Counsellor B

A Public Hospital

A Report by the

Health and Disability Commissioner

(Case 01/09143)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer
Ms B	Provider, Alcohol and Drug Counsellor
Ms D	Witness, Associate of Consumer
Ms C	Witness, Associate of Consumer

Complaint

On 23 August 2001 the Commissioner received a complaint from Ms A about Ms B and a Public Hospital. The complaint is summarised as follows:

- *Ms B, Counsellor assigned to Ms A at an Alcohol and Drug Clinic, initiated a sexual relationship with Ms A which left her feeling worse after treatment.*

- *The Public Hospital failed to facilitate a fair, speedy and efficient resolution of the complaint in that:*
  – the investigation took an undue amount of time
  – the outcome led to remedial action only for Ms B.

An investigation was commenced on 7 September 2001.

Information reviewed

- Letter of complaint and accompanying documents from Ms A including response to the Public Hospital complaint review, letter from a psychiatrist outlining outcome of complaint, personal file from the Alcohol and Drug Clinic, bank account details
- Letter of response from Ms B
- Letter of response from the Public Hospital 25 October 2001 including Review of Complaint dated 8 January 2001, the Public Hospital's Disciplinary Procedure Policy, Harassment Policy, Code of Conduct, copies of e-mails to and from Ms B and Ms A
- Letter of response from the Public Hospital dated 21 May 2002 including Review of Ms A's complaint dated 14 September 2001, copies of further e-mails to and from Ms B and Ms A, a bank account opening and operating authority
- Notes of interview with Ms C
- Notes of interview with Ms D

Information gathered during investigation

Ms A had been treated by the Public Hospital's Alcohol and Drug Services on a number of occasions since 1993. She first attended the Alcohol and Drug Clinic in June 1999 and requested a lesbian counsellor. Ms B was the Manager of the Clinic and also the only lesbian counsellor at the clinic. Ms A's case was therefore assigned to Ms B, who carried a small caseload of approximately four clients, due to her managerial responsibilities. Ms A attended counselling sessions with Ms B on six occasions between 22 June and 27 July.

According to the clinical records, on 27 July 1999 Ms A indicated that she felt she was "on the right track". Ms B noted in the medical records that Ms A "continues to be abstinent from cannabis and has reduced her alcohol to an acceptable level". Ms A was referred to a clinic psychiatrist and was prescribed the anti-depressant medication Prozac. Ms B also referred Ms A to the Community Alcohol and Drug Service psychiatrist, for an assessment of her Prozac prescription on 5 August 1999. On 26 August 1999 Ms A was discharged from the Clinic.

On 17 September 1999 Ms A self-referred to the Clinic and, according to the clinical records, requested counselling with Ms B. Between 17 September 1999 and 1 November 1999 Ms A had a further seven sessions with Ms B. On 1 November 1999 Ms A requested a home visit to finish her counselling with the Alcohol and Drug Clinic and was discharged from the Clinic. According to the medical records Ms A advised that she planned to leave the country on Saturday 13 November 1999.

Ms A was overseas for a period of time and then returned to a city. On her return she made contact with Ms B and saw her socially at functions from time to time. Ms A stated that on 7 February 2000 she decided to leave her home and Ms B asked her to move in with her. Ms B stated that at the beginning of February Ms A said that she was unable to stay in her flat as her flatmates were "users" and this was detrimental to her rehabilitation. Ms B further stated that Ms A had broken up with her partner of 12 years and, in light of her vulnerability, offered her accommodation. Ms B stated that she informed Ms A that she could stay for one month and that if she moved in she would never be able to see her again as a counsellor. Ms B said that Ms A accepted this.

Ms A stated that she moved in with Ms B and commenced a sexual relationship with her. Ms B denied that she had a sexual relationship with Ms A and said that her own partner, although not living with them, often stayed. Ms B further stated that Ms A had not stopped drinking, was volatile, and broke things, and she eventually asked her to leave. Ms A stated that e-mails between her and Ms B were evidence of the affair. The e-mails do not support a sexual relationship but rather ongoing friendship. In response to my provisional opinion Ms A said that a number of the e-mails clearly identifying a sexual relationship were missing.

Ms D, a former lover of Ms A, advised me that she met Ms B through Ms A in approximately March 2000. Ms A was a Reiki (laying-on of hands healing technique) teacher and Ms D was to be the model when Ms A taught Reiki to Ms B. Ms D stated that she thought Ms A was living with Ms B at the time and that as far as she knew they were flatmates. She said Ms A had told her that she was planning to move in with Ms B and that she fancied Ms B. Ms D

said that she knew that the relationship between the two went "sour" at some point and that there was furniture outside and windows broken in the house. Ms D stated that she recognised from her own experience when Ms A was going off and wanted nothing to do with her anymore. Ms D stated that she continued to be friends with Ms B.

Ms C, an acquaintance of Ms A, said that she originally met Ms B through Ms A but also through other people she knew. She stated that she knew Ms A was looking for somewhere to live and had asked to stay at her place for the night, but Ms C did not feel comfortable about this and said so. Ms C stated that she had been to the house Ms B and Ms A shared and she thought there was also another woman there from time to time. She stated that she "wouldn't have necessarily said that their [Ms A and Ms B's] relationship was intimate". She said she had not seen them together very often and had not seen them going out together, but the relationship seemed amicable. Ms C further stated that she knew Ms A was attracted to Ms B and wanted a relationship with her and that she had discussed this with people around her. Ms C said the only time she saw them together other than at Ms B's house was on one occasion when Ms B called to pick up Ms A after she had been drinking at Ms C's house.

Ms A stated that her affair with Ms B lasted four months and that after they broke up she wanted to leave. Ms B stated that on 8 May 2000 she told Ms A to leave and that it took almost two weeks for her to go. When Ms A finally left her house in mid-May, she left behind most of her furniture and personal possessions.

Ms A stated that the existence of a joint bank account was evidence of her relationship with Ms B. Ms B stated that on 16 May 2001, Ms A opened a joint bank account in both their names and forged her signature on the application. In an internal review by the Public Hospital of Ms A's complaint, Ms B stated to the Public Hospital that she had not put money in or drawn money out and the signature was not hers.

Complaint

On 5 January 2001 Ms A complained to the New Zealand Association of Counsellors. Her complaint was forwarded to the Public Hospital. Ms A complained that Ms B took advantage of her in having a sexual relationship with her following a period as her counsellor. The Public Hospital interviewed Ms B on 17 January and on 19 January responded to Ms A, advising that they were investigating the complaint and wished to arrange an interview for 24 January. This letter did not reach Ms A and on 17 February 2001. Ms A e-mailed the Public Hospital to advise that she had moved to a city but would like to be told the outcome of the investigation. Ms B was again interviewed on 22 February 2001 and on 19 March the Public Hospital provided a draft report for Ms B's comment. Ms A does not appear to have been updated by the Public Hospital until 7 June 2001 when the Public Hospital report was finalised. The Public Hospital acknowledges this oversight. Ms A responded to the report on 23 July 2001 and requested a copy of file documentation, which was forwarded on 17 August 2001.

The review of Ms A's complaint by the Public Hospital concluded that Ms A lived with Ms B for four months but did not find that a sexual relationship had occurred. Remedial action was taken in relation to Ms B and professional boundary issues. The Public Hospital has a Code of Conduct Policy which provides staff with standards of conduct and outlines what are considered to be breaches of the Code. A copy of this document is included in the 'Relevant Standards' section of the opinion.

Response to provisional opinion

The Public Hospital acknowledged that it should have updated Ms A but that the case was complex and took time to finalise. The Public Hospital viewed the professional boundary issues seriously and spent considerable time instituting a performance development plan for Ms B. Ms B has ongoing supervision. The Public Hospital advised that it has used this opportunity to review its complaints policy and that it intends to develop a draft policy on professional boundaries for staff, to be used in conjunction with the Code of Conduct.

Ms B did not wish to make a submission in response to my provisional opinion.

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.

RIGHT 10

Right to Complain

4) Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month.

…

6) Every provider, unless an employee of a provider, must have a complaints procedure that ensures that –

a) The complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and

b) The consumer is informed of any relevant internal and external complaints procedures, including the availability of –

i. Independent advocates provided under the Health and Disability Commissioner Act 1994; and

ii. The Health and Disability Commissioner; and

c) The consumer's complaint and the actions of the provider regarding that complaint are documented; and

d) The consumer receives all information held by the provider that is or may be relevant to the complaint.

7) Within 10 working days of giving written acknowledgement of a complaint, the provider must, –

a) Decide whether the provider –

i. Accepts that the complaint is justified; or

ii. Does not accept that the complaint is justified; or

b) If it decides that more time is needed to investigate the complaint, –

i. Determine how much additional time is needed; and

ii. If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.

8) As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of –

a) The reasons for the decision; and

b) Any actions the provider proposes to take; and

c) Any appeal procedure the provider has in place.

Relevant Standards

THE PUBLIC HOSPITAL'S CODE OF CONDUCT

3.1 CODE OF CONDUCT

1. **PURPOSE**

To provide staff members with standards of conduct which are to be adhered to and to outline what are considered to be breaches of the code of conduct.

2. **PERSONNEL AFFECTED**

This code of conduct applies to all the Public Hospital's staff members and only the Chief Executive may make changes to the code of conduct.

3. **POLICY**

3.1 **Staff Conduct**

…

3.1.2 Staff Members have an obligation to:

…

(f) maintain proper standards of integrity and conduct in the performance of their duties and in their private lives, where they may reflect badly upon the Company;

…

Opinion: Breach – Ms B

Right 4(2)

Professional boundaries
The maintenance of professional boundaries is an integral part of counselling and psychotherapy and its importance in the counsellor/client relationship cannot be emphasised strongly enough. Counselling and psychotherapy are amongst the most intense therapeutic relationships. Counselling involves the consumer confiding fears, feelings, emotional responses and vulnerabilities. The relationship can result in transference, where the consumer idealises the therapist or "falls in love" with him or her. This is a common occurrence when the consumer is receiving counselling or psychotherapy. These feelings can continue unresolved for a number of years. If a dependent relationship of this type develops, the consumer may present for further counselling even when a current counselling relationship has been terminated.

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 to Ms B, an experienced drug and alcohol counsellor with social work training. Any relaxation of professional boundaries by a counsellor can contribute to feelings of transference that the consumer may be developing and ultimately put the counsellor in a compromised position.

Ms B stated that although she maintained professional boundaries while counselling Ms A, she saw her socially on a number of occasions several months after the counselling was terminated. Ms A asked for temporary accommodation as her current accommodation was not good for her rehabilitation. Ms B knew that this was not a good idea as it would cross the professional boundary. Ms B reluctantly agreed to Ms A staying for a short time, on the condition that Ms A did not drink and that Ms B would never counsel her again. Ms A became Ms B's flatmate in February 2000 and left the house in May 2000.

[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.

Ms B knew that Ms A had continuing problems and was likely to present for further counselling from the drug and alcohol service at the Public Hospital. Even if Ms B did not counsel Ms A again, she was a manager of the service and the personal relationship, which developed as a consequence of the flatmate relationship, had the potential to undermine Ms A's therapeutic relationship with the drug and alcohol service.

The Public Hospital's Code of Conduct Policy section 3.1.2(f) states:

> "Staff members have an obligation to maintain proper standards of integrity and conduct in the performance of their duties and in their private lives, where they may reflect badly upon the [Public Hospital]."

In permitting a former client who was likely to need the assistance of the drug and alcohol service again to become a flatmate, Ms B did not act in accordance with the Public Hospital's Code of Conduct. Her actions were unprofessional, unethical and unwise, and in my opinion breached Right 4(2) of the Code.

Sexual relationship
Ms A alleges that she had a sexual relationship with Ms B while living in her house between 7 February and May 2000. Ms B denies that she had a sexual relationship with Ms A. Ms A has pointed to a joint bank account to substantiate her assertions that she and Ms B were in a long-term sexual relationship; however, a shared bank account does not indicate the nature of the relationship. Many people who share houses as flatmates have a joint bank account. I also note that the bank account appears to have been opened on 16 May 2000, after Ms A had moved out of the house.

Ms A's friends have been unable to offer any evidence in support of her assertion. While it is clear from the surviving e-mails sent between Ms B and Ms A that they had a warm and friendly relationship, it is not apparent that the relationship was sexual or anything more than a close friendship. As stated above, developing such a close friendship with a current, and possibly future, client was unethical and unprofessional. However, there is no conclusive evidence that points to a sexual relationship. Accordingly, I have decided to take no further action in respect of this part of Ms A's complaint because the investigation has been unable to establish the facts.

Opinion: No Breach – The Public Hospital

In addition to any direct liability for a breach of the Code, employers are vicariously liable under section 72(2) of the Health and Disability Commissioner Act 1994 for ensuring that employees comply with the Code of Health and Disability Services Consumers' Rights. Under section 72(5) it is defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do the thing that breached the Code.

Ms B was an employee of the Public Hospital. I am satisfied that the Public Hospital's Code of Conduct was sufficient to guide staff in appropriate conduct. Accordingly, the Public Hospital is not vicariously liable for Ms B's breach of the Code.

Opinion: Breach – The Public Hospital

Right 10(4)

The Public Hospital is required by Right 10(6) of the Code to have a complaints process. This process must ensure acknowledgment of receipt of the complaint in writing within five working days, and a decision within ten working days whether the complaint is justified or not or that further time is needed to investigate the complaint. Under Right 10(4) of the Code, the Public Hospital is required to update the consumer about progress in dealing with the complaint at intervals of not more than one month.

Ms A's letter was received by the Public Hospital on 8 January 2001 and was acknowledged by letter on 18 January 2001, nine working days after it was received. Ms A e-mailed the Public Hospital on 15 February 2001 and stated: "Could you send me an e-mail with the outcome of your investigation [e-mail address] because I'm not sure where I am going to be for a while." Ms A was not contacted again by the Public Hospital until 7 June 2001 when the Public Hospital advised her of the final outcome of the investigation.

The Public Hospital acknowledges that Ms A was not updated with the progress of her complaint at less than monthly intervals as required by Right 10(4) of the Code. The Public Hospital states that this failure occurred because of a misunderstanding as to the meaning of Ms A's comments, and sincerely regrets that this occurred. It would have been prudent for the Public Hospital to clarify Ms A's meaning rather than assuming her comment meant that she did not want monthly updates. By omitting to regularly advise Ms A about the progress of her complaint, in my opinion the Public Hospital breached Right 10(4) of the Code.

Actions taken

In response to my provisional opinion Ms B and the Public Hospital provided written apologies to Ms A for their breaches of the Code. Their apologies have been forwarded to Ms A.

The Public Hospital has instituted a performance development plan for Ms B and, in addition, Ms B has ongoing supervision.

Further actions

- A copy of this opinion, with identifying features removed, will be sent to the New Zealand Association of Counsellors and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.