

**Acupuncturist, Mr B**  
**An Acupuncture Clinic**

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

**(Case 07HDC12714)**



Health and Disability Commissioner  
*Te Toihau Hauora, Hauātanga*



## Parties involved

Ms A	Consumer
Mr B	Provider/Acupuncturist

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## Complaint

On 17 July 2007, the Commissioner received a complaint on behalf of Ms A, about the services provided by Mr B at an acupuncture clinic (the Clinic). The following issue was identified for investigation:

- *The appropriateness of the acupuncture treatment Mr B provided to Ms A on 6 October 2006.*

An investigation was commenced on 10 August 2007. On 16 November 2007, the investigation was extended to include the following:

- *The adequacy of the information about acupuncture treatment Mr B provided to Ms A.*
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## Information reviewed

Information was reviewed from Ms A and her representative, and from Mr B. Ms A's acupuncture records from Mr B and her medical records from hospital were reviewed. Information and policies from the New Zealand Register of Acupuncturists Inc (NZRA) were also received. Independent expert advice was obtained from acupuncturist, Dr Xiaonan (Emily) Han.

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## Information gathered during investigation

### *Overview*

At 12.30pm on Friday 6 October 2006, Ms A attended an appointment at the Clinic for acupuncture. She had recently given up smoking and was experiencing some shortness of breath. This was her 15th acupuncture treatment and it lasted 45 minutes. Afterwards Ms A felt unwell when walking to her car. She took time to rest before driving back to work.

At about 2pm, Ms A had difficulty breathing and she was taken by ambulance to hospital. A chest X-ray revealed that her left lung had collapsed (pneumothorax).

*Qualifications and experience*

Mr B graduated from a University of Traditional Chinese Medicine in China, with a Bachelor's degree in 1990. He sat accreditation exams, including a five-hour practical examination, in New Zealand. He became a member of the New Zealand Register of Acupuncturists in 1998. Mr B has undertaken further training in clinical assessment and gained a New Zealand Diploma of Acupuncture in 2004.

Mr B has practiced acupuncture for 10 years in New Zealand and six years in China.

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## **Information gathered**

Ms A had her first acupuncture treatment with Mr B on 7 June 2006. Before commencing treatment, he recorded her medical history, noting "very chesty, can become breathless, has had asthma for many years, cough, tight chest". She had stopped smoking about one year previously, and she told him that sometimes she could hear herself wheezing and could not lie flat. He knew that her lung function was weak, resulting in a cough, shortness of breath and wheezing. He did not specifically ask about fainting or blood disorders. Mr B recommended a course of acupuncture treatment aimed at strengthening Ms A's lung and kidney function. Ms A attended regularly until 6 October 2006 and had 15 treatments.

Ms A said that Mr B failed to provide her with any information about the risks and side effects of acupuncture treatment, failed to warn her not to cough during the treatment, and did not monitor her during the treatment.

In contrast, Mr B advised that he routinely asks his patients whether they have ever had acupuncture before. He said he provided Ms A with the NZRA brochure "An Introduction to Acupuncture" and a brief explanation about acupuncture, and the type of feeling she was likely to experience, such as "heaviness, distension, tingling or an electric sensation". This is not recorded in his treatment notes.

The NZRA brochure explains how acupuncture works and warns the patient to avoid heavy lifting and alcohol after treatment and that, occasionally, a worsening of symptoms can be experienced before improvement. The thought of needling can be abhorrent to some people but the brochure explains that many patients experience very little pain. The brochure does not list any other risks of treatment such as damage to internal organs.

Ms A stated that Mr B did not give her a brochure. She picked up a brochure in reception and read it herself. Mr B did not explain the contents of a brochure to her or

mention any risks associated with acupuncture. He did not tell Ms A about the risk of pneumothorax.

Mr B said that although he knows pneumothorax can result from acupuncture treatment, it is very rare. Mr B said that he told Ms A that she must remain still when the needles were inserted and that she should advise him if she experienced any pain or discomfort. He advised that it is a natural and effective treatment with no side effects and that it is usual for a patient to return to previous activities, such as work, following acupuncture treatments. Mr B said that he remained with Ms A during most of every treatment and if he had to leave the room he was still within earshot. He did not have a call bell in the treatment room.

Ms A stated that, contrary to Mr B's statement, he did not remain in the room with her during the treatment. Ms A said that he left the room after he inserted the needles and returned 15 minutes later to turn them and again left. Mr B later returned to remove the needles, then left to allow Ms A to dress. Ms A stated, "He never once remained in the room during all my treatments."

Mr B recorded Ms A's improvement over the course of the treatments. His notes show that he regularly checked her cough and other symptoms. Ms A's asthma appeared to be better controlled as she was using her inhaler less often and she seemed pleased with the results of the treatment.

#### *Treatment 6 October 2006*

Ms A attended a scheduled appointment for acupuncture with Mr B at 12.30pm on 6 October 2006. Mr B checked Ms A's symptoms and assessed her as he had done before each previous treatment. He noted she had a little cough, but felt quite good, her breathing was good and her chest loose. He said he discussed her condition and "confirmed that she was content to have acupuncture treatment to build up her lung function and her immune system". Ms A received the same acupuncture treatment that she had received at the previous 14 appointments and Mr B did not notice anything adverse about the treatment she received that day.

Mr B used 0.22 X 30mm needles. He inserted them approximately 10 — 15mm deep and obliquely, the standard depth recommended by the acupuncture text "Chinese Acupuncture and Moxibustion". As before, he monitored Ms A during treatment. She did not appear to be in any pain or discomfort. Mr B provided a diagram of his needling sites.

Ms A said that she felt very relaxed during the treatment. She was not anxious and did not feel any pain but she thinks she might have coughed. She said that no one was with her, although Mr B came in to check the needling halfway through the treatment. After the treatment, she left the clinic and was walking towards her car when she began to feel off balance and uncoordinated. She felt discomfort and pain in her left shoulder at the needling sites. She waited in the car until the disorientation subsided and then drove back to work.

At 1.55pm, Ms A arrived back at her office. She had a 2pm appointment and as she was walking towards her client she felt worse, her breathing became difficult, and she asked the client to get help. It became increasingly difficult to breathe and talk. She was scared and feared for her life. A work colleague called the ambulance service.

A St John ambulance took Ms A to the hospital Emergency Department (ED). By the time she arrived her breathing was so compromised that she could only speak in monosyllables. A chest X-ray revealed that Ms A had a marked left pneumothorax with compression collapse of the left lung, thought to be secondary to her acupuncture treatment. An under-water chest drainage tube<sup>1</sup> was inserted and her lung re-inflated spontaneously. She was placed on prophylactic antibiotics and admitted to the ward at about 5.30pm. On 9 October 2006, the chest drain was removed. She was discharged on 11 October 2007.

Mr B did not know Ms A had suffered a pneumothorax until 2 November when he received a letter advising him of her recent admission to hospital and requesting a meeting. Mr B could not understand how this seemingly uneventful treatment could have resulted in her pneumothorax. Ms A was advised to seek compensation from ACC.

#### *ACC decision*

On 1 November 2006, ACC advised Ms A that it had accepted her for cover for personal injury caused by an accident on 6 October 2006. ACC accepted the injury as “left tension pneumothorax caused by the insertion of an acupuncture needle”.

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## **Independent advice to Commissioner**

The following expert advice was obtained from acupuncturist, Dr Emily Han:

“According to all the information and documents provided to me about [Ms A’s] complaint, I would like to make a comment about this case.

#### *Background knowledge of Pneumothorax*

Pneumothoraxis is the accumulation of air or gas in the pleural cavity, occurring as a result of disease or injury, or sometimes induced to collapse the lung in the treatment of tuberculosis and other lung diseases.

Pneumothoraxis can be the complication of an acupuncture treatment accident. It can occur but is very rare. It may be caused by careless or unprofessional insertion of the needles. In most cases the acupuncturist would “feel” the

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<sup>1</sup> The tube is inserted through the chest wall into the cavity left by the collapsed lung with the other end under water to prevent air being sucked back into the lung on inhalation.

needle touch the pleura (a thin membrane that envelops each lung) while inserting the needle and respond appropriately to prevent any complications. It also may be caused by patient movement while the needles are retained in certain points.

If the accident happened in an acupuncture treatment, the symptoms of Pneumothoraxis can occur during or after the treatment. The patient will be advised to avoid any movement to prevent any further complication. A small amount of air in the pleura cavity can be absorbed without any treatment. A seriously injured patient should be sent to hospital immediately.

#### *Overall opinion*

My overall opinion to this case is that [Mr B] provided [Ms A] with an appropriate standard of acupuncture treatment.

#### **The standards apply in this case?**

##### 1. Patient communication standards applied

###### *Code of Professional Ethics ...*

The most relative points are mentioned as followed.

- a. [Mr B] provided information about acupuncture to [Ms A] and explained the treatment for her asthma. "She was also advised that she needed to remain still when the needles were inserted and that she should advise [Mr B] immediately if she experienced any discomfort." Page 3, Document C.
- b. [Mr B] collected the medical history and current medical conditions before the first treatment. In the follow up treatment he put down any change in his Clinical Record.
- c. According to Document D, the Clinic Record, [Mr B] communicated and examined [Ms A] and gained enough information from her, which is the basis for the diagnosis and further treatment.
- d. There was no record showing that [Ms A] disagreed to have the acupuncture treatment from [Mr B].

##### 2. Diagnosis of symptoms and treatment standards applied

###### *Acupuncture & Moxibustion, The textbook of Traditional Chinese Medicine.*

##### a. Selecting points

The following points were selected by [Mr B] in the treatment: BL12, BL13, BL23, BL43, DU4, EX-B1, K13, ST36 and SP6.

These points are used to treat Asthma or reinforce body energy.

b. The recommended insert depths of these points are:

Points	Location	Insert method
BL12 Fengmen	Upper Back	Oblique insertion 0.5—0.8 cun.
BL13 Feishu	Upper Back	Oblique insertion 0.5—0.8 cun.
BL23 Shenshu	Upper Back	Oblique insertion 0.5—0.8 cun.
BL43 Gaohuangshu	Upper Back	Oblique insertion 0.5—0.8 cun.
EX-B1 Dingchuan	Upper Back	Perpendicular insertion 0.5—0.8 cun.
DU4 Mingmen	Lower Back	Oblique insertion upward 0.5—1.0 cun.
K13 Qixue	Lower Belly	Perpendicular insertion 1.0—1.5 cun.
ST36 Zusanli	Under the knee	Perpendicular insertion 1.0—2.0 cun.
SP6 Sanyinjiao	Under the knee	Perpendicular insertion 1.0—1.5 cun.

Note: Cun is a special measurement standard in acupuncture. This standard is applicable on any patient of different sexes, ages, and body sizes. The width of the interphalangeal (middle) joint of the patient's thumb is taken as 1 cun.

[Mr B] inserted the needles on the back at 10-15mm obliquely.

c. Retaining the needle

In general, the needle may be retained for 15—20 minutes. The time of retaining the needle may be appropriately prolonged as long as several hours for some diseases.



It was not mentioned how long the needles were retained. According to Page 2, Document C, the treatment took about 45 minutes, therefore the retaining of the needles should probably be 20-30 minutes, which is normal for treating Asthma.

[Mr B's] acupuncture treatments comply with these standards.

**Did [Mr B] take an appropriate medical history from [Ms A] before commencing her treatment in June 2006?**

The medical history from [Ms A] was recorded as Problem/Complaint in Patient's Record of [the] Clinic (Document D, Page 1).

[Mr B] declared that before the first treatment he routinely asked patients about their medical history, any current medical conditions and any medication that they are taking. (Document C, Page 3, 11)

Therefore [Mr B] did take an appropriate medical history from [Ms A] but not recorded enough in the Patient Record.

Was the equipment used by [Mr B] during the October 2006 treatment appropriate?

According to Page 2, Document B, [Mr B] used 0.22 \* 30mm needles. The needles were inserted approximately 10-15mm deep and obliquely.

The handle of the needle should not touch skin therefore needle should always be a little longer than the insert depth.

The equipment used by [Mr B] was appropriate.

Limitation of Information:

Document E: There are only page 2 and page 3 of the Emergency Department Clinic Record for the Observation Unit. Page 1 was not provided.

**Additional Notes:**

- A. This acupuncture session was the 15<sup>th</sup> in this course of treatment. No previous side effect had occurred.
- B. The complications as Pneumothorax did not manifest until after the patient had left the clinic. Therefore the acupuncturist was not able to treat further symptoms.

References:

Long Zhixian, 1999, *Acupuncture & Moxibustion*, Textbooks in Traditional Chinese Medicine.

NZRA, 2002, Code of Professional Ethics.”

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## **Response to provisional opinion**

*Mr B*

Mr B responded to my provisional opinion as follows:

“I accept that I did not advise [Ms A] that a lung injury was a rare complication of acupuncture treatment and that there was a minor risk of that occurring. I also accept that I did not warn [Ms A] not to cough during acupuncture treatment as this could increase the possibility of an injury occurring. I wish to apologise for my failure in not advising [Ms A] accordingly.”

As a result of this event, Mr B has reviewed his procedures in terms of the information he provides to his clients. He now advises all patients of the “remote possibility” of injury, particularly those with a history of asthma, shortness of breath, wheezing or regular coughing.

*Ms A*

In response to the provisional opinion Ms A questioned how Mr B could not understand how his “uneventful” treatment of her could have resulted in a pneumothorax when he knew that this was a risk associated with acupuncture.

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## 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*

- (1) *Every consumer has the right to have services provided with reasonable care and skill.*

### *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 —*

...

- (b) *An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option.*

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## Other relevant standards

The New Zealand Registrar of Acupuncturists' "Code of Professional Ethics" states:

### **1. Professional Conduct**

- 1.1 Consider the health and well-being of your patient to be your first priority.  
 1.2 Honour your profession and its traditions.  
 1.3 Recognise your own clinical and diagnostic limitations, and know when to refer a patient to another Health care professional.

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### **2. Responsibility**

- 2.1 Practise the science and art of acupuncture to the best of one's ability within concepts and diagnostic framework.

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- 2.4 Ensure that every patient receives a complete and thorough examination with the acupuncture/TCM diagnostic framework.
- 2.5 Ensure that accurate and legible records of fact are kept for each consultation/contact.

## **7. Consent and Informed Consent**

### **7.1 Consent**

The treatment of a patient is legally permitted only with his or her express or implied consent.

### **7.2 Informed Consent**

Members should therefore take care in explaining the diagnosis and treatment they propose to administer, and why it is necessary or desirable in language the patient is able to understand. Members should never abuse a patient's right to know by infringing upon his or her freedom to refuse treatment or to ignore advice. If a member has any doubt about a patient's willingness to undergo treatment, the consent should after due explanation, be obtained in writing.

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## **8. Description of Services**

- 8.1 Professional qualifications and descriptions of services help the public to make informed choices of the quality and type of service provided by the Acupuncturist, and the profession as a whole.
- 8.2 The Practitioner will not misrepresent their acupuncture qualifications, experiences or services.

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## **Opinion**

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

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### **Opinion: Mr B**

As my expert has advised, pneumothorax is a rare complication from acupuncture treatment. It can be caused by the careless or unprofessional insertion of needles. It can also be caused by patient movement while the needles are retained. The question here is whether Mr B provided an appropriate standard of care and provided Ms A with adequate information.

***Standard of care – No Breach***

Mr B has been performing acupuncture treatment for 16 years in China and New Zealand. He was qualified and registered with the NZRA to practice acupuncture in New Zealand. When he learned of Ms A's injury, he could not understand how she sustained it because he had used the same equipment and technique for her 14 previous treatments; she did not have any discomfort or pain during this treatment, and she appeared well when leaving.

Mr B used 0.22 x 30mm acupuncture needles inserted obliquely to a depth of 10-15mm. He used the same needling sites for all Ms A's treatments; four on either side of the thoracic spine and one in the centre of the lumbar spine. He also used a heat lamp directed on Ms A's back during the needling. This treatment was aimed at reinforcing the lung, kidney and immune function and I am advised it was consistent with traditional Chinese medicine for anyone suffering respiratory problems. Mr B was not aware that Ms A had coughed during the 45-minute treatment.

My independent expert, Dr Han, advised me that Mr B's acupuncture treatment was appropriate. Mr B recorded Ms A's medical history before commencing the first treatment in June, asked about her medical history and current conditions and whether she was taking any medication. Dr Han said that Mr B's records were adequate, although he could have recorded more about the treatment. The equipment he used was appropriate and the depth and angle of insertion was as recommended in the textbooks. Although rare, pneumothorax can occur during or after treatment. Dr Han said that small amounts of air in the pleural cavity can be absorbed if the patient lies still but, in serious situations, hospital treatment should be sought urgently. In Ms A's case the pneumothorax did not manifest itself until after she had left the clinic so Mr B was unable to treat her.

I assume, as do all involved in this case, that Ms A's pneumothorax was the result of her acupuncture treatment on 6 October rather than any other cause. There does not appear to be any other explanation and I note that ACC has accepted the claim on this basis. Furthermore, Ms A was taken ill when leaving the clinic and chest X-rays taken within an hour of acupuncture revealed the collapsed lung. However, I accept Dr Han's advice that the overall standard of acupuncture treatment provided by Mr B was appropriate. Accordingly, in my opinion Mr B provided services with reasonable care and skill and did not breach Right 4(1) of the Code.

***Information provided - Breach***

Under Right 6(1)(b) of the Code of Health and Disability Consumers' Rights Ms A had the right to information that a reasonable consumer in that consumer's circumstances would expect to receive, including an explanation of her condition and treatment, expected risks, and side effects.

Conflicting information has been provided to me about what Ms A was told regarding acupuncture treatment, the risks, and the need to lie still. There is a question about whether Mr B should have told Ms A that lung injury (pneumothorax) was a risk.

Organ damage in general is not discussed by either Mr B or my expert Dr Han and it is not mentioned in the literature published by the New Zealand Register of Acupuncturists. While I accept that pneumothorax is a rarely seen complication from acupuncture, in this case Ms A had known problems with a cough which Mr B was aware of, and checked before each treatment.

Mr B said that he explained to Ms A the role of acupuncture in the treatment of asthma. He told her to remain still when the needles were inserted and to tell him if she experienced any discomfort. He gave her this explanation in June 2006 before her first treatment and reinforced the information before each subsequent treatment. However, neither Mr B nor the information pamphlet specifically mentioned the risk of coughing during treatment. It was particularly important for Ms A that she was aware of the need to lie still. Mr B did not hear her cough during the treatment on 6 October and said he would have removed the needles if he had. He did not have a call bell in the room but said that he remained within earshot and checked on Ms A regularly. Ms A said that she was not given any information or told not to cough.

Mr B should have considered Ms A's circumstances when providing information about the risks. She suffers with asthma and had a history of smoking, was short of breath, with a wheeze and a cough. Telling Ms A not to move during the treatment was not specific enough. Mr B should have warned her not to cough, and reinforced the message by explaining the risks of coughing when she had needles in her back. In my opinion Mr B's failure to give adequate information to Ms A was a breach of Right 6(1) (b) of the Code.

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## **Actions taken**

Mr B has reviewed his procedures and made changes to his practice regarding the information he provides to his clients about treatment risks. He has provided a written apology to Ms A.

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## **Follow-up actions**

- A copy of this report will be sent to the New Zealand Register of Acupuncturists.
- A copy of this report, with details identifying the parties removed, will be placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.