Doctor in General Practice, Dr B

A Report by the

Health and Disability Commissioner

(Case 13HDC00733)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

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Executive summary

Background

1. Ms A had been receiving general practitioner services from Dr B for three and a half years when, in April 2013, he gave her his personal cell phone number. Dr B said that he gave Ms A his number so that she could call him or send him a text message if she thought that she needed help at any stage.

2. Ms A had previously received support and treatment from a community mental health service for problems including an eating disorder, depression, self-harm, and substance misuse. Having developed positive strategies for dealing with problems or issues, Ms A was discharged from that service at the end of 2012. It was clear from her discharge letter that a considered decision had been made to discontinue the telephone and text support that had been available to her, in order to support her independence.

3. On 12 April 2013, Dr B invited Ms A to accompany him out of town where he was attending a conference. Dr B told HDC that he invited Ms A because he thought that this would give them the opportunity to talk about his troubles as a young man, and how it was possible for her to succeed in life even though her troubles seemed overwhelming. Ms A declined the invitation.

4. Three days later, Dr B sent Ms A a text message, telling her that he was trying to find an excuse to see her again, that the results of her blood tests were "really very wonky", and that he had bought her something while out of town. Dr B met Ms A at a shop in town. He gave her an envelope containing a copy of the results of her blood tests and a pair of earrings. The results of her blood tests were entirely normal.

5. Over a period of five to six weeks, Dr B sent Ms A approximately 50 text messages. He told her that he was "distracted" by her, she had "gotten under [his] skin", and he was "overwhelmingly attracted" to her.

6. Ms A reminded Dr B that he was her doctor, that he should treat her as he treated his other patients, and that doctors should not meet their patients in town or give them gifts. Ms A repeatedly indicated to Dr B that his behaviour was unprofessional and difficult for her to deal with. When Ms A suggested that she change doctors to make it easier for Dr B, he discouraged her from doing so.

7. In June 2013, Ms A changed to a different doctor.

Findings

8. It was clinically inappropriate of Dr B to give Ms A his personal cell phone number, as this jeopardised the work that Ms A had undertaken with the community mental health service to develop constructive and appropriate strategies for dealing with any stressors or crises that might arise. This was a failure to provide care with reasonable

care and skill and, accordingly, a breach of Right 4(1) of the Code of Health and Disability Services Consumers' Rights (the Code).[1]

9. For inviting Ms A to accompany him out of town, repeatedly accessing her cell phone number for personal reasons, sending her highly inappropriate text messages (including about his personal feelings for her), and lying to her about her test results so that she would agree to meet with him, Dr B failed to provide Ms A with services in accordance with professional and ethical standards, and so breached Right 4(2) of the Code.[2]

10. Dr B's persistent texting of Ms A in the face of her efforts to discourage the contact constituted harassment and, accordingly, was a breach of Right 2 of the Code.[3]

Complaint and investigation

11. The Commissioner received a complaint from Ms A about the services provided by Dr B. An investigation was commenced on 19 August 2013, in relation to the following issues:

- *Whether Dr B provided Ms A with services of an appropriate standard.*
- *Whether Dr B maintained appropriate professional boundaries in relation to Ms A.*

12. The parties directly involved in the investigation were:

Ms A	Consumer/complainant
Dr B	Provider

Also mentioned in this report:

Dr C	Psychiatrist

13. Information was reviewed from: Ms A, Dr B, a medical centre, and a telephone company.

14. Expert advice was obtained from HDC's clinical advisor, Dr David Maplesden (see **Appendix A**).

[1] Right 4(1) of the Code states: "Every consumer has the right to have services provided with reasonable care and skill."
[2] Right 4(2) of the Code states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."
[3] Right 2 of the Code states: "Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation."

Information gathered during investigation

Background

15. Dr B first provided general practitioner (GP) services to Ms A in October 2009.[4] Clinical records show that between October 2009 and April 2013, Ms A consulted with Dr B on approximately 30 occasions, at a medical centre.[5]

16. Ms A stated that prior to April 2013, she considered Dr B to be "a good doctor". He appeared very thorough, he was always very friendly, and she thought they had a good relationship. Ms A said that Dr B would sometimes get "a bit off the topic" and ask or talk about matters other than her health, but at the time she found this quite normal.

17. Dr B advised HDC that after Ms A transferred to his practice in October 2009, they quickly established a good rapport. He felt that Ms A was comfortable and honest while consulting with him, which he felt was important given her "past medical and psychiatric history". Dr B stated:

> "[Ms A] is a disarmingly beautiful lady, and I cannot deny that I sometimes complemented [sic] her about her attire or general look when she consulted with me. All my consultations with her were totally professional however, directed towards the clinical problem that she presented with on the day."

18. From March 2009 until November 2012, Ms A received services from a district health board's Community Mental Health Service (CMHS), for treatment and support with issues including an eating disorder, depression, self harm, and substance misuse.

19. In a letter dated 1 October 2012, psychiatrist Dr C wrote to Dr B advising that Ms A was to be discharged from the CMHS in November 2012. Dr C noted that there had been a gradual improvement over the past three years, and that Ms A had found "… therapy very helpful and she feels she is coping better, feels calmer and has developed new coping strategies to substitute her previous maladaptive behaviours". Dr C noted that Ms A was not on any regular medication and had no symptoms of mental illness. A discharge plan was enclosed, which stated:

> "A planned discharge will occur on 2 November 2012. … [Ms A] understands there will be no social or casual contact between the team and herself post-discharge in honour of the professional relationship and how beneficial it was in her achieving her level of mental wellness. … [Ms A] will address physical health concerns with her GP by making a timely appointment with him ([Dr B]). [Ms A] understands the GP may be reluctant to prescribe regular medications to her as she has, in the past, [misused] various combinations and/or accessed medications from other sources. … [Ms A] has the tools to manage her life in a more constructive

[4] Dr B is not a vocationally registered general practitioner. He is registered with the Medical Council of New Zealand within a general scope of practice. He is an associate member of the Royal New Zealand College of General Practitioners.
[5] Dr B works at a practice which is owned and operated by Dr B and other doctors who work at the practice.

manner. Should she come up unexpectedly, the Crisis plan will remain in force with nil contact from the CMH team for a period of 1 year post discharge."

20. It was noted in the Crisis plan:

"If [Ms A] makes phone/text contact with helping agencies or crisis team — a short conversation is indicated where she is referred back to her handouts and skill-based therapy notes, as per psychology input. It is best not to engage in exploratory frameworks."

21. It was noted further that "[t]he emphasis is very much about giving this young adult the opportunity to be out of the mental health services".

Consultation, 9 April 2013

22. On 9 April 2013, Ms A, then aged 22 years, went to see Dr B. Ms A thought that she had an ear infection, and also needed Dr B to complete a form for Work and Income New Zealand (WINZ).

23. Dr B stated that at the beginning of 2013, Ms A seemed to be doing very well, and that she seemed psychologically stable. He told HDC that at the consultation in April 2013, Ms A's physical examination seemed normal and she seemed "wonderfully well".

24. Dr B's clinical notes for this consultation referred to the WINZ form and noted that Ms A "[h]as been relatively well". Dr B noted the results of the physical examination, which included:

"ENT fine
Mild bilateral middle ear effusions."[6]

25. Dr B requested blood tests and prescribed repeat medications, with the addition of an antibiotic (cefaclor) and Otrivine nasal spray.[7] Dr B also noted:

"Neilmed nasal spray for dry noses given
Try Batrafen for thumbnail 3 x per week
See [as required]."

26. Ms A said that during the consultation, they talked about her having been discharged from the CMHS at the end of 2012. She stated that Dr B said that if she ever needed any support she could always talk to him, and that he wrote his cell phone number on a piece of paper and gave it to her. Ms A said that she took the piece of paper but told Dr B that she was doing really well and did not need any support. Ms A also stated that Dr B told her that he was going overseas on holiday and asked if she would like to go with him. Ms A thought that he was joking and "just mucking around". Ms A

[6] Middle ear effusion is the accumulation of fluid in the space behind the eardrum.
[7] Records indicate that the only regular medication prescribed for Ms A at that point was terbinafine hydrochloride, for a fungal infection of the nails.

stated that Dr B also asked her whether she had a partner, as he had done several times previously.

Further visit to practice

27. According to Dr B, after seeing Ms A on 9 April 2013, he ruminated over her case over the next few days and concluded that he should try to do something to prevent her from "regressing back to her former state". Dr B stated that during the consultation on 9 April, Ms A told him that the texting support service that was previously available to her from the CMHS had been withdrawn, and that she was not allowed to text her CMHS nurse for a specific period of time — a year, he thought. Dr B stated: "I am not aware of the reason for the withdrawal of this service, but to me this seemed to be a bit of a tragedy, because the service had worked particularly well for [Ms A] …"

28. Dr B explained that he called Ms A into the practice, offered her his personal cell phone number, and asked her to text or call him if she thought she needed help at any stage. Dr B stated:

> "I understood at the time that this was highly irregular and unusual for a GP to do this, but I had thought about it quite a bit and I felt almost a personal duty as her GP to try to help this beautiful young lady, who had worked so very hard to successfully extricate herself out of, and distance herself from, her past mental health and addiction problems. I personally had been through similar tribulations and ructions as a young man and I understood just how easily [Ms A] could regress back to her former self. [Ms A] accepted my cellphone number with gratitude …"

29. While Ms A recalls that Dr B gave her his cell phone number on 9 April 2013, rather than a few days later, she agrees with Dr B that a few days after 9 April, he called her on her cell phone and asked her to come in to the practice.[8] Ms A said that Dr B told her that she did not need to make an appointment. She said that when she arrived at the practice she was shown into Dr B's consulting room, where Dr B appeared to be cleaning out drawers. Ms A said that Dr B then proceeded to offer her a number of things, including handcream, cough lozenges, a nasal spray, sweets, and "Alzheimer's type pills". It was Ms A's impression that these were products that had been given to Dr B (eg, as samples). Ms A told HDC that she was not entirely clear why he had asked her to see him that day, but he did tell her that she needed to stop biting her nails. Ms A said that she had not talked to Dr B specifically about biting her nails in the past, although she had previously consulted him in relation to a problem with one of her thumbnails.

30. Dr B confirmed to HDC that he offered Ms A some moisturising cream, which was a sample product provided to him by the manufacturer. He stated that there may have been some sweets in his "sample drawer" and he may have offered these to Ms A also, although he does not recall doing so. Dr B said that he did not offer Ms A "any other medications".

[8] Ms A recalls that this was the Friday of the same week (ie, 12 April 2013).

Texting commences

31. On 12 April 2013, Dr B sent Ms A a text message: "*Hey [Ms A]. Just checking that I have yr correct phone number on my phone. I usually ignore text and calls from an unknown number …*" [9]

32. Ms A replied: "*Yep, its me*"

33. Dr B replied: "*K. U have a great weekend. Boring […] conference tomorrow for me [out of town]; and I don't enjoy driving alone … U want to go [there] t'moro?*"

34. Ms A declined Dr B's offer.

35. Dr B told HDC that he suggested Ms A accompany him because he thought that this would give them the opportunity to talk. He said that he wanted to explain to her that his troubles as a young man were not much different from her problems, and that it is possible to get through and succeed in life even though her troubles had seemed overwhelming. He said that he believed that "explaining my youthful experiences to her would help her to a certain degree".

36. Dr B told HDC that while he was driving, he thought about his decision to give Ms A his cell phone number and concluded that if she did have "a bit of a meltdown [he] was ill-equipped from a counselling skills point of view to handle a meltdown of the magnitude that she had had in the past". He stated that, in addition, he wanted to do nothing to jeopardise his relationship with his family. Dr B said that he resolved to tell Ms A to delete his cell phone number from her phone and to have no further contact with him outside of their professional GP/patient relationship. Dr B stated that while he was out of town, he bought a pair of earrings for Ms A, which he intended to give her, as a way of "lessening the blow" of asking her to delete his number from her cell phone.

15 April 2013

37. On 15 April 2013, Dr B sent Ms A a text message asking her whether she was working that day. Ms A confirmed that she was, and Dr B replied: "*I'm trying to find an excuse to see you again … Actually your bloods are really very wonky and I need to discuss them with you. And I got you something [there] …*"

38. Ms A replied by text, expressing surprise at her blood results and asking if she should make an appointment. Dr B replied that he had no appointments available that day, but that he had to buy an umbrella in town and could meet her at lunchtime. He asked Ms A where he might get an umbrella and then wrote: "*Gotta work a bit. You're distracting me … In fact, you've distracted me all weekend as well. Pleasant distraction though. Later …*"

39. Ms A replied: "*I'm not supposed to distract u, you're my doctor …*" Dr B replied, suggesting they meet at 12.30pm. He continued: "*I know I'm not supposed to be*

[9] The content of all text messages in this report is reproduced as in the original text messages — ie, with the original spelling, grammar, and punctuation.

distracted by you, but I can't help it. I have had this affliction for the past 3 years, since I first met u …, and it's difficult to get rid of. Know a good doctor?"

40. Ms A confirmed that she would meet Dr B and noted that she would have a friend with her. She added: "*U r a good doctor and I wud like 2 keep u az my doctor. Yes sumtimes thoughts and feelings can be difficult 2 help or ov I can understand that, but u wil hav 2 try hard.*"

41. Dr B met Ms A and her friend as arranged. According to Ms A, Dr B gave her an envelope and said that the test results were in it, and that they were "actually fine". Ms A said she replied "OK", but that she was somewhat confused by this. Ms A said that after further discussion about where Dr B might buy an umbrella, she told him that she had to leave. She said that Dr B asked her to go with him to another part of town where there were several retail outlets. Ms A said that initially she said no, but that Dr B would not take no for an answer. Ms A and her friend went with Dr B to two or three shops, before he dropped them back at Ms A's car.

42. Dr B told HDC that because Ms A had a friend with her, he was unable to talk to her, as he had intended to do, about his request that she delete his cell phone number. Dr B said that he wanted to talk to her about this in person, as he did not want his request to "act as a catalyst to send [Ms A] into a spiral downward into a regression that would see her reverting back to her former ill self".

43. Ms A said that when she got home she opened the envelope Dr B had given her and found the test results, a note, a pair of earrings, and a few lollipops. The note said: "[Ms A], Please keep the earrings. I'd like to see you in them one day. xxx" Ms A sent Dr B a text message: "*Thanku 4 the earings they r nice bt u realy shudnt have*"

44. Dr B replied:

> "*I'm glad you like them. I didn't have much time to browse on Saturday. I wanted to get u drop earrings, long ones, but I didn't see any that I liked. Can I still get you something from [overseas] though? And I apologise for coming on so strong this morning. Stupid of me. Sorry [Ms A]. You have gotten under my skin a bit though and I'm not sure what to do about it …*"

45. Ms A replied that she understood, but that maybe he needed to look at it in terms of her being his patient to see if that helped. She asked Dr B if he wanted her to change doctors. He replied that he did not want her to do this, as then he would never see her again.

Texting continues

46. On 16 April 2013, Dr B sent Ms A a text message asking her if she was in town. She replied that she was not.

47. On 18 April 2013, Dr B sent Ms A a text message, asking her to meet him in town. She replied that she did not think that was a good idea.

48. On 20 April 2013, Dr B sent Ms A a text message while he was waiting to board his flight overseas, asking if he would see her when he returned. Ms A replied that she did not think that would be a good idea, as she was trying to make it as easy as possible for him to stop thinking about her.

49. Dr B replied:

> "*I'll try to have a good time. Thank you. [Ms A], I've been trying to not think of you for years now. I really doubt that it's even possible for me to stop thinking of you. I will try to keep my contact with u down to an absolute minimum though. As I said before, I do not want to hassle u, or make u think that I'm somesort of weirdo. What would you like from [overseas]?*"

50. Ms A replied, again reminding Dr B that he was her doctor and that he should treat her like other patients. She told Dr B that he did not need to get her anything, that she should not be accepting gifts from him, and that he should spend his money on himself and his family.

51. Dr B replied: "*Will u accept gifts from me if I was'nt your doctor? What if you thought of me as your benefactor, or even as an angel looking out for you?*"

52. Dr B sent Ms A two text messages while he was overseas, to which Ms A did not reply.

53. On 28 April 2013, Dr B sent a text message to Ms A saying that he had just returned home, and that he assumed Ms A had not replied to his text messages from overseas because of the cost. He asked Ms A whether she was "OK". Several text messages followed:

> Ms A: "*Glad u had gud time. Yes got mesages. Am ok, have ben busy and bit unwel.*"
>
> Dr B: "*Thx. Do u need some meds or do u need to see a doctor? What's happening?*"
>
> Ms A: "*Nothn major just bit unda weather i wil b fine.*"
>
> Dr B: "*Pls let me know whether u need anything if you are feeling ill. I'm not working tomorrow, but I am going to work to do paperwork and stuff at work sometime during the day. Can I see you sometime in town or somewhere tomorrow? I would like to see u again, [Ms A]. I also did get u something that I want u to have. Pretty please …?*"
>
> Ms A: "*I stil don't think gud idea. . U know its not proffesional 2 b meeting patients in town right? As nice as it is u got me something u shudnt have as i told u not 2 and 2 spend it on ur family.. ur family need u [Dr B] and am sure they love u a lot*"
>
> Dr B: "*Yes [Ms A], I love my wife with all the love that is possible […]. I didn't ask to be attracted to you though. I have managed to suppress my feelings for the*

> *past few years and I know that they won't ever go away. If I have to continue to suppress and deny my attraction to you, then I will. I do not want to hurt you […]. Ever. There are some things that I may be able to talk to you about though […]. And that is why I so much want to talk with you. I know that this is pretty heavy stuff and its unfair to do this to you, so I am not going to trouble you again. Would you please accept the gifts that I brought back for you though?*"
>
> Ms A: "*[…] Yes this is heavy stuff and i am finding it hard to get my head around and understand … I suppose i am not entierly sure what is hapening and where this has all come from.. And i am also not sure what 2 do"*

54. On 29 April 2013, Dr B sent Ms A a text message saying: "*Hey [Ms A]. U feeling better today? Do you need meds?*"

55. Ms A replied that she was "OK" and just needed to rest.

56. Dr B sent a further text message, which included:

> "*… I know that you are a bit confused and bewildered with my behaviour over the past few weeks. It is a bit selfish of me to do this to you; after all, these thoughts and feelings that I have for you are my problem, not yours. I want you to understand that I do not expect anything at all from you and especially, I do not want you to feel obliged to do or say anything that you do not want to. I still want to be your friend though, if that is possible. Even just a txt buddy. I wish that you were not my patient, but then if you were not my patient, I wouldn't get to see you at all. You are a young and exceptionally beautiful woman though. You deserve to have some handsome young gentleman come along and sweep you off your feet. That will happen, of course. I want that to happen to you. I just wish that that young handsome gentleman was me. Unfortunately, I'm neither of those. I also want you to not regress back to the person that you were three years ago and I want to ensure that that does not happen again.*"

57. Ms A replied, stating again that she was thinking about whether she should change doctors to make it easier for Dr B. Dr B replied, asking whether he would see her again if she changed doctors. Ms A replied that that was unlikely, as she had always thought of him as her doctor.

58. Dr B sent a further text message asking Ms A not to go to another doctor, and saying that he wanted to see her again, to "*look into [her] beautiful eyes and see [her] incredible smile, and know that [she is] well*". Dr B said again that he did not think his past was very different from hers, and that he would like to talk to her to explain what he meant.

59. Ms A replied that if she did decide to see him, there would have to be boundaries. She said that she needed some time to get her head around it all.

60. On 2 May 2013, Dr B sent a text message to Ms A: "*Knock knock*" Ms A did not reply.

61. On 8 May 2013, Dr B and Ms A exchanged text messages as below:

> Dr B: "*Hi [Ms A]. Am I allowed to ask whether u are ok?*"
>
> Ms A: "*hi.im nt that well.*"
>
> Dr B: "*Do you need anything? What's going on R u at home or working? Can i help u.*"
>
> Ms A: "*No thanx i wil be ok.*"
>
> Dr B: "*Can i call u?*"
>
> Dr B: "*At least tell me what's wrong with you …*"

62. The following day, Dr B sent a further text message: "*U ok [Ms A]?*" Ms A did not reply.

63. Ms A told HDC that she decided that she should not have accepted the earrings from Dr B, and she asked a friend to drop them off at the practice on her behalf. Ms A thought that this was a week or two after Dr B had given them to her. On 21 May 2013, Ms A sent a text message to Dr B asking whether he had received the envelope with the earrings, left at his practice.

64. Dr B replied to Ms A, confirming that he had received the envelope. He said that in giving her a gift he did not expect anything from her.

65. Ms A replied that she accepted this. Dr B then replied:

> "*…Why then, did u send back the earrings? And what about the stuff that I brought back from [overseas] for u? Will u accept those then, knowing that there's no strings attached. There really aren't any strings, [Ms A]. I know that there isn't a snowflakes chance in hell of me ever having some sort of physical relationship with u. That is precisely what I needed to talk to you about, [Ms A]. Txting does not even come close to expressing what I want to talk to you about.*"

66. Ms A replied that it is wrong for a professional GP to give patients gifts, and that she was trying to do what was right. Ms A wrote that she was finding it hard as she already struggled to trust, and she had had no idea that he had feelings for her all this time.

67. Dr B replied:

> "*You're right, of course. Doctors are not supposed to be giving patients gifts. Doctors are human unfortunately, and I didn't ever expect to find myself in this kind of fix. I didn't ask for this, [Ms A]. That is why I could not talk to you. I would never have thought that I could just be so overwhelmingly attracted to somebody other than my wife. Apparently I can. Gotta go home. Can I text u t'moro?*"

68. Ms A did not reply.

69. Dr B sent Ms A a text message the following day, asking her if she would read a letter if he wrote one. Ms A replied: "*Ok. I dnt want 2 b horible 2 u bt az a profesional u shud know that this needs 2 stop.*"

70. Dr B replied: "*K. It will.*"

71. That evening, Dr B and Ms A exchanged a number of text messages along similar lines. Dr B noted again that he did not want anything from Ms A, but that he hoped "selfishly" that she would become someone he could "talk to about stuff". Ms A asked: "*Y me?*" She asked Dr B how this would work with her being his patient, and if he had thought about the oath he had taken. Dr B replied that he did not take the Hippocratic Oath lightly.

72. Ms A asked Dr B how his wish to just talk to her fitted with his feelings for her.

73. Dr B replied:

> "*That's pretty simple [Ms A]. You are an intelligent, incredibly beautiful young lady. I can't say that I have ever felt the same way about any of my patients ever. I didn't expect it to happen, and certainly could not do anything to stop it from happening. I won't trouble you anymore. I'm sorry.*"

74. Ms A replied, saying thank you and noting her concerns about seeing another doctor. She told Dr B to take care and that she hoped things would get better for him.

75. Dr B and Ms A had no further contact. The following month, Ms A transferred to a different doctor.

Complaint response

76. In his response to this complaint, Dr B stated:

> "I am completely ashamed, embarrassed and mortified that my effort to try and help [Ms A] has deteriorated into a situation as serious as this, which is the total opposite of what I was trying to achieve. I admit that I am the sole cause of this situation due to my poor judgement in this case, and that I have put [Ms A] through a significant amount of stress and mental anguish as a result of my poorly thought out actions … This is going to obviously be traumatic to [Ms A], and it will probably be difficult to establish a trusting relationship with her new GP because of my actions … I cannot but re-iterate my complete and utter remorse and mortification for my actions …"

77. Dr B also noted the following:

- He has resolved never to try to overreach his capabilities by offering a service that he is not qualified to offer.

- Although his practice management software allows him to send text messages to patients, he has not used this feature before and would be reluctant to do so in the future.
- He had never previously given his personal cell phone number to a patient and will never do so again.
- He has re-read chapter three of *Cole's Medical Practice in New Zealand*, regarding the doctor–patient relationship, and now realises that he could have done things differently when Ms A told him that the "text buddy" service was no longer available.

Additional information from the medical centre

78. In January 2012, prior to the events leading to this complaint, the medical centre received a complaint relating to an inappropriate text message from Dr B to a young female patient. The complaint was dealt with through the local primary health organisation's complaints committee. This resulted in a review of the medical centre's texting policy, and an understanding that Dr B was not permitted to text patients.[10]

79. The texting policy that the medical centre had in place at the time of the events leading to Ms A's complaint included:

> "Txt messages can be sent to [patients] using the Practice's TXT2Remind system only. Texting patients from personal cell phones is not permitted unless in an extreme emergency."

Responses to provisional report

80. Ms A confirmed that the information outlined in my provisional report was correct and had no further comment.

81. In response to my provisional report, Dr B stated:

> "I would firstly like to say that I respect the HDC complaints process and whilst I do not agree with every part of your report for the reasons previously provided in responses to your office, I accept your provisional report and the recommendations therein. I have no hesitation in offering my sincerest apology to [Ms A] … I only ever wanted to support [Ms A], having … experienced something similar to her when I was younger. I have also taken this matter seriously, and I have no previous transgressions of any nature."

82. Dr B provided a written apology to Ms A.

[10] The content of the text messages that Dr B sent to this patient was made available to my Office. The text messages are not in the same vein as those that he sent to Ms A, but do demonstrate a lack of professional communication.

Relevant standards

83. The Medical Council of New Zealand states in its publication *Good Medical Practice (2013),* under the heading "Acting honestly and ethically":

> "*Integrity in professional practice*
>
> 53. You must be honest and trustworthy in your professional practice and in all communications with patients.
>
> *Sexual and emotional boundaries:*
>
> 54. Do not become involved in any sexual or inappropriate emotional relationship with a patient."

84. The New Zealand Medical Association Code of Ethics includes:

> "Doctors should ensure that all conduct in the practice of their profession is above reproach. Exploitation of any patient, whether it be physical, sexual, emotional, or financial, is unacceptable and the trust embodied in the doctor–patient relationship must be respected."

85. The Medical Council of New Zealand's *Sexual Boundaries in the Doctor–Patient Relationship: A resource for doctors* (October 2009) states:

> "The Council has a zero-tolerance position on doctors who breach sexual boundaries with a current patient. In the Council's view it is also wrong for a doctor to enter into a relationship with a former patient or a close relative of a patient if this breaches the trust the patient placed in the doctor.
>
> …
>
> A breach of sexual boundaries comprises any words, behaviour or actions designed or intended to arouse or gratify sexual desires … It incorporates any words, actions or behaviour that could reasonably be interpreted as sexually inappropriate or unprofessional.
>
> …
>
> As the professional, the onus is always on you to behave in a professional manner. You must ensure that every interaction with a patient is conducted in an appropriate professional manner.
>
> …
>
> Judgement on your behaviour is not based on the attraction you feel towards a patient but how you respond to this attraction.
>
> …
>
> It is difficult for any professional to objectively assess the appropriate action when he or she is attracted to a client. By recognising the danger signs you can consciously avoid any improper behaviour before any damage is done.
>
> …

> If you … feel attracted to a patient ask for help and advice from a respected peer who can help you decide the appropriate and ethical course of action."

Opinion: Breach — Dr B

Introduction

86. Under Right 2 of the Code, Ms A had the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.[11] Right 4(1) of the Code required Dr B to provide services to Ms A with reasonable care and skill.[12] Right 4(2) of the Code required Dr B to provide Ms A with services that complied with legal, professional, ethical, and other relevant standards.[13]

87. For the reasons outlined below, I find that Dr B failed to provide Ms A with care and services in accordance with her rights under the Code.

Services not provided with reasonable care and skill

Personal cell phone number

88. Ms A consulted with Dr B approximately 30 times over a period of 3½ years, from October 2009 to April 2013. The information provided by both Dr B and Ms A indicates that prior to the events leading to this complaint, a positive doctor–patient relationship existed between them. Ms A found Dr B to be thorough, friendly, and "a good doctor". She said that Dr B sometimes went "a bit off the topic" but at the time that seemed quite normal. Dr B said that following Ms A's transfer to his practice, they quickly developed a good rapport. He felt that she was comfortable and honest while consulting with him, and that this was important given her medical and psychiatric history.

89. On 9 April 2013, Ms A consulted with Dr B about a possible ear infection, and to have a WINZ form signed. Dr B recommended antibiotics and a nasal spray. He advised HDC that at this time, Ms A seemed "wonderfully well".

90. According to Ms A, it was during this appointment that Dr B gave her his cell phone number, telling her that if she ever needed any support she could always talk to him.

91. Dr B acknowledged giving Ms A his cell phone number, but states that he did this a few days after the 9 April appointment. Dr B said that he ruminated over Ms A's case for a few days after the consultation, concluded that he should do something to prevent her from "regressing back to her former state", and called her back to the practice to offer her his personal cell phone number.

92. Ms A also recalled that Dr B asked her to return to the practice a few days after the 9 April consultation, which she did. Ms A advised HDC that she was not entirely clear

[11] See footnote 3.
[12] See footnote 1.
[13] See footnote 2.

why he had asked to see her again, although he did tell her that she needed to stop biting her nails.

93. Whether Dr B gave Ms A his cell phone number on 9 April or a few days later is of little consequence; my concern lies with the fact that he gave her his number at all, and with his reasons for doing so.

94. Dr B stated that during the consultation on 9 April, Ms A told him that the texting support service that was previously available to her from CMHS had been withdrawn. Dr B told HDC that he did not know why the service had been withdrawn, but to him this seemed to be "a bit of a tragedy", as the service had worked particularly well for Ms A.

95. Ms A had been discharged from the CMHS in late 2012, having been provided with treatment and support for health issues including an eating disorder, depression, self-harm, and substance misuse. I consider that the reasons for the withdrawal of the texting service were clearly signalled in Dr C's letter to Dr B of 1 October 2012, and the enclosed discharge plan. Dr C wrote that Ms A had developed new coping strategies in place of previous maladaptive behaviours, she had no symptoms of mental illness, and was on no regular medications. The discharge plan states: "[Ms A] understands that there will be no social or casual contact between the team and herself post-discharge in honour of the professional relationship and how beneficial it was in her achieving her level of mental wellness."

96. Despite this, Dr B offered Ms A his personal cell phone number and asked her to text or call him if she thought that she needed help at any stage. Dr B told HDC that he understood this was "highly irregular and unusual" but he had thought about it quite a bit and "felt almost a personal duty as her GP to try to help this beautiful young lady, who had worked so very hard to successfully extricate herself out of, and distance herself from, her past mental health and addiction problems". Dr B explained further that he had been through "similar tribulations and ructions as a young man" and he understood just how easily Ms A could "regress back" to her former self.

97. However, Dr B also told HDC that at the beginning of 2013, Ms A seemed to be doing very well and seemed "psychologically stable". There was nothing in the clinical notes from the appointment on 9 April to suggest that he or Ms A had particular concerns about her mental or emotional well-being, or the availability of support. Ms A confirmed that she neither had, nor expressed, any such concerns at that time. On the contrary, she said that she told Dr B that she was doing really well and did not need any support.

98. I note also that the medical centre's texting policy at this time clearly stated that texting a patient from a personal cell phone was permitted only in an extreme emergency.

99. My clinical advisor, Dr David Maplesden, stated:

> "I cannot determine whether [Dr B's] original intent in providing [Ms A] with his phone number … was to offer her genuine psychological support should she

> require it or whether there were more sinister motives. Either way, it was clinically inappropriate to reinstitute a 'text buddy' system when the patient had not indicated any need or desire for such a system to be in place and the CMHS discharge letter and crisis plan overtly discouraged any system encouraging dependence."

I agree. I find Dr B's stated rationale for giving Ms A his personal cell phone number unconvincing. Irrespective of this, Dr B's decision to give Ms A his cell phone number — a decision that he states he gave some thought to — showed poor clinical judgement. In giving her his personal cell phone number, Dr B jeopardised the work that Ms A had done with the CMHS to develop constructive, appropriate strategies for dealing with any stressors or crises that might arise. In these circumstances, I find that Dr B failed to provide services with reasonable care and skill, and so breached Right 4(1) of the Code.

Breach of professional boundaries

Proposed travel out of town

100. On 12 April 2013, Dr B sent Ms A a text message, ostensibly to confirm that he had her correct cell phone number and so would not ignore an incoming text message or call from her. Given that it was Dr B who had given Ms A his cell phone number and not the reverse, it would appear that he obtained her number from her clinical records. Dr B's repeated accessing of this information for personal reasons and seemingly without Ms A's permission was inappropriate. Ms A replied to Dr B's text message, confirming that he had the correct number. Dr B then sent Ms A a further text message, telling her that he was going to a conference the following day and inviting her to accompany him. He wrote that he did not enjoy driving alone.

101. Dr B told HDC that he invited Ms A to go with him as he thought that it would give him the opportunity to talk to her about his troubles as a young man and how it was possible for her to succeed in life even though her troubles seemed overwhelming. Again, in light of what occurred subsequently I find Dr B's explanation of his motives at this time less than convincing. However, if Dr B was genuinely motivated by concern for Ms A's well-being and her future, his suggestion that she might benefit from hearing of his experience and that he could tell her about this on a trip out of town, was exceedingly ill-advised. Regardless of his motivation, his invitation was a failure to maintain appropriate professional boundaries.

Text messages and meeting, 15 April 2013

102. On 15 April 2013, Dr B sent Ms A a text message asking her whether she was working that day. Ms A confirmed that she was, and Dr B replied: "*I'm trying to find an excuse to see you again … Actually your bloods are really very wonky and I need to discuss them with you. And I got you something from [there] …*"

103. Ms A replied by text message, expressing surprise at her test results and asking if she should make an appointment. Dr B replied that he had no appointments available that day, but asked Ms A to meet him in town at lunchtime. In a further text, Dr B wrote: "*Gotta work a bit. You're distracting me … In fact, you've distracted me all weekend as well. Pleasant distraction though. Later …*"

104. Ms A replied, pointing out that as her doctor, he was not supposed to be distracted by her, to which Dr B replied: "*I know I'm not supposed to be distracted by you, but I can't help it. I have had this affliction for the past 3 years, since I first met u …, and it's difficult to get rid of. Know a good doctor?*"

105. It becomes very difficult at this point to conclude anything other than that Dr B was allowing his personal feelings for Ms A to impinge on his professional obligations as her doctor.

106. Dr B met Ms A as arranged. He gave her an envelope containing the test results, which, according to Ms A, he then said were "actually fine". My clinical advisor, Dr David Maplesden, has confirmed that Ms A's test results were entirely normal. I consider that Dr B's actions at that time were therefore dishonest, manipulative, and a blatant attempt to exploit Ms A's trust. His actions were not in accordance with the Medical Council of New Zealand's standard requiring doctors to be honest and trustworthy in their professional practice and in all communications with patients.[14]

107. When Ms A returned home and opened the envelope, she found the test results, a note, a pair of earrings, and a few lollipops. Dr B told HDC that while he was driving he had resolved to ask Ms A to delete his number from her cell phone, and that he intended to give her the earrings to lessen the blow of his request. Dr B said that as Ms A had a friend with her when they met in town, he was not able to discuss with her the issue of his cell phone number.

108. The note accompanying the earrings said: "[Ms A], Please keep the earrings. I'd like to see you in them one day. xxx" I find no evidence in this or in any subsequent text messages to Ms A, which included further efforts to give her gifts, of any attempt to re-establish appropriate communication and professional boundaries. The offering and giving of gifts can also be perceived as an unprofessional attempt at emotional manipulation.

Further text messages, 16–28 April 2013

109. During the last fortnight in April 2013, Dr B sent Ms A further text messages, asking to meet with her and offering to buy her a gift from overseas. Ms A declined to meet with Dr B, told him that he did not need to buy her anything, and said that she should not be accepting gifts from him.

110. When Ms A told Dr B on 28 April 2013 that she was feeling a little unwell, he replied that he was not working the following day but that he would be doing paperwork at the practice sometime during the day. He then asked Ms A to meet him in town or somewhere. He told Ms A that he wanted to see her again, and that he had bought her something from overseas. Ms A replied that she still did not think this was a good idea, and reminded Dr B that it was unprofessional to meet a patient in town. That any patient should be put in the position of having to remind his or her doctor of appropriate professional boundaries is unacceptable.

[14] See paragraph 83.

111. In a further text message to Ms A that day, Dr B referred explicitly to the fact that he was attracted to her. He said that there were things that he wanted to talk about with Ms A. It is hardly surprising that Ms A found the situation difficult to understand and deal with.

112. On 29 April, Dr B sent Ms A a further text message. He acknowledged that his behaviour had been confusing and bewildering for Ms A, but then continued in a similarly confusing and unprofessional vein. He told her that he wanted to be her friend or at least a "text buddy". He said that he wished she were not his patient, but that if she were not, he would not get to see her at all. He said that he wished a "handsome young gentleman" would sweep her off her feet, and that he were that man. He said again that he wanted to ensure that she did not "regress back" to the person she was three years earlier.

113. When Ms A wrote that she was thinking of changing doctors to make it easier for Dr B, he asked her not to do this. There can be little doubt that Dr B was prioritising his own wishes and desires over Ms A's well-being.

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114. On 2 May, 8 May, and 9 May, Dr B made further attempts to engage with Ms A via text message. Ms A either replied briefly or did not reply at all. It should have been evident to Dr B that his contact was not welcome.

115. Dr B and Ms A exchanged further text messages on 21 and 22 May 2013, after Ms A had returned the earrings. Yet again, Ms A reminded Dr B of his professional obligations. She wrote that she was finding the situation hard, and that she already struggled to trust others. Dr B said that he realised he should not give patients gifts and that he did not take the Hippocratic Oath lightly. However, once again he commented on his attraction to Ms A. He wrote again that he wished to talk to Ms A about his past experiences, suggesting on the one hand that this was for her benefit, but also stating that he "selfishly" hoped that she would become someone that he "could talk to about stuff".

Conclusion

116. Dr B's text messages to Ms A were not explicitly sexual although, in my view, there is a concerning undertone. However, without question, his text messages were inappropriate and unprofessional.

117. Dr B told Ms A explicitly, via his text messages, that he was attracted to her and had strong feelings for her. The Medical Council of New Zealand standard in relation to sexual boundaries is unambiguous: "Do not become involved in any sexual or inappropriate emotional relationship with a patient."[15] I note also the Council's guideline on sexual boundaries in the doctor–patient relationship, which refers to the need for doctors to recognise the danger signs so as to avoid any improper behaviour, before any damage is done.[16] If Dr B recognised the signs, he certainly failed to act on

[15] See paragraph 83.
[16] See paragraph 85.

them. His actions were inconsistent with the concern for Ms A's well-being that he has professed to HDC.

118. Dr B also failed to act in accordance with the New Zealand Medical Association's Code of Ethics, which requires doctors to ensure that all conduct in the practice of their profession is above reproach, and to respect the trust embodied in the doctor–patient relationship.[17]

119. By asking Ms A to accompany him out of town, repeatedly accessing her cell phone number for personal reasons, sending her highly inappropriate text messages (including about his personal feelings for her), and lying to her about her test results so that she would agree to meet with him, Dr B failed to provide Ms A with services in accordance with professional and ethical standards, and so breached Right 4(2) of the Code.

120. I note also the repeated efforts that Ms A made to discourage Dr B's contact. It is clear from her text messages that she found the content of his communications with her confusing and distressing, and on multiple occasions she drew his attention to his professional obligations as her doctor. As Dr Maplesden states:

> "[T]he texting was persistent in the face of attempts by [Ms A] to discourage such 'non-professional' contact, and continued even when [Ms A] expressed confusion and distress at [Dr B's] ongoing declaration of his feelings for her, offer of gifts etc. For such contact to be initiated and continued by him with a vulnerable young female patient with documented relationship and boundary issues and known psychological fragility was highly inappropriate even if there was no intent for a relationship to develop beyond a 'close friendship' level."

121. In these circumstances, I consider that Dr B's persistent efforts to engage with Ms A constituted harassment and, accordingly, were a breach of Right 2 of the Code.

Other matters

Lack of candour

122. I am concerned about Dr B's apparent lack of candour in his communication with HDC. Dr B told my Office that Ms A was the only patient to whom he had given his personal cell phone number. However, information subsequently provided to HDC by the medical centre shows this to be untrue. In January 2012, the medical centre received a complaint about an inappropriate text message that Dr B sent from his personal cell phone to a young female patient. As a result of this, the medical centre reviewed its texting policy and had an understanding with Dr B that he was not permitted to text patients.

Alleged offer of medication samples

123. Ms A advised HDC that when she met with Dr B at his practice after her appointment on 9 April 2013, he offered her a number of products, including handcream, cough lozenges, a nasal spray, sweets, and "Alzheimer's type pills".

[17] See paragraph 84.

124. Dr B confirmed to HDC that he offered Ms A some moisturising cream, which was a sample product provided to him by the manufacturer. He said that he may also have offered her sweets from his "sample drawer", although he does not recall doing so. However, Dr B denied offering Ms A "any other medications".

125. Dr Maplesden comments:

> "… I would consider the action of offering to a patient prescription medications (in this case Alzheimer's medication) for which there is no clinical indication, particularly when the patient is a vulnerable young (22 year-old) patient with a past history of drug and alcohol abuse, to be a severe departure from expected standards."

126. I agree, but given the conflicting accounts provided by Ms A and Dr B, I do not consider that there is sufficient evidence to make a finding on this matter.

Summary

127. During or shortly after a consultation on 9 April 2013, Dr B gave Ms A his personal cell phone number, thereby jeopardising the work that she had undertaken with the CMHS to develop constructive, appropriate strategies for dealing with any stressors or crises that might arise. This was clinically inappropriate, and a breach of Right 4(1) of the Code.

128. On 12 April 2013, Dr B invited Ms A to travel with him out of town the following day, where he was attending a conference. Over the five to six weeks that followed, Dr B sent Ms A nearly 50 text messages, the content of which conveyed his strong personal feelings for her and was highly inappropriate. On 15 April 2013, Dr B fabricated an excuse to meet with Ms A by telling her, erroneously, that the results of her blood tests were "wonky". Dr B's conduct in these respects was contrary to professional and ethical standards and, accordingly, a breach of Right 4(2) of the Code.

129. In my view, Dr B's persistent texting of Ms A in the face of her efforts to discourage the contact constituted harassment. Accordingly, Dr B breached Right 2 of the Code.

Recommendation

130. As noted above (paragraph 82), Dr B provided a written apology for forwarding to Ms A.

131. I recommend that Dr B remain in a mentoring relationship with two senior GPs, to include at least three face-to-face meetings with each mentor each year. Both mentors should provide written confirmation to the Royal New Zealand College of General Practitioners that the mentoring has occurred and that Dr B appears to be continuing to maintain appropriate professional boundaries with patients. Dr B is to confirm to HDC within one month of the date of this report that this arrangement is in place.

Follow-up actions

132.
- Dr B 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 with details identifying the parties removed, except the expert who advised on this case, will be sent to the Medical Council of New Zealand. The Medical Council will be advised of Dr B's name and asked to consider a review of his competence.
- A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to the Royal New Zealand College of General Practitioners and the district health board, and they will be advised of Dr B's name.
- A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addendum

The Director of Proceedings decided to institute a disciplinary proceeding. The Health Practitioners Disciplinary Tribunal suspended Dr B's registration for nine months, censured him, and upheld the conditions already imposed on his practising certificate by the Medical Council for three years (or until he has completed a Sexual Misconduct Assessment to the satisfaction of the Medical Council). The Tribunal also imposed 40% costs.

Appendix A — Expert clinical advice to the Commissioner

The following expert advice was obtained from general practitioner Dr David Maplesden:

> "1. Thank you for the request that I provide clinical advice in relation to the complaint about the care provided to [Ms A] by [Dr B]. In preparing the advice on this case to the best of my knowledge I have no personal or professional conflict of interest. I have reviewed the information on file: complaint from [Ms A]; responses to HDC from [Dr B]; GP notes ([the medical centre]) including copies of specialist reports; summary of HDC interview with [Ms A]; telephone records ([a telephone company]); [Ms A] complains that [Dr B] *started texting me* [from 12 April 2013] *after looking up my number on my file … he was telling me he had feelings for me … he asked me if I wanted to go [overseas] with him as well as [out of town] …* [he] *kept making excuses to see me and even lied to me about my blood tests also buying me earrings and giving me a note to say he would like to see me wearing them*[18] *…*
>
> 2. [Ms A] was interviewed by HDC investigators on 28 August 2013. A summary of the interview includes the following points:
>
> (i) [Ms A] had no issues with [Dr B's] management of her or attitude towards her prior to the events in question although in hindsight recalls him asking on several occasions whether she had a partner.
>
> (ii) [Ms A] saw [Dr B] on 9 April 2013 because of an ear problem and she required renewal of her Sickness Benefit. [Dr B] examined her ears and confirmed an infection. He prescribed antibiotics but forgot to give her the prescription. During the consultation [Dr B] *said he was going [overseas] and asked her if she would like to go with him … he also asked whether [Ms A] had a partner … they also talked about [Ms A] having been discharged from Mental Health services at the end of last year and* [Dr B] *said if she needed any support, she could always talk to him. [Dr B] wrote his cellphone number on a piece of paper and gave it to her. [Ms A] told [Dr B] that she was fine, doing really well, and didn't need any support.* She did not express any concerns about a lack of support or her mental wellbeing at the time of the consultation. During the consultation [Dr B] commented on [Ms A's] tattoos (back area) and *told her she looked stunning*. [Ms A] had to ring back regarding the overlooked prescription which was eventually provided the following day.
>
> (iii) On 12 April 2013 [Ms A] received a call from [Dr B] inviting her to the practice as he *had some stuff for her.* [Ms A] states she attended the surgery later that day and [Dr B] gave her a variety of 'freebies' including moisturising creams, throat lozenges and a nasal spray. *He has some Alzheimer's type medication and said she could have some of those. [Ms A] declined, and said with her history of taking tablets she wouldn't accept any … [Dr B] also talked about going [out of*

[18] The note (undated) attached to the blood results states *[Ms A], Please keep the earrings. I'd like to see you in them one day … [Dr B]x*

town] the next day, and asked if she would like to go with him. [Ms A] said no … Later that day she received a text asking her to confirm her number and [Dr B] again asked her to accompany him [out of town], which she declined.

(iv) [Ms A] continued to receive unsolicited texts from [Dr B] including a text on 15 April 2013 asking to meet with her 'in town' to discuss her blood tests which he described as 'really wonky'. On meeting with her he handed her an envelope containing the test results which he told her were 'actually fine'. [Dr B] then insisted [Ms A] and her friend accompany him to shop for an umbrella and he drove them to another shopping centre where they visited several shops before he drove them back to the original meeting place. On getting home [Ms A] found the envelope contained a pair of earrings and a note in addition to the blood tests results (see footnote 1). She texted [Dr B] saying he shouldn't have bought her the gift but thanking him for it.

(v) [Dr B] continued to text [Ms A], sometimes late at night. The texts became more explicit in regard to [Dr B's] feeling for [Ms A], while hers showed more overt concern that professional boundaries were not being observed. [Ms A] returned the earrings to [Dr B's] practice and had no further face to face contact with [Dr B] following the meeting referred to above. However, text exchanges continued until 22 May 2013 when [Dr B] accepted [Ms A] did not want further contact.

3. In a response to HDC dated 30 June 2013 regarding the complaint, [Dr B] made the following assertions:

(i) [Ms A] had been a patient of [Dr B's] since October 2009. Her past history included anorexia nervosa, drug/alcohol dependence and depression. *[Ms A] is a disarmingly beautiful lady, and I cannot deny that I sometimes complemented her about her attire or general look when she consulted with me. All my consultations with her were totally professional however …* By April 2013 [Ms A] appeared stable and well with regard to her previous psychological and medical problems.

(ii) [Ms A] had been enrolled in a 'texting buddy' system with the local Community Mental Health Services (CMHS) whereby she had access to text communication with a CMHS nurse whenever she felt she needed support. She had used this service regularly and successfully. At the consultation of 9 April 2013 [Ms A] informed [Dr B] the service had been withdrawn. Over the next few days [Dr B] felt concerned that this support for [Ms A] was gone and a few days later he called her to the practice and *offered her my personal cellphone number and asked her to call or text me if she thought that she needed help at any stage …* Shortly after this [Dr B] states he texted [Ms A] on a number he had obtained from her clinical record to ensure the number was correct so in future he could identify calls/texts from this number as being from her and therefore prioritise them appropriately.

(iii) [Dr B] states he invited [Ms A] to accompany him on a forthcoming trip to [a conference] so he could counsel her during the trip by recounting some of his negative experiences as a young man which were not dissimilar to her own, and to

encourage her to work through them to succeed as he had done. [Ms A] declined the invitation and [Dr B] states he considered his actions while he was [away] and decided it was not appropriate to have made the invitation or to have arranged to be [Ms A's] 'text buddy'. He bought her a pair of earrings *that I thought I would present to* [her] *when I told her that I was perhaps NOT the person to call or text when she thought she was in trouble.*

(iv) [Ms A] had blood tests performed on 12 April 2013. [Dr B] states *I decided that I would meet with her on the pretext of giving her her blood results, and then tell her that I would like her to delete my cellphone number*... The meeting took place but [Ms A] had a friend with her so the cellphone issue was not discussed ([Dr B] preferred to have this discussion in person in case [Ms A] reacted badly to the decision). However, [Dr B] gave [Ms A] an envelope containing her results and the earrings together with a note saying that [he] would like her to accept the earrings …

(v) [Dr B] then travelled [overseas] on holiday and *kept in touch with* [Ms A] *during my visit [overseas] and even after I got back … just to let her know I was available just in case she needed help*. [Dr B] states he attempted to arrange a further meeting with [Ms A] to inform her about the need to delete his number, but she refused to meet. Before he could finalise this decision, [Ms A] notified him she did not want any further contact and to desist from texting her.

(vi) [Dr B] states his intention was only ever to support [Ms A] given her fragile psychological state and there was never any intention to form a relationship with her. However, he admits he may have judged the situation poorly and regrets the perception of his actions [Ms A] has formed (she has since changed GPs) and the distress his actions may have caused her. In a further response dated 1 September 2013 [Dr B] has noted changes to his practice since the complaint: an acceptance of his limitations in regard to counselling of high risk psychiatric patients; a decision never to give his personal cellphone number to patients in the future and to limit the use of communication via text. He has reviewed the relevant sections of *Cole's Medical Practice in New Zealand* and apologised for the unintended distress he caused [Ms A].

4. I have reviewed the telephone records on file and these are largely consistent with [Ms A's] complaint. I will not reproduce all the text communication here, but some relevant extracts and observations are:

(i) Text communication commenced 12 April 2013, initiated by [Dr B]. He sent three texts to [Ms A] including the first confirming her number, and the second noting he was going [out of town] that weekend (13/14 April 2013) for a conference and *U want to go [out of town] t'moro* which [Ms A] declines.

(ii) No text communication was recorded over the weekend. On 15 April 2013 [Dr B] initiated contact with a text *Are u working today?* A second text from him stated *I'm trying to find an excuse to see you again … Actually your bloods are really very wonky and I need to see you to discuss them with you. And I got you something [there] …* In subsequent texts [Dr B] notes he has no appointments but

arranges, on his initiative, to meet [Ms A] at lunch time that day. There were eight separate texts from [Dr B] to [Ms A] prior to the meeting, including comments such as *You're distracting me … in fact you've distracted me all weekend as well. Pleasant distraction though …* and *I know I'm not supposed to be 'distracted' by you, but I can't help it. I have had this affliction for the past 3 years, since I first met u …, and it's difficult to get rid of. Know a good doctor?*

(iii) Following the meeting in the shopping centre on 15 April 2013 [Ms A] has texted [Dr B] *Thank you for the earrings they r nice but u really shudnt have*. [Dr B] responds describing earrings he tried to find and asking [Ms A] if she would like a gift from his trip [overseas]. Text includes *And I apologise for coming on so strong this morning. Stupid of me. Sorry [Ms A]. You have gotten under my skin a bit and I'm not sure what to do about it …* [Ms A] responds *U stil can if that is what u want 2 do* [re gift from overseas]. *That's ok I undastand maybe u jst nead 2 at it az I am ur patient and c if that helps, if not do u want me 2 change doctors?* [Dr B] rejects the idea of [Ms A] changing doctors but replies *Can I still txt u though? I promise not to make a nuisance of myself, and I won't ever hurt you. You're just so easy to be with and talk to.* [Ms A] responds in the affirmative but reiterates *just gota try hard 2 overcome those thoughts/feelings and 2 thnk ov me as ur patient.*

(iv) On 16 April 2013 [Dr B] initiates contact with a text *U in town* [Ms A] replies in the negative and there is no further contact that day.

(v) On 18 April 2013 [Dr B] initiates contact with a text at 0747hrs *Mornin [Ms A]. Can I please call you later or (fingers crossed) meet you in town today …?* [Ms A] declines face to face contact or a call explaining in further exchanges *I knw its hard bt I am trying 2 make It easier 4 u by declining to c u.*

(vi) Next contact is initiated by [Dr B] in a text at 2141hrs 20 April 2013 while he is waiting to board his plane [overseas] — *Hi [Ms A]. Waitin' to board. Am I going to see you when I get back?* [Ms A] responds again declining a meeting then, in response to further texts from [Dr B] further describing his infatuation with her and asking what gift she wants, declines any gift and reiterates *jst thnk about the fact that u r my doctor, nead treat me like ur other patients.* There are further exchanges including ([Dr B]) *Will u accept gifts from if I wasn't your doctor? What if you thought of me as yr benefactor, or even as an angel looking out for you?* To which [Ms A's] response includes *I think of u as what I am suppose 2 my doctor like ur other patients …*

(vii) [Dr B] sent [Ms A] two further texts from [overseas], describing his holiday, and texted her again on 28 April 2013 an hour or so following his return to New Zealand, enquiring whether she had received the texts he sent while away. There follows an exchange of texts in which [Ms A] declines a request from [Dr B] to meet in town to receive a gift, and in which [Dr B] expresses his love and devotion to his wife and *if I have to continue to suppress and deny my attraction to you, then I will. I do not want to hurt you […]*

(viii) On 29 April 2013 [Dr B] initiated contact at 13.47hrs with a text enquiring after [Ms A's] general wellbeing. In the subsequent exchange [Dr B] again expresses feeling for [Ms A] and a desire to present to her the gift he has bought. [Ms A] describes indecision as to what she should do, expressing an inclination to change doctors which [Dr B] discourages her from doing. She asks for time free of contact as *I need some time 2 get my head around it all … I don't want to give u wrong message by accepting gifts from u … I know u care but as my doctor their wil have to be boundaries if I do decide 2 continue 2 c u …*

(ix) On 2 May 2013 [Dr B] attempted to initiate contact with a text *knock knock* which [Ms A] ignored. On 8 May 2010 he again initiated contact with a text *Hi [Ms A]. Am I allowed to ask whether u are ok?* [Ms A] responds that she is *nt that well* but declines an offer of assistance from [Dr B] and ignores his next three texts (two on 8 May 2013 and one on 9 May 2013) requesting further contact from her.

(x) The next recorded exchange is initiated by [Ms A] on 21 May 2013 querying whether [Dr B] had received the earrings she had returned to his surgery. Subsequent exchanges refer to the giving of gifts — [Ms A] expressing her concern it is unprofessional and [Dr B] responding there is no expectation of anything in return for the gifts, including *I know there isn't a snowflake's chance in hell of me ever having some sort of physical relationship with u. That is precisely what I need to talk to you about … Txting does not even come close to expressing what I want to talk to you about.* The exchange terminates with [Dr B] stating *I didn't ask for this [Ms A] … I would never have thought that I could just be so overwhelmingly attracted to somebody other than my wife. Apparently, I can. Can I txt u t'morro?* [Ms A] does not respond to this last comment (sent 2119hrs) and [Dr B] sends her another text at 2344hrs (*Hey [Ms A]. U awake?)* to which she does not respond.

(xi) The final exchange is initiated by [Dr B] on the evening of 22 May 2013. It involves [Dr B] discussing his reasons for wanting to pursue a 'friendship' with [Ms A] to talk about his life experiences but eventually noting he accepts [Ms A's] wish for further contact to cease.

5. Clinical notes review

(i) Outpatient notes indicate [Ms A] had involvement with various mental health services since 2006 (at age 16 years). Diagnoses included borderline personality disorder, eating disorder, self-harming behaviour and previous alcohol and drug abuse. CMHS clinic letter dated 7 January 2010 refers to specific difficulties encountered by [Ms A] including *relationship instability characterised by poor boundaries, marked sensitivity to abandonment and high intensity within the relationships.* She received extensive input from mental health services and had made good progress by 2012 with discharge from the service undertaken on 2 November 2012 but with a 'crisis plan' agreed by [Ms A] and communicated to [Dr B]. The discharge letter and plan includes the comments *The team and [Ms A] are both likely to experience feelings, not unlike grief, in allowing [Ms A] to take greater charge of her life and accept the responsibility of making her own*

decisions … If [Ms A] makes phone/text contact with helping agencies or crisis team — a short conversation is indicated where she is referred back to her handouts and skill-based therapy notes, as per psychology input. It is best not to engage in exploratory frameworks. My impression from the discharge letter is that [Ms A] had made excellent progress in becoming independent of CMHS support and any activities that might encourage further dependence (including the actions of [Dr B] in providing his number for ready text access) were to be discouraged as they could be possibly detrimental to [Ms A's] ongoing recovery.

(ii) [Dr B's] clinical notes are of a good standard. I note he declined to provide [Ms A] with psychotropic medication she requested in October and November 2010 (in the context of known drug hoarding and abuse) despite considerable pressure applied by the patient. Management of intermittent medical problems appears to be well documented and consistent with expected standards. The issue of smoking cessation was dealt with in an appropriate fashion (July–October 2011). There is nothing in the clinical notes prior to April 2013 raising concern at the clinical management of [Ms A] by [Dr B]. There is no record of inappropriate physical examinations.

(iii) Notes for 9 April 2013 refer to [Ms A's] presentation for *WINZ form renewal … Has been relatively well. Still smoking but has decreased heaps. Not drinking at all […]. … mild bilateral middle ear effusions, Chest clinically clear … Abd soft, non-tender and no masses, Normal BS …* height and weight were recorded with calculated BMI within the normal range. Blood tests ordered and advised antibiotic (Cefaclor) and Otrivine nose spray. Blood test form given and prescription for Cefaclor generated but evidently not given to the patient (faxed to pharmacy the following day). There is no reference to discussion about [Ms A] requiring additional mental health support or expressing concern at lack of support. I note she had been seen by [Dr B] on 10 January 2013 (the first time since formal discharge from CMHS) and no mental health concerns were expressed or recorded on this occasion either. This is consistent with [Ms A's] assertion that she had no particular concerns regarding her mental health at the time of the April consultation, that she did not express any such concerns to [Dr B], and that him providing her with his telephone number was unexpected and certainly not solicited.

(iv) The blood results dated 12 April 2013 include diabetes screening tests, B12 and folate levels, urinary albumin:creatinine ratio, liver function, renal function, thyroid function, lipid profile, blood count and ferritin levels. All results are within the normal reference range. There is no valid clinical reason for [Dr B] to have informed [Ms A] the results were other than completely normal (see 4(ii)).

(v) There are no clinical notes entries after 12 April 2013.

6. The New Zealand Medical Association Code of Ethics[19] includes:

> ***Responsibilities to the patient***
>
> *Doctors should ensure that all conduct in the practice of their profession is above reproach. Exploitation of any patient, whether it be physical, sexual, emotional, or financial, is unacceptable and the trust embodied in the doctor–patient relationship must be respected.*

7. The Medical Council of New Zealand states, in its publication *Good Medical Practice (2013)* under the heading *Sexual and emotional boundaries:*

> *Do not become involved in any sexual or inappropriate emotional relationship with a patient. In most circumstances you should also avoid becoming sexually or inappropriately emotionally involved with someone close to a patient, or a former patient.*

8. Comments

(i) [Dr B's] care of [Ms A], until the time of the events in question (April 2013) appears to have been consistent with accepted standards. With the benefit of hindsight it is possible to attach significance to any questions [Dr B] posed to [Ms A] regarding her relationship status, but such questions were also an integral part of monitoring her psychological wellbeing and I do not think it is possible to retrospectively apply significance in a negative sense to these comments under the circumstances. It is relevant that [Dr B] had declined [Ms A's] requests for psychotropic medication in the past (see 5 (ii)) with respect to her comment that [Dr B] may have offered her medications which were not clinically indicated in April 2013 (see 2(iii)). [Dr B] has not responded specifically to this claim by [Ms A].[20] If he is unable to refute the claim, I would say the action of offering to a patient prescription medications (in this case Alzheimer's medication) for which there is no clinical indication, particularly when the patient is a vulnerable young (22 year-old) patient with a past history of drug and alcohol abuse, to be a severe departure from expected standards. I would not regard the provision to a patient of over-the-counter sample items (such as moisturisers or throat lozenges) to be a departure from expected practice, leaving aside the circumstances relevant in this case.

(ii) [Dr B] was aware of [Ms A's] psychiatric history with previous CMHS letters referring specifically to her emotional vulnerability particularly in regard to establishing boundaries within relationships (see 5 (i)). As also discussed in section 5(i), an intent of CMHS in discharging [Ms A] from their service was to reduce her dependence on external agencies and individuals given the progress she had made towards appropriate independent decision making over her time with the

[19] New Zealand Medical Association 2013. Code of ethics. Chapter 22 in St George IM (ed.). *Cole's medical practice in New Zealand*, 12th edition. Medical Council of New Zealand, Wellington. ISBN 978-0-9922460-0-6.

[20] Dr B was subsequently asked about this matter. He denied offering Ms A "any other medications" (see paragraph 29).

service. [Ms A] was 22 years old at the time of the events in question. I cannot determine whether [Dr B's] original intent in providing [Ms A] with his phone number on 12 April 2013 was to offer her genuine psychological support should she require it or whether there were more sinister motives. Either way, it was clinically inappropriate to reinstitute a 'text buddy' system when the patient had not indicated any need or desire for such a system to be in place and the CMHS discharge letter and crisis plan overtly discouraged any system encouraging dependence.

(iii) Irrespective of the motive for initiating the 'text buddy' system, [Dr B's] actions in frequently initiating text contact were not consistent with the proposed clinical utility of the system (for patient initiation when required). The content of the texts sent by [Dr B] was clinically inappropriate and while not being overtly sexual in nature (although sexual innuendo might have been construed in some of the texts), the texting was persistent in the face of attempts by [Ms A] to discourage such 'non-professional' contact, and continued even when [Ms A] expressed confusion and distress at [Dr B's] ongoing declaration of his feelings for her, offer of gifts etc. For such contact to be initiated and continued by him with a vulnerable young female patient with documented relationship and boundary issues and known psychological fragility was highly inappropriate even if there was no intent for a relationship to develop beyond a 'close friendship' level.

(iv) The manipulation of [Ms A] by [Dr B] to meet outside of the surgery was professionally inappropriate. Her trust was overtly exploited to gain such a meeting when [Dr B] told [Ms A] her blood results were *really very wonky* on 15 April 2013, when the results were entirely normal. The offer and giving of gifts could also be perceived as unprofessional attempts at emotional manipulation. These actions were not consistent with the ethical and practical considerations outlined in sections 6 and 7.

(v) There is little in the information on file to raise suspicion that [Dr B] intended to sexually exploit [Ms A], or that he had gained any covert sexual gratification during his clinical management of [Ms A] in the period preceding the declaration of his feelings for her. However, [Dr B] was apparently infatuated with [Ms A] and was at least professionally very naïve in his actions 'pursuing' her via text. Taking into account his knowledge of [Ms A's] psychological history and his persistence in maintaining text contact even in the face of her pointing out from an early stage that it was professionally inappropriate, and noting particularly his manipulation of her regarding her blood test results, I feel his actions were a moderate to severe departure from expected standards (severe if there had been established sexual contact or overt attempts to achieve this)."