

Counsellor, Mr B

**A Report by the
Health and Disability Commissioner**

(Case 01HDC07830)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer
Mr B	Provider/Drug and Alcohol Counsellor
Mrs C	Drug and Alcohol Counsellor/Therapist

Complaint

On 16 July 2001 the Commissioner received a complaint from Ms A about Mr B. The complaint is that:

From March/April 1999 Mr B, counsellor, failed to maintain his professional and ethical boundaries while counselling his client, Ms A, by forming a sexual relationship with her.

Additionally Mr B failed to provide counselling services of an appropriate standard in that he:

- *Informed Ms A about his own personal relationship problems in counselling sessions;*
- *Came to Ms A's home for coffee and to be away from his own office environment;*
- *Got Ms A to meet and socialise with his family;*
- *Asked Ms A if she was in love with him.*
- *Further, Mr B discussed his other counselling clients with Ms A.*

An investigation was commenced on 12 October 2001.

Information reviewed

- Complaint letter written by Ms A.
- Written response to complaint from Mr B's lawyer.
- Transcripts of interviews with Ms A and Mr B.
- Witness statement from Mrs C.
- Computer printout of client case record for Ms A from the first Alcohol and Addiction Counselling Centre.
- Letter of support for Mr B from the Senior Therapist, the first Alcohol and Addiction Counselling Centre.
- Client case records for Ms A (22/4/1998 to 26/8/1998 and 28/6/2000 to 25/10/2000) from Care NZ, formerly NSAD.

- NSAD Staff Code of Ethics for the National Society on Alcoholism and Drug Dependence New Zealand.
 - NSAD (Care NZ) Personal File for Mr B.
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Information gathered during investigation

Initial counselling

On 22 April 1998 Ms A attended the first Alcohol and Drug Dependence Centre and saw Mr B, a counsellor. Ms A stated that her ex-partner had been an alcoholic and she was seeking to move on in life and regain her self-esteem. The client case notes record that Ms A then attended counselling with Mr B on four occasions between 22 April and 26 August 1998.

Mr B stated that he thought that he first saw Ms A in 1997, at which time she was working as a registered nurse. Mr B said that clinically Ms A had very low self-esteem and had been beaten severely at one stage and their counselling sessions related to self-empowerment.

At the end of 1998 Mr B left the first Alcohol and Drug Dependence Centre for personal health reasons.

Follow-up contact in rented rooms

Ms A stated that Mr B started his practice in new rooms just after Christmas 1998. Mr B said that he thought he began practising from rooms let to him in a friend's house at the beginning of 1999.

According to client records, Ms A had a one-to-one counselling session with Mr B at his new rooms on 9 February 1999. The recorded details are that the visit was a face-to-face visit of 60 minutes' duration with counsellor Mr B. Mr B stated that the first thing that he can remember in terms of his ongoing relationship with Ms A was that she came for a visit to the new rooms, "really a social visit more than anything else".

Ms A stated that she saw the visit to Mr B at his new rooms as a continuation of counselling that she was having before and had always intended to continue. Both parties agreed that personal issues were discussed during this session and that Mr B's wife's hospitalisation was discussed. Mr B stated that he believed from this point on a friendship was developing and counselling was not needed:

"I mean she was doing really well on her own I mean she was coming to groups, she showed an interest."

Ms A stated that she was seeing Mr B for counselling sessions during this time and that Mr B shared a lot about his wife's suicide attempt and their marriage during these sessions.

In response to my provisional opinion Mr B stated that his relationship with Ms A was formed at a time of intense personal stress and against a background of a previously unblemished record as a counsellor.

At one stage Mr B gave Ms A his business card with his home address and cell phone number and encouraged her to phone if she needed to talk, as she was having unwanted contact from her ex-partner and felt threatened. Ms A stated that she rang him many times.

Mr B began going to Ms A's flat. Mr B said that Ms A told him to come over some time if he wanted to go to her place for a coffee, and so he did. Ms A stated that she was still having ongoing counselling at this time. Mr B denied that formal counselling was continuing at this time. Mr B said there were visits but no formal counselling sessions.

Ms A stated that she shifted flats and that Mr B came to her place every second or third day and that the nature of their conversations was both personal and professional. These visits began at the beginning of 1999. Later, Ms A started going to Mr B's house. This started in February or March following the attempted suicide of Mr B's wife and occurred about once a week. Ms A stated that Mr B then invited her to come to his house.

Mr B stated that he thought that Ms A had come to their place for Christmas and had Christmas dinner with them the year of 1999. Mr B stated that Ms A was a nurse and was there with lots of advice because he needed someone to talk to. His wife had been very ill; she had tried to commit suicide by taking an overdose of sleeping pills and he had had to revive her.

Counselling sessions at the second alcohol and addiction centre

In approximately April 1999, Mr B moved to new rooms at the second Alcohol and Addiction Centre ('the Centre'). Mr B stated that he thought he opened the Centre in June or July 1999. Ms A stated that she thought it was April 1999. Ms A helped Mr B shift to the new rooms and Mr B said there was quite a friendship developing between them during this time:

"[Ms A] was right here and so she was in and out and would say go over for a cup of coffee so I would go over for a cup of coffee."

Confidentiality of other clients

Ms A said that Mr B discussed other clients with her both during the meetings at each other's houses and during counselling sessions. The nature of the discussions was often derogatory and personal. Mr B denied this and said that he was very strict about not discussing other clients.

Sexual relationship

Ms A stated that it was after Mr B left the rooms at his friend's house and moved into the Centre that they first started talking about the sexual side of things. She thought the first sexual encounter at her flat took place in May or June 1999. Mr B said that he thought the sexual relationship began in the beginning of the year 2000 but that he was a "bit hazy" about this.

Ms A said that Mr B initiated the sexual relationship but that she had to take some responsibility because she was “very very willing”. Ms A stated that the relationship had to be kept a secret and that she did not discuss it with anyone until she discussed it with her girlfriend after the first sexual encounter. Ms A stated that the other people who were aware of the relationship were her daughter and her adopted daughter. Ms A said Mr B took her for a weekend away in August 1999 and produced a receipt for a motel, in Mr B’s name and dated 28 August 1999.

At interview, Mr B was asked if he had taken Ms A to a motel. Mr B replied:

“Yeah, [...], we went up there for one weekend just for the Friday night. That’s correct and that would have been ... that’s what I’m saying it was about March of 2000, may have been later ...”

Mr B was shown the receipt from the motel and he stated that he had in mind that the date was March 2000 but the receipt said August 1999 so that is when it must have been.

Ethical considerations

Initially, Mr B stated that the sexual relationship started in April 2000 and that he could not really remember how it started; they just got closer and closer and it was not something he had planned. Mr B further stated that he had reservations because Ms A had been a client but he could not remember whether he discussed ethical considerations with her.

Ms A said ethical considerations were raised early in the relationship, from the first time that Mr B asked her if she loved him while he was still using rooms at his friend’s house. Ms A said that as the counselling sessions continued they continued to discuss “where we were in regard to our feelings” and Mr B told her there was no need to see anyone else as he could separate the two issues. Ms A stated that they often talked about “the ethical thing” and it was something she understood because of her personal code of ethics. Mr B stated that he had a personal code of ethics and Care NZ also had a Code of Ethics and Principles of Practice, and that he tried to adhere to them as best he could.

Ms A stated that although she attended 17 group counselling sessions, she was also involved in one-to-one counselling with Mr B. Ms A was referred to the computer printout record of her counselling sessions where only group sessions were listed. Ms A said that was not correct and that she was:

“God damned annoyed that there was no record of me seeing him in that period of time because there should be. I remember one time going in there and he was working on the computer and he said oh here’s your one [Ms A], motivated, enthusiastic and willing to learn, that’s what he was typing at that time. So where are those records?”

Mr B said that he was not counselling Ms A at the time but that she went to therapy groups and participated in a co-facilitation role. Mr B was referred to the computer printout of the sessions that Ms A had at the Centre. He stated that they were all group sessions that he facilitated, and that he did not see Ms A as a client. Mr B stated that Ms A was showing an interest in becoming a counsellor herself.

Mrs C, counsellor at the Centre, stated that although she had no doubt Ms A had attended all the group counselling sessions as listed there were also “lots of one-to-one sessions” with Mr B or that is what she assumed happened when they went behind closed doors.

Mr B stated that he thought Ms A was aware of the role that she had in the group therapy sessions; that she was there to learn and to participate and he used to ask her what she thought about things. Mr B was told that Ms A believed that she was having counselling sessions and not co-facilitating sessions. Mr B said that he could not argue with what she was saying if that was how she saw it but he certainly never saw it that way. Mr B said there were no financial considerations until Ms A started to go to Mrs C for counselling sessions. Mr B stated that a lot of his clients cannot pay and he never turns anyone away. Ms A said:

“[Mr B] very often used to waive it (the fee) because I was only working part time and when I did give him money I didn’t get a receipt.”

However, when she started seeing Mrs C she would receive receipts for each session. Ms A stated that the only financial records that she kept were for the counselling sessions with Mrs C.

End of the sexual relationship

Ms A stated the sexual relationship ended on 5 November 1999 and Mr B counselled her during the entirety of the relationship.

Initially Mr B stated that he thought the sexual relationship was probably 6 to 8 weeks in duration; it occurred 14 months after the ‘maintenance’ visit in February 1999 and 17 months after he finished counselling Ms A at NSAD. At interview Mr B was unsure when the sexual relationship started and finished but thought it was somewhere in a block of time towards the end of 2000/2001, and that it was six weeks or a couple of months in duration but probably it occurred at the beginning of 2000. Mr B was told that Ms A said the relationship started in mid-1999 and went to the end of 1999. Mr B said, “maybe she’s right” and was very hazy about it.

Mr B further stated that Ms A’s ex-husband had contacted him “a couple of times” unbeknown to Ms A and Mr B had told him that he was having a relationship with Ms A. Mr B said that he had also counselled Ms A’s ex-husband’s second wife and her son. Mr B said that the sexual relationship ended because “she [Ms A] was behaving very badly, ringing up and abusing me and demanding and all sorts of things and I thought I can’t cope with this”.

Mr B said that he told Ms A in anger, “You know bloody [Ms A’s ex-husband] was right” and breached confidentiality. Ms A was very angry and went to Mrs C.

After the relationship

Ms A said that when the relationship ended she made an appointment to see Mrs C. Mrs C stated that she had been aware of Ms A coming in frequently, including at strange times (out of hours), for counselling with Mr B. Mrs C said that prior to her appointment with Ms A she had seen Ms A's name entered in the appointment book under her name and, thinking it was a mistake, checked with Mr B. Mrs C stated that Mr B didn't say much but commented that she should be careful and not believe everything she heard.

The client case records record that the first one-to-one session between Ms A and Mrs C occurred on 10 February 2000. Mrs C stated that Ms A was extremely upset and emotional and shared what had occurred between her and Mr B. Mrs C gave Ms A literature on professional abuse and, following the session, challenged Mr B about Ms A's allegations. Mr B admitted the relationship. Mrs C stated that she gave Mr B and the other male counsellor working at the Centre a handout on professional abuse. Mrs C said Mr B did not say much but she advised him for his own safety to stop seeing female clients for six months and to seek counselling himself. Mrs C stated that in her experience alcohol and drug clients were extremely vulnerable, and counsellors, because of their position of relative power, needed to have firm boundaries to protect themselves and the client.

Mrs C set up a meeting between Ms A and Mr B at Ms A's request and with Mrs C present as her advocate. Ms A stated that a lot of things were discussed at that meeting. She told Mr B that he had said in counselling "you know [Mr B] the man against [Mr B] the Counsellor" and she asked him which one went to bed with her, the man or the counsellor. Additionally, Ms A said that she had to demand an apology because she felt very angry and that Mr B had given an apology "tongue in cheek" and stated that he had no regrets.

Ms A continued to have counselling with Mrs C for a period of two to three months. Mrs C stated that when Ms A started to feel better she referred her to another counsellor at NSAD (now Care NZ). Mr B was Mrs C's employer and she felt she had an ethical dilemma to resolve. Ms A continued to attend Mrs C's group sessions.

Response to Provisional opinion

In response to my provisional opinion, Mr B advised that as a result of his relationship with Ms A, he has suffered loss of reputation, and has lost many of his clients and a number of his friends. Mr B is concerned that future action will impact on his ability to practise, and will exacerbate the financial losses he has already suffered as a result of his relationship with Ms A. Mr B stressed his extreme remorse for any hurt that he caused Ms A and accepted his responsibility for the relationship.

Mr B informed me that he is now receiving fortnightly supervision of his counselling work.

Code of Health and Disability Services Consumers' Rights

The following Right in the Code of Health and Disability Services Consumers' Rights is 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.*

Other Standards

National Society on Alcohol and Drug Dependence New Zealand (NSAD)

STAFF CODE OF ETHICS FOR THE NATIONAL SOCIETY ON ALCOHOLISM & DRUG DEPENDENCE NEW ZEALAND

PREAMBLE

The primary obligation of agency staff is to ensure quality services to clients in treatment. Because the relationship between client and staff is a special one, it is essential that staff have the maturity and ability to handle the responsibility entrusted to them.

NSAD staff and Independent Contractors must at all times realize that they are part of a profession which must watch over its own activities and members. For this reason a Code of ethics that states the behaviour expected of staff is needed.

PRINCIPLE I – BEHAVIOUR TOWARDS CLIENTS

1. A staff member should maintain all client information in the strictest confidence in accord with the Privacy Act and in accord with NSAD Privacy Code.
2. A staff member should be familiar with the Statement of Clients Rights.
3. A staff member should respect all clients by maintaining a nonpossessive and professional relationship with the client.
4. No client should be discriminated against on the basis of race, creed, religion, sex, national origin, sexual preference, disability or political affiliation.

5. A staff member should recognise that the best interest of the client may be served by referring or transferring the client to another agency or service.
6. A staff member should not engage in a sexual relationship of any kind with a client.
7. A staff member should at all times have due regard for the Treaty of Waitangi.

PRINCIPLE II – STAFF BEHAVIOUR TOWARDS OTHER STAFF MEMBERS

1. A staff member should not undermine the work of another staff. Agreed procedures for problems or differences of opinion should be used to settle differences.
2. A staff member should exhibit courtesy and temperance in situations of conflict.
3. A staff member should show a commitment to provide the highest quality of care through personal effort and the utilization of other health services which will benefit the client.

PRINCIPLE III – STAFF BEHAVIOUR TOWARD THE EMPLOYING AGENCY

1. A staff member should adhere to the policies and procedures of The National Society on Alcoholism and Drug Dependence New Zealand as their Employer. If there are questions or a belief that there is a need for change, these are to be communicated appropriately through the Organisational Structure.

PRINCIPLE IV – STAFF BEHAVIOUR TOWARDS OTHER AGENCIES

1. A staff member should be open-minded about treatment in settings other than those used by NSAD.
2. A staff member should be willing to assess other treatment modalities and to utilize other Agencies when this directly benefits the client.

PRINCIPLE V – SELF REGULATING BEHAVIOUR

1. A staff member should show a commitment to realistically assess their own personal strengths, limitations and effectiveness and remain open to feedback and constructive criticism.
2. A staff member should show a commitment to take personal responsibility for continued growth through further education and training.
3. A staff member should refrain from behaviour which reflects badly on themselves and their employing agency.

NSAD CLIENT STATEMENT OF RIGHTS

- CLIENTS have the right to be treated with respect.
 - CLIENTS have the right to receive treatment regardless of race, religion, sex or sexual preference.
 - CLIENTS have the right to be informed of sanctions, rules and regulations prior to entering the programme.
 - CLIENTS have the right to know of any fees charged and methods of payment prior to entering a programme.
 - CLIENTS have a right to a copy of any contract for treatment/accommodation payment entered into.
 - CLIENTS have the right to discharge themselves at any time.
 - CLIENTS have the right to register complaints in accordance with CLIENTS COMPLAINTS PROCEDURES and access to the nominated Clients Advocate.
 - CLIENTS have the right to examine their records in the presence of the Programme Director/Senior Counsellor at reasonable intervals (say once a month) and to rebut any information in the record by entering a counter statement of clarification. All such annotations are to be signed and dated by the client.
 - CLIENTS have a right to confidentiality in accordance with the Privacy Act.
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Opinion: Breach – Mr B

Right 4(2)

In my opinion Mr B breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.

Professional boundaries

The importance of maintaining professional boundaries in the counsellor/client relationship cannot be emphasised enough. In the area of therapeutic relationships, psychologists Stewart and Battle note: ¹

“Ultimately, the best protection for the public occurs when psychologists have a clear sense of professional boundaries and act scrupulously to maintain them.”

I see no reason why such a principle should not apply equally to Mr B, an experienced counsellor who could reasonably be expected to have recognised his boundaries and when they were under threat and becoming blurred. A number of acknowledged signals to a developing inappropriate relationship were present from an early stage. Personal details, such as Mrs B's suicide attempt, were shared with Ms A. Mr B shifted his contact from a professional to a personal location initially giving the reason that Ms A lived alone and therefore her flat afforded privacy and gave him a feeling for where she “was at”. Mr B's disregard for contractual issues such as charging for sessions and issuing receipts for monies further demonstrated his failure to maintain professional boundaries.

Sexual exploitation

By engaging in a sexual relationship with Ms A when Ms A was undergoing counselling from him, Mr B acted unprofessionally and unethically. Ms A went to Mr B for counselling, at a time when she was vulnerable, having suffered severe physical abuse and with low self-esteem. As Ms A's counsellor, Mr B held a position of trust.

Ms A clearly felt attracted to Mr B, who appeared to be interested in her and caring towards her. Mr B betrayed his position of trust by sexually exploiting Ms A. She was evidently left with a feeling of responsibility for the sexual relationship. Ms A said that while the impetus for a sexual relationship came from Mr B she felt a responsibility, as she was “very, very willing”. Although Mr B claimed that he was not in a counselling role during the developing friendship and sexual relationship, I am satisfied that Mr B was her counsellor throughout. Mr B initially sought to locate the sexual relationship at least one year after the evidence showed it happened. When presented with the evidence Mr B then accepted that Ms A's timeframe may well have been correct and that he was a “bit hazy” about times. Even if Mr B had convinced me that Ms A was a former client, I would still have found his conduct unethical.

¹ Stewart, D. & Battle, P. (1999). The Importance of Maintaining Sexual Boundaries with Ex-Clients: A Review and Commentary. *Guidance and Counselling*, 14 (3), 37-39.

It is clear that Mr B recognised that having a sexual relationship with a client was inappropriate. He stated that he had reservations about the relationship for this reason. It is also clear that Mr B was aware of and used the Care NZ Code of Ethics, which states explicitly:

“A staff member should not engage in a sexual relationship of any kind with a client.”

However, Mr B did not heed his reservations and, indeed, told Ms A during counselling that she knew “[Mr B] the man as against [Mr B] the counsellor”. Mr B compromised his role as a counsellor while carrying out what was initially a close personal friendship and then a sexual relationship with Ms A.

Ms A was inevitably damaged by Mr B’s behaviour. Mrs C, the counsellor from whom she sought assistance in dealing with the effects of the sexual relationship, identified that Ms A was “extremely upset and emotional”. By his actions Mr B demonstrated a total lack of professionalism and respect for Ms A. Although I accept Mr B’s remorse for his actions and acknowledge that he has suffered a number of adverse consequences, Mr B clearly breached professional and ethical standards. In my opinion, Mr B’s conduct amounted to a breach of Right 4(2) of the Code.

Action

- I have decided to refer this matter 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 further action should be taken in relation to Mr B.
 - A copy of this opinion, with identifying features removed, will be sent to the New Zealand Association of Counsellors Inc and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes upon completion of the Director of Proceedings processes.
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