at Spinal Health as the Office Manager/receptionist from August 2006 until April 2008, was interviewed in July 2007 in relation to another case involving Mr Parker. Ms C advised HDC that Mr Parker employed a personal assistant to write up patient notes. Ms C stated that the notes were written on cardboard cards and stored in a plastic box/filing cabinet.
[4] At no point during the investigation did Mr Parker explain what he meant by the term "biomechanics", nor did he provide any evidence of his qualification in this field.
[5] Ms C advised HDC that she was not given any information to provide clients that explained biomechanics. Mr Parker advised the Spinal Health staff that if people telephoned for information they were to say "its like chiropractics" and that the approach was to "dodge" questions and book the clients. Mr Parker had had a video made by an ex-client, of about 12 to 15 minutes' duration, which promoted Biomechanics and was shown to clients. She recalled that the video started, "The next 12 minutes will be the most important in your life."

> **Option B** Clients: The Spinal Health Foundation's remolding program along with our specialized correction and prevention approach, will return your spinal curvatures toward the stability you are designed to have. These special remolding exercises will be shown to you as soon as your condition allows."

The information sheet advised that the third critical component of biomechanics was "maintaining proper habits" and stated that patients need to change and maintain their habits for the pelvis to maintain its proper position. These changes were listed and included: "Do **not** cross your legs … Do **not** sleep on your stomach … Don't stand on one leg … Stand tall, breathe deep and **smile**." The sheet advised that after the first treatment the patient "may feel better, worse or no change", and explained that this is because every person feels different. The information sheet concluded, "To live a life of ability and health so you can live your potential, you must '**stay the course**' of consistency and prevention. Each treatment builds on the last."

Option A was a six-month "deep treatment programme" and required a payment of $3,700 prior to commencing the programme. Option B was a corrective and prevention programme.

Mr Parker recommended to Mr A that he take up Option A. He provided him with the cost of the treatment on a weekly basis, and took him to the receptionist to fill in the contract. Mr A told the receptionist that he was concerned about whether he could afford the treatment as he was off work on ACC. The receptionist spoke to Mr Parker about Mr A's concerns. Mr Parker told Mr A that it was "only $25 per week", that he would be "out of pain in no time, back to work, off ACC and … would be able to afford it".

Mr A said, "I was put on the spot. … Dr Parker left and the receptionist came back in. I felt obligated to sign the contract so I did."

Contract

When Mr A returned to Spinal Health on 27 April 2007, he signed the Spinal Health Engagement Agreement for the Spinal Health Deep Treatment Programme. The agreement stated that Spinal Health Foundation Associates Ltd, "**GUARANTEES** that if the Patient follows through with the Program the Patient will have an improvement for the better in his/her structural stability/posture demonstrated by before and after patient profile photographic or x ray evidence."

The agreement specified a "PATIENT ONE-TIME FEE" of $3,700 "to be paid on the signing of this Agreement (plus ACC payments)."[6] The terms and conditions of "engagement" were that Spinal Health would provide "over a period of six months a series of treatments for the Patient at intervals recommended by Spinal Health to achieve the guaranteed results" and that "in the event that the guaranteed results are not achieved", Spinal Health will refund the "Patient fee in full to the Patient (excluding ACC payments received)".

The agreement noted that the patient "must attend at the Spinal Health Clinic when required by Spinal Health for the prescribed course of treatment" and agree to follow the recommendations of Spinal Health relating to "changing habits and rehabilitation". The agreement also listed possible additional expenses which included orthopaedic supports, laboratory tests, X-rays "and/or analysis" and nutritional support.

Mr Parker took a left profile unclothed head, neck and shoulder photograph of Mr A. Mr A was given a follow-up appointment for 30 April.

Mr A arranged finance to cover the $3,700 for the six-month treatment fee with Spinal Health.

Spinal Health treatment

The treatments Mr Parker provided to Mr A, conducted approximately every second day between 30 April and 9 July 2007, were recorded as brief one-line notes. There were a total of 28 treatments. Most of the treatment notes were completed by Mr Parker, but a number appear to have been written by another person. There is no record of a treatment plan.

On his third visit on 30 April, Mr A told Mr Parker that he was dissatisfied with the treatment timeframe and that although his problems were with his neck, the treatments had focussed on his posture. Mr Parker convinced Mr A to carry on with the treatment and recorded that consultation as, "improved mobility, wants to continue w/tx [treatment]".

[6] These pre-pay or "wait list" systems for treating patients began to emerge in New Zealand in 2004. The business model is based on the principle that some consumers require long-term corrective care from a chiropractor and it can be more economical for those consumers to agree to a fixed term pre-payment treatment plan with reduced payments. Pre-payment programmes are becoming more widely used by chiropractors in New Zealand, and the New Zealand Chiropractors Registration Board has set clear guidelines on how the pre-payments schemes should be administered. Wait List practices should comply with the Chiropractic Board's *Code of Ethics and Standards of Practice*, and ensure that consumers receive adequate information about their condition and the treatment options, the distinction between corrective care and relief care, and the risks, side effects, benefits and costs. Patients should be given a reasonable period to consider the agreement before signing up, and the option of withdrawing their consent to services at any time during the treatment period.

"Mr A stated:

> "I cancelled my contract with [the finance company] and Spinal Health Foundation. Dr Parker rang me later that night at home and after 8–10 minutes of conversation convinced me to carry on with the treatment.
>
> After another week of treatment I was still unsatisfied and still in pain but Dr Parker was convincing me that I was doing well and improving. My pain was coming from my neck but Dr Parker continued to work on my posture which was not helping with the pain and discomfort."

Dr E

On 8 May, Dr E wrote to Ms B to advise her that Mr A's MRI report indicated a very worn intravertebral disc at C5–6 with major cramping of the root canals. Dr E advised, "He really does need surgery to open up the root canals and to stabilise that level in the spine." He stated that Mr A needed to stop physiotherapy, which could "easily just keep his symptoms active for him, noting the amount of change that is seen on the MRI scan". Dr E advised Ms B that he had informed Mr A that surgery was the preferred treatment option. He said he would contact orthopaedic consultant Dr D to ask if he would operate on Mr A.

Dr D

On 31 May, Dr D examined Mr A and wrote to Dr E and Mr A's GP to advise them:

> "I have had an extensive discussion with [Mr A]. We have discussed treatment options including conservative care versus surgery. … He wishes to proceed with surgery. … I have discussed with him the nature of the operation including the potential complications of infection, dural tear, nerve injury, paralysis, non union, adjacent segment changes and failure to resolve symptoms. I have explained that there is an 85% chance the operation will significantly relieve his left arm symptoms. The effect on the neck pain is less predictable. He is aware of this and wishes to go ahead with surgery. … I have written to ACC to request funding for the surgery and will schedule him once we have approval."

Spinal Health treatment

Mr A continued to be treated by Mr Parker at Spinal Health. On 8 June, Mr Parker took a clothed right profile head, neck and shoulder photograph of Mr A.

On 2 July, Mr Parker recorded that Mr A had "no shoulder pain, no back pain", but at the following appointment noted that he had "slight neck ache".

Withdrawal from treatment

On 11 July, the clinical note records that Mr A telephoned to advise that he wanted to discontinue the treatment, and that "Dr Parker called and encouraged [him] to continue on plan. Scheduled for Friday 13-7-07. Trying to get refund … Payment due in payment book from [finance company] x changes mind."

There was a further note, "Called tried to reschedule several times — says he does not want to come in any more."

Request for refund
On 21 July 2007, Mr A wrote to Spinal Health to advise that he had received 29 treatments from Mr Parker over three months. At $56 per visit this was a total of $1,624.

Mr Parker responded to Mr A on 6 August, advising him that the option he chose, the Spinal Health Deep Treatment Program, "does not contain a per treatment fee of 56 dollars per treatment as you suggest.[7] There is no provision in the contract for changing your mind. The terms were read, agreed to and signed by you on the 27-04-07, they are very clear." Mr Parker stated that Mr A was "clearly progressing and improving". He stated that even though Mr A had voided the guarantee by not attending when required for the prescribed course of treatment it was "achieved and captured" in the exam pictures and progress photos. He stated that Mr A's change in satisfaction "seems to coincide" with the first payment due from the finance company.

Mr Parker encouraged Mr A to continue with his treatment, but noted that the guarantee would not be reinstated for future treatment, "to avoid tampering with the results". Mr A said:

> "I feel I was lied to, misinformed, deceived, manipulated and pressured even before I signed the contract. A contract and treatment was purely based on my posture and not the real medical problem."

Mr A advised HDC that he was covered by ACC, and at $3700 for 29 visits, he actually paid a great deal more than $56 per treatment.

Further assessment/treatment — Dr D
Dr D saw Mr A again on 21 August and recorded that he was still troubled by significant pain radiating down his left arm, and intermittently into the base of the right side of his neck, and occasionally into his right lateral upper arm. Dr D noted that Mr A was scheduled for surgery on 4 September. Dr D ordered preoperative blood tests, and hard and soft collars for Mr A for the postoperative recovery period.

On 4 September, Dr D performed a C5/6 anterior cervical discectomy fusion and plating on Mr A.

On 10 October, Dr D saw Mr A for a four-week post-surgery check and noted that he had no significant left arm pain. X-rays showed that he had satisfactory positioning of the bone graft and plate. Mr A was referred for physiotherapy for a range of movement and strengthening programme, and Dr D planned to see him again in six weeks for a further review.

[7] Ms C told HDC (in relation to another case involving Mr Parker) that the treatment fees were $56 if patients did not have ACC cover.

On 27 November, Dr D noted that Mr A had normal power in his left arm and was "overall" happy with his progress. Dr D cleared Mr A for return to work on 10 January 2008.

Disputes Tribunal hearing
On 18 October 2007, Mr A took a claim to the Disputes Tribunal seeking a refund of the $3,700 that was paid on his behalf by the finance company. Mr A claimed that Mr Parker and Spinal Health breached the written agreement and the Consumer Guarantees Act 1993, particularly, "to provide healthcare services with reasonable care and skill". The claim was upheld.

On 7 November, Mr Parker wrote to the Disputes Tribunal Chief Referee appealing the decision. He stated that there was photographic evidence that "clearly showed a marked improvement" in Mr A's condition "thus meeting the contract agreement upon standard of measure". He also noted, "I am an employee of Certified Spinal Health Associates Ltd. I am not a director, not an owner of the company." The appeal was upheld.

Additional information

On 17 October 2008, Mr Parker provided HDC with a copy of Mr A's clinical records, two photographs and a copy of the Disputes Tribunal decision of August 2008 upholding his appeal. He declined to provide an explanation of biomechanics or details of his treatment plan for Mr A.

Mr Parker also subsequently declined to respond to the information and findings in my provisional opinion other than to indicate that he considered it all to be "fraud".

Spinal Health did not respond to the provisional opinion.

Opinion: Breach — Mr Parker

Mr Parker indicated that he strongly disagreed with my preliminary findings. However, he has not provided a convincing argument or any new information that has led me to change my opinion. In my view he has breached the Code of Health and Disability Services Consumers' Rights in the following ways.

Information provided
In 2007, Mr Sean Parker was a registered chiropractor, and as such was bound by the New Zealand Chiropractic Board's Code of Ethics and guidelines.

On 27 April 2007, Mr A consulted Mr Parker at Spinal Health about his painful neck and left arm. He had been receiving physiotherapy for his symptoms and had been referred to an orthopaedic surgeon who advised that he required surgery on his neck.

Mr A did not want to have this surgery because of the risks involved and decided to seek another opinion.

At his first visit to Spinal Health, Mr A was shown a promotional video about biomechanic chiropractic, a specialty Mr Parker practised. It appears Mr Parker routinely showed his new patients this video. Mr A was also provided with an information sheet. The information sheet focussed on the importance of the patient adopting and maintaining "proper habits", but gave no information about biomechanics and advised only of the expected outcomes of the Option A and B treatment plans.

There is no evidence that Mr Parker explained his planned programme of care to Mr A. After the first three visits, Mr A questioned the treatment methodology, but was still not provided with accurate information. Independent chiropractor Margie Blacklow advised that Mr Parker should have provided Mr A with documentation that included his philosophy of treatment, benefits that could be expected from this form of treatment protocol, and the associated risks and side effects. This information was vital for Mr A to make an informed choice.

It is clear that Mr A had little understanding of what was involved in the treatment Mr Parker offered. He was under the impression that his treatment times would be the same as the initial assessment examination, which took 20 to 30 minutes, and recalls being told that his symptoms would be "fixed within a few visits". When, after three visits, Mr A saw no improvement in his symptoms he talked to Mr Parker about his concerns about the appropriateness of the treatment, because it appeared to focus on his posture instead of his neck. He enquired about withdrawing from the treatment agreement, but Mr Parker convinced him that he was "doing well and improving". Mr Parker still did not outline specific treatment goals to relieve Mr A's pattern of presenting symptoms.

Informed consent

Ms Blacklow advised me that Mr Parker should have provided Mr A with all the information a reasonable consumer would expect to receive, in written format, before the agreement was signed at the end of the second visit. This was vital for Mr A to make an informed choice. Ms Blacklow stated that it is normal chiropractic practice for written informed consent to be obtained prior to cervical spine manipulation. It should be signed by the provider and patient, and record that the treatment plan has been explained and the treatment consented to, once appropriate questioning and tests have been conducted.

Ms Blacklow stated:

> "I am unable to find any pre-cervical manipulation questioning, testing of informed consent in the documents I have received. … Legislatively alone I would say it was a severe departure from the standard."

Accordingly, in my opinion Mr Parker breached Rights 6(1), 6(2), and 7(1) of the Code of Health and Disability Services Consumers' Rights (the Code).[8]

Standard of care

Ms Blacklow advised that Mr Parker appears to have assessed Mr A's problem as being caused by the structural stability and posture of his full spine, and planned his programme of care with the philosophy that a full spine treatment regime would relieve his neck pain. She stated that the exact origin of Mr A's pain would have been difficult to determine even with the pathology identified by X-ray and MRI, because of the nature of his pain patterns, and that Mr Parker's plan to assess alternative factors for the origin of the pain and his plan to improve structural stability cannot, therefore, be disregarded. Ms Blacklow stated that this treatment protocol is acceptable as long as specific goals and outcome measurements are followed, explained and monitored, but she believes that Mr Parker's treatment options for Mr A were based on "little clinical reasoning".

Ms Blacklow advised that the initial requirement of chiropractic treatment is to obtain a good case history. The history needs to be detailed and, in Mr A's case, specific to the cervical spine and associated neurological patterns. This is necessary to address the nature of the presenting complaint and to determine if the problem has the potential to respond to chiropractic treatment. Ms Blacklow advised that Mr Parker's history taking was inadequate. The history should have focussed on Mr A's presenting complaint and general health, and specific questions relating to his neck conditions, such as any headache, dizziness, weakness, numbness, and conditions that alleviated or aggravated the condition.

The clinical records provided indicate that Mr Parker performed some of the recommended physical examination tests, but Ms Blacklow had difficulty in determining exactly which tests he did perform. The documentation he provided does not indicate the grading scales he used for neurological testing, or what neural levels were tested. He did not provide any protocols for vertebral arterial testing insufficiency, or record any blood pressure readings. Ms Blacklow noted that Mr Parker has not explained his treatment plan for Mr A and the results of the treatment. She stated that the appropriateness of Mr Parker's treatment of Mr A would have been acceptable if his plan was based on "true patient need and tailored to meet Mr A's particular requirements", but this was not done. She advised that Mr Parker's lack of clinical standards with regard to assessing a full clinical history and physical examination protocols was a moderate departure from the standard.

Mr A discharged himself on 11 July 2007, after 29 treatments, because his symptoms were not improving. He was still suffering from significant pain radiating down his left arm, which was also present intermittently in the base of the right side of his neck and right upper arm. These symptoms resolved following C5/6 spinal disc fusion and plating by orthopaedic surgeon Dr D on 4 September.

[8] See Appendix 2 for details of the relevant Code Rights.

I am satisfied that Mr Parker did not provide Mr A with a reasonable standard of treatment and care and, accordingly, in my opinion, Mr Parker breached Rights 4(1) and 4(2) of the Code.

Documentation
As already discussed, Ms Blacklow noted that Mr Parker's documentation of Mr A's history and physical examination was very limited. He also did not document his interpretation of Mr A's X-rays.

The New Zealand Chiropractic Board's Code of Ethics[9] states that a chiropractor should keep a record of patients' progress. These records must be capable of being interpreted by the chiropractor's colleagues. Each consultation, which must be dated, should include brief subjective comments from the patient or guardian as well as the chiropractor's observations, the examination findings, all procedures performed, significant concerns about findings of progress, advice to the patient, any non-compliance, and the date of the next visit. Any informed choice or consent to treatment obtained should also be recorded in the notes.

Ms Blacklow noted that Mr Parker's documentation of the physical examination tests he performed have been indicated by a line through a box, or a "P" listed by "compression". She said that this does not provide information about the type of compression test performed. His documentation does not record the grading scales he used for his neurological tests or the neural levels tested. He also did not document the protocols he used for vertebral arterial insufficiency testing.

Ms Blacklow stated that Mr Parker's records appear very limited and do not appear to comply with the Chiropractic Board's guidelines.[10] She advised that the chiropractor is responsible for providing adequate documentation that would enable a colleague to provide ongoing care. She stated that Mr Parker's "documents are severely lacking in regard to accurate history, physical examination protocols, informed consent and general individual treatment documentation".

[9] The Code of Ethics is available on the New Zealand Chiropractic Board's website: http://www.chiropracticboard.org.nz/Site/code_of_ethics.aspx.

[10] The New Zealand Chiropractic Board Guidelines state, at 4.6.3, that "in addition to the initial case history and examination information a Chiropractor should keep a record of patients' progress. Records must be capable of being interpreted by the Chiropractor's colleagues, and should include:

1. Date of each consultation;
2. Brief notes about the subjective comments made by the patient or guardian, along with the Chiropractor's observations;
3. Examination findings recorded;
4. Informed choice/consent obtained;
5. All procedures performed on the patient;
6. Significant concerns the Chiropractor may have about the findings or the patient's progress;
7. Advice given to the patient;
8. Patient non-compliance with the Chiropractor's instructions;
9. Date of the next follow-up visit.

Mr Parker has not explained or defended his limited record-keeping. He has provided very limited information despite being given the opportunity to provide more.

It must be noted that it is through the medical record that health professionals have the power to produce definitive proof of a particular matter. A High Court ruled that health professionals whose evidence is based solely on their subsequent recollections (in the absence of written records offering definitive proof) may have their evidence discounted.[11]

In my opinion, Mr Parker's failure to adequately document his examinations and treatment of Mr A amount to a breach of Rights 4(1) and 4(2) of the Code.

Exploitation
At the second consultation, Mr Parker gave Mr A the results of his assessment, and outlined two biomechanic treatment plan options, recommending that Option A would be the most beneficial. Option A was a six-month "deep treatment programme". Option B was a corrective and preventative programme.

Mr Parker asked the clinic receptionist to provide Mr A with an Option A treatment agreement. The agreement stated that the deep treatment programme "guarantees" the patient will have "improvement for the better" if he or she follows through with the programme's series of treatments over a period of six months. The agreement required the patient to attend the Spinal Clinic "when required" and to agree to the clinic's recommendations relating to changing habits and rehabilitation. The patient was required to pay, on the signing of the agreement, a one-time fee of $3,700. Mr A was concerned about whether he could afford the treatment and discussed this with the receptionist, who brought this to Mr Parker's attention.

Mr Parker told Mr A that it was "only $25 per week", that he would be "out of pain in no time, back to work, off ACC and … would be able to afford it". Mr A stated, "I was put on the spot." He signed the agreement and obtained a loan for $3,700.

[11] *Patient A v Nelson-Marlborough District Health Board* (HC BLE CIV-2003-2004-14, 15 March 2005).

The New Zealand Chiropractic Board has set up clear guidelines[12] for chiropractors choosing to offer pre-payment programmes to patients. The guidelines specify that chiropractors must allow a patient to withdraw at any time. The patient must be allowed a seven-day "cool off" period and, if the patient chooses to withdraw from the agreement, he or she will owe only the costs of the visits and services at the chiropractor's normal rates. The guidelines state, "A Chiropractor must not leave a patient feeling pressurized or coerced into entering a contracted treatment plan."

When Mr A attended his third appointment, he told Mr Parker that he was dissatisfied with the treatment timeframe and that, although his problems were with his neck, the treatments focussed on his posture. He cancelled his contract with Spinal Health and the finance company. Mr Parker telephoned him at home that evening and convinced him to continue with the treatment programme. However, Mr A continued to have reservations about the effectiveness of the programme, because it was not relieving his pain.

Ms Blacklow advised that it is apparent that Mr Parker did not comply with the Chiropractic Board's guidelines regarding pre-payment plans. The information he gave Mr A in regard to his treatment and pre-payment was inadequate. She stated that this would be viewed by peers as a severe departure from the standard.

On 11 July, Mr A telephoned the clinic and said that he was discontinuing his treatments. Mr Parker telephoned Mr A back and encouraged him to continue on the plan, and rescheduled his appointment. Mr A did not return to the clinic. His treatment record sheet notes that Mr A was contacted "several times" to try to get him to reschedule. Mr A told the clinic staff that he did not want any further treatment.

The Code[13] states that patients are entitled to refuse services and to withdraw consent to services. Mr A was dissatisfied with the treatment he was receiving and on two occasions tried to withdraw from the treatment programme. On the first occasion he was convinced to continue and, when he finally decided that he would withdraw,

[12] The New Zealand Chiropractic Board Guidelines state, at 3.1.13, that: "where a Chiropractor offers a pre-payment scheme then it shall be explained, to the patient, in advance. All treatment plans that have a contractual basis for pre-payment of care must comply with the following:

a) Allow the patient to 'cool off' within seven days and, in that time, a patient can terminate the agreement and owe only the costs of the visits and services used at the Chiropractor's normal cost rates.
b) It is explained, to the patient, prior to commencement of treatment, whether the payment program is time based or just visit number based.
...
d) Where the pre-payment is for a number of visits then the patient must be made aware, prior to signing, that if they withdraw any repayment is based on the number of visits made and the number left as a cost per visit that the Chiropractor makes the patient aware of before signing.
e) Patients must be allowed to withdraw at any time.
f) The plan is based on true patient need and tailored to meet a particular patient's needs.
…
j) A Chiropractor must not leave a patient feeling pressurized or coerced into entering a contracted treatment plan.

[13] Right 7(7).

several attempts were made to get him to change his mind. The Code[14] also states that patients have the right to be free from coercion and harassment or other exploitation. It appears that Mr A was correct in believing that he was "misinformed, deceived, manipulated and pressured" during his treatment programme and "even before" he signed the contract on 27 April 2007.

Accordingly, in my opinion Mr Parker breached Rights 2 and 7(7) of the Code.

Opinion: Breach — Certified Spinal Health Foundation & Associates Ltd

During the period under investigation, Mr Parker was an employee of Certified Spinal Health Foundation Associates Ltd (Spinal Health).[15] Under section 72 of the Health and Disability Commissioner Act 1994 ("the Act") an employer is liable for acts or omissions by an employee unless the employer proves that it took such steps as were reasonably practicable to prevent the employee from breaching the Code.

Spinal Health has not provided any information to show it exercised any authority over Mr Parker's conduct other than to support him in his endeavours to convince Mr A to firstly sign up for a pre-payment treatment programme and then continue the treatment when he wished to withdraw. Spinal Health was a party to the engagement agreement with Mr A.

Spinal Health failed to take reasonably practicable steps to prevent Mr Parker from breaching Rights 2, 4, 6 and 7 of the Code. Therefore, Spinal Health is vicariously liable for Mr Parker's actions.

Other comment

Mr Parker's registration

I note that Mr Parker is no longer registered as a chiropractor with the Board. He should be very careful not to undertake any activities restricted to registered chiropractors under the Health Practitioners Competence Assurance Act 2003[16] *and* he should inform his clients that he is not a registered chiropractor and that he does

[14] Right 2.
[15] On 7 November 2007 in relation to the dispute with Mr A about fee refund, Mr Parker wrote to the Disputes Tribunal Chief Referee stating, "I am an employee of Certified Spinal Health Associates Ltd. I am not a director, not an owner of the company".
[16] As a non-registered chiropractor, Mr Parker is not allowed to refer patients for X-ray or to undertake cervical manipulation.

not have any formal qualifications in biomechanics. As an unregistered practitioner, he is still subject to the Code.

Follow-up actions

- Mr Parker will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
- A copy of this report will be sent to the New Zealand Chiropractic Board.
- The New Zealand Chiropractic Board will be asked to consider a competence review should Mr Parker seek to renew his registration.
- A copy of this report with details identifying the parties removed, except Mr Parker and Certified Spinal Health Foundation & Associates Ltd, and the expert who advised on this case (Ms Blacklow), will be sent to the New Zealand Chiropractors Association, the Ministry of Health, the District Health Board, and the Accident Compensation Corporation, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes, on completion of the Director of Proceedings' process.

Addenda

The Director of Proceedings decided to lay a charge of professional misconduct before the Health Practitioners Disciplinary Tribunal. The matter was heard together with 07HDC17307 on 24 May 2010. It proceeded by way of an agreed summary of facts. In its decision dated 15 June 2010 the Tribunal upheld all particulars and found Mr Parker guilty of professional misconduct.

The Tribunal imposed the following penalty:

- 18 months suspension to be followed by 18 months supervision with regular reports being provided to the Board followed by a further 18 months of case load supervision.
- Conditions including that prior to recommencing practice he undertake training and demonstrate competency to the satisfaction of the Chiropractic Board in:
  a. fundamental Chiropractic assessments and examinations;
  b. risks associated with the routine use of x-rays and the appropriate assessments needed prior to ordering them;

c. Informed consent ethics and the provision of information to clients;
d. Client-centred practice;
e. ethical business practice for chiropractors; and
f. ethics generally.

- He is also to provide a mental health assessment to the Board.
- Censure.

No fine was imposed due to Mr Parker's financial situation; however costs of $5,000.00 ($3,000 for the Director, $2,000 for the Tribunal) were awarded.

The Tribunal's full decision can be found at:
http://www.hpdt.org.nz/Default.aspx?tabid=267

The Director subsequently decided to also commence proceedings in the Human Rights Review Tribunal in order to seek compensation for the consumer. The matter was settled between the parties without a statement of claim having to be filed.

Appendix 1 — Expert advice from chiropractor Margie Blacklow

"I have been asked to provide expert advice to the Health and Disability Commissioner on case number 08/14166.

I have read and agree to follow the Commissioner's guidelines for independent advisors. I agree there is no conflict of interest with the case in question. My professional clinical opinion will be provided, this is based on my professional history. I have an undergraduate Bachelor of Applied Science (Chiropractic) Degree from Phillip Institute (Melbourne) and a Master of Applied Science (Musculoskeletal Management), RMIT (Melbourne). I have practised in both Perth, Western Australia and Christchurch, New Zealand. My passion is sports chiropractic and I now practise in a multi-disciplinary Sports Medicine clinic in Christchurch, New Zealand. I have held executive positions with the Chiropractic Associations both in New Zealand and Australia, where my portfolios have included developing ethical and standard of practice guidelines.

Please find below the responses for the advice required by your office as requested in correspondence dated 19 February 2009.

I have reviewed the documents forwarded to me by HDC:

1. Letter from HDC outlining the complaint and requesting an opinion.
2. Letter of complaint from [Mr A] to the commissioner.
3. Clinical documentation from Mr. Parker relating to [Mr A's] treatment and assessment.
4. Information from Ms B physiotherapist and documentation from orthopaedic surgeons [Drs E and C].
5. DVD labelled Target.

I have been asked to provide expert advice on the following:

1. Please comment generally on the standard of care provided by Mr. Parker to [Mr A].
2. Please comment on the standard of Mr. Parker's clinical assessments/examinations of [Mr A] in 2007. (If applicable) What further assessments/investigations should Mr Parker have initiated?
3. Please advise on the appropriateness of the treatment Mr. Parker provided to [Mr A] in 2007.
4. Please comment on the adequacy of information Mr. Parker provided to [Mr A] in 2007.
5. Should Mr. Parker have contacted [Mr A's] physiotherapist and doctor to discuss his plan of treatment?
6. Was Mr. Parker's documentation of an appropriate standard?

Appropriateness of Treatment

Advice on the general standard of care provided by Mr. Parker to [Mr A] from the documentation provided.

Upon reviewing all the documents and in particular the document labelled 'Spinal Health Agreement', it would appear that the program of care that Mr. Parker felt appropriate for [Mr A], was improvement of the structural stability/posture of the full spine. I am presuming that Mr. Parker provided this program of care, with the philosophy that this full spine treatment regime would relieve [Mr A's] cervical spine pain for which he was seeking treatment/second opinion.

The documentation I was able to review included a very limited history, physical examination and no interpretation of x-ray. It would appear that [Mr A] has been placed on a generic program of care, and not a specific neurology based treatment regime. This treatment protocol is acceptable as long as specific goals and outcome measurements are followed, explained and monitored.

Due to the nature of pain patterns, even with pathology listed on X-ray and M.R.I it is difficult to determine the exact origin of pain. It is not until after further tests and results that we know [Mr A's] pain origin is truly discogenic in nature.

Therefore we cannot disregard Mr. Parker's plan of action with regard to assessing alternative factors for origin of pain, and his treatment regime of improving the structural stability of the full spine to relieve cervical spine pain. However, outcome measures should have been put in place and monitored rigorously. Mr. Parker should have communicated his philosophy and reasoning of full spine treatment to relieve his presenting symptom pattern to [Mr A] in a better manner.

From the documents there appears to be little clinical reasoning that forms the basis which treatment options for [Mr A's] therapy was established.

According to [Mr A's] letter dated 18 August 2008 to HDC, it appears that after the history, physical examination and scoliosis X-rays were assessed [Mr A] was then given two options of treatment, Options A or B.

Option A

I take is a pre-payment plan where [Mr A] states that Mr. Parker said 'my spine would be back to the way it should be as a baby and that I could live 10 years longer as long as I follow through with the treatment.' I am unaware of any scientific justification for this statement. Mr. Parker may have some clinical justification for this.

Option B

'pay as you go, 3 days a week'

[Mr A] has then signed a pre-payment agreement, to start with Option A treatment program.

I can see from the correspondence reviewed from [Mr A], that Mr. Parker has not explained his program of care which includes treatment methodology in an accurate manner, as after the first 3 visits, [Mr A] was questioning the lack of treatment to the cervical spine and tried to cease further care.

The appropriateness of treatment would have been acceptable if the plan was based on true patient need and tailored to meet [Mr A's] particular requirements.

Due to the lack of Mr. Parker's clinical standards with regard to assessing a full clinical history and physical examination protocols. I believe this to be a moderate departure from the standard.

Information Provided

Mr. Parker should have provided [Mr A] with all the information he would expect to receive in a written format considering Mr. Parker wanted to have an "agreement/program" signed at the end of the second visit.

As Mr. Parker wanted to provide a service he "believed" would be effective, even though it may not have been proven to scientific or evidence based principles. He should have provided [Mr A] documents that included his philosophy of treatment, benefits of this form of treatment protocol, risks associated, side effects, outline the costs and options for exit, as this information was vital for [Mr A] to make an informed choice.

According to HDC guidelines:

Providers have a duty to disclose any lack of scientific evidence for a proposed procedure and give specific reasons for recommending it. Consumers should be given a choice of options so they do not feel pressured into receiving something they are not happy about.

Enough time must be allowed for the provider to consider the information received before consenting to the treatment. This may involve written information to take away and consider.

Mr. Parker has not supplied [Mr A] with any documentation specific to his condition and explained his philosophy of care.

Pre-Payment Scheme Information

Prepayment programs are becoming more widely used by chiropractors in New Zealand. The New Zealand Chiropractic Registration Board has therefore set up clear guidelines on how the prepayment schemes should be administered. As seen section 3.1.13 Code of Ethics and Standards of Practice:

3.1.13 Pre-payment schemes:

Where a Chiropractor offers a pre-payment scheme then it shall be explained, to the patient, in advance. All treatment plans that have a contractual basis for pre-payment of care must comply with the following:

a. Allow the patient to 'cool off' within seven days and, in that time, a patient can terminate the agreement and owe only the costs of the visits and services used at the Chiropractor's normal cost rates.
b. It is explained, to the patient, prior to commencement of treatment, whether the payment program is time based or just visit number based.
c. Where the payment is for a number of visits, then the patient must be made aware of all implications, penalties or offers involved in repayment.
d. Where the pre-payment is for a number of visits then the patient must be made aware, prior to signing, that if they withdraw any repayment is based on the number of visits made and the number left at a cost per visit that the Chiropractor makes the patient aware of before signing.
e. Patients must be allowed to withdraw at any time.
f. The plan is based on true patient need and tailored to meet a particular patient's needs.
g. The program should only reflect treatments or visits that are clinically necessary and appropriate.
h. The plans must have the flexibility to allow for change to the patient's condition.
i. A Chiropractor must not abandon a patient who does not wish to sign a contracted treatment plan or who does not wish to attend an educational session. If a patient seeks care and it cannot be provided for other genuine reasons, those reasons should be fully explained to the patient and the patient referred to another practitioner.
j. A Chiropractor must not leave a patient feeling pressurised or coerced into entering a contracted treatment plan.
k. The patient should be informed that s/he has the right not to enter into the contract. In that event the Chiropractor should refer the patient to another Chiropractor who is able to assist the patient on a 'short-term consultation basis'.

In the case in question we can see a significant number of these guidelines have not been meet by Mr. Parker. Namely points a, b,d,e,f,h,j.

The information that has been given has been inadequate both in regard to treatment and pre-payment, I believe this to be a severe departure from the standard.

Documentation

As Mr. Parker has not defended his documentation or his philosophy of treatment regime in question, I can only comment on the clinical documents provided.

These documents are severely lacking in regard to accurate history, physical examination protocols, informed consent and general individual treatment documentation.

Case History
The initial requirement is to obtain a good case history. This is necessary to address the nature of the presenting complaint and to determine if the problem has the potential to respond to chiropractic care. Therefore the history needs to be much more detailed and specific gearing towards the cervical spine and associated neurological patterns.

The case history and confidential health questionnaire was inadequate in the reviewed documents.

As the cervical spine is the area in question, the history should have included information that is pertinent to the patient's presenting complaint and general health. A specific number of pre cervical neck manipulation questions should been have included in the history prior to cervical manipulation.

There are multiple questions that the provider could ask, some of the types of questions that should be asked to a person presenting with cervical spine issues include:

– Pre manipulation cervical spine vertebral artery insufficiency questions, (Headache, stroke, medication, dizziness, vertigo etc.)

– Pain referral patterns need to draw out specific characteristics of the patient's neck pain and associated symptoms. (Weakness, numbness, pain pictures etc)

– Determine circumstances of onset distribution of pain referral sites (abrupt, trauma, etc)

– Conditions that alleviate or aggravate condition

Physical Examination Protocols

Some Physical Examination protocols for cervical spine would include:

1. Vertebral Artery Insufficiency tests
2. Range of motion tests — active passive resisted
3. Reflexes — grading scales associated
4. Motor/Sensory testing (Myotome/Dermatome) — grading response
5. Palpation restriction
6. Special tests Orthopaedic (there are multiple but some are listed below)
   - Space occupying masses — valsalva,
   - Spinal mechanical dysfunction — soto-hall/percussion
   - Neural compression — compression tests maximal/shoulder depression/ distraction/brachial plexus tension tests/spurlings test
7. Blood pressure

Mr. Parker performed some of the physical examination tests listed above. However from the documentation it is difficult to determine exactly what tests have been done

and to what neurological level the tests have been performed. The results for tests done have been marked by a line through a box or a 'P' listed by 'compression'. I am unable to determine from the documentation what type of compression test was performed. Mr. Parker has not explained/defended his results and his documentation does not indicate what grading scales he used for neurological tests or what neural levels were tested.

Upon reviewing the documents I cannot see any vertebral arterial insufficiency testing protocols, no blood pressure readings and no informed consent documentation.

Consultation records appear very limited and do not appear to comply with legislative requirements as listed below.

I am unsure if Mr. Parker was claiming ACC for [Mr A's] treatments but if he was, then he must comply with their guidelines and keep documents to the standards according to both the ACC and the New Zealand Chiropractic Board Code of Ethics guidelines 4.6.3.

4.6.3 In addition to the initial case history and examination information, a Chiropractor should keep a record of patients' progress. Records must be capable of being interpreted by the Chiropractor's colleagues, and should include:

1. Date of each consultation;
2. Brief notes about the subjective comments made by the patient or guardian, along with the Chiropractor's observations
3. Examination findings recorded
4. Informed choice/consent obtained
5. All procedures performed on the patient
6. Significant concerns the Chiropractor may have about the findings or the patient's progress
7. advice given to the patient
8. patient non-compliance with the Chiropractor's instructions
9. date of the next follow-up visit

ACC Treatment Provider Handbook pg 38 gives recommendations for clinical notes:

- be in ink legible
- include your name signature and date of visit
- provide appropriate clinical reasons to justify the consultation/visit ongoing treatment
- identify a treatment plan and rehabilitation expectations as discussed with the patient and detail progress towards outcomes or rehabilitation goals
- be written at the time of consultation or shortly afterwards
- have any later notes appropriately dated and countersigned
- clearly demonstrate that you conducted each consultation with appropriate levels of skill and care

Records of a follow-up consultation should include:

- an evaluation of the effectiveness of previous treatment
- treatment provided and advice given
- the reason for change, if any, to an earlier treatment plan
- progress towards the outcome
- outcome report, where required

Informed Consent
A patient's informed consent should be obtained prior to commencement of care. Health warnings and associated risk factors of manipulation should be explained especially if treatment of cervical spine is sought. Normally, written informed consent prior to cervical spine manipulation is signed by both provider and patient to state it has been explained and treatment consented to, once appropriate questioning and tests have been performed.

I am unable to find any pre-cervical manipulation questioning, testing or informed consent in the documents I have reviewed.

Considering both legislative requirements and peer equivalence, I believe overall Mr. Parker's documentation is a moderate departure from the standard, legislatively alone I would say it was a severe departure from the standard.

Discussion with Physiotherapist/Doctor to discuss Mr. Parker's treatment plan

As Mr. Parker is a primary heath care provider he does not have to discuss his treatment plan with either [Mr A's] physiotherapist or Doctor. Mr. Parker should however recognise the patient's rights for co-operation between himself and [Mr A's] other heath providers to ensure quality and continuity of care.

There has been no departure from the standard.

Margie Blacklow
Chiropractor"

Appendix 2

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 2
Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

RIGHT 4
Right to Services of an Appropriate Standard

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

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
(b) An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and
....
(2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.
(3) Every consumer has the right to receive, on request, a written summary of information provided.

RIGHT 7
Right to Make an Informed Choice and Give Informed Consent

(7) *Every consumer has the right to refuse services and to withdraw consent to services.*