GENERAL PRACTITIONER, DR B

A Report by the

Health and Disability Commissioner

(Case - 99HDC13348)



## **Opinion – Case 99HDC13348**

#### **Parties involved**

Information was obtained from:

Mrs A	Consumer
Dr B	General Practitioner / Provider
Dr C	General Practitioner
Ms D	Receptionist, Medical Centre
Ms E	Practice Nurse, Medical Centre
Ms F	Witness
Ms G	Dr C's Nurse

#### Complaint

On 8 December 1999 the Commissioner received a complaint from Mrs A about services provided by a general practitioner, Dr B. The complaint is that:

- On 26 February 1999 Mrs A informed Dr B's receptionist that she had received a diagnosis that day from another doctor and did not wish to pay for another consultation prior to a cauterisation procedure of a lesion on her left temple. The receptionist discussed this with Dr B and then telephoned Mrs A, informing her that no consultation fee would be necessary. On 2 March 1999 Dr B charged Mrs A a consultation fee, re-diagnosed her growth, and recommended freezing treatment instead of cauterisation.
- On 2 March 1999 Dr B undertook a consultation with Mrs A during which he gave an estimated cost of \$10.00 for freezing her growth, offered her a skin peeling treatment, recommended the use of some cream, and provided an information pamphlet to her. Mrs A did not request this information but was charged for the consultation time and a jar of cream, which she never received.
- On 2 March 1999 Dr B suggested that Mrs A also consider removal of some moles on her face. Following the freezing treatment Dr B proceeded to also remove the moles under local anaesthetic without Mrs A's consent and included the cost of the mole removal in his fee.

An investigation was commenced on 28 January 2000.

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#### Information reviewed

• Copies of Mrs A's medical records were also obtained from the Medical Centre and from the general practitioner, Dr C.

#### Information gathered during investigation

In February 1999, Mrs A noticed that a red mark on the skin next to her left eye, which had been there for some time, had suddenly flared up. On Friday, 26 February 1999, Mrs A consulted Dr C, general practitioner, about the mark, as she was unable to obtain an appointment with a dermatologist in the area at short notice.

Dr C advised:

"I saw this lady on 26/2/99 for a lesion of the face for one year that had been asymptomatically increasing in size. I examined her and made a diagnosis of benign telangiectasia, and recommended that the central blood vessel be cauterised. Furthermore, I suggested that [Dr B] has better equipment than I to do this, and advised that I send a referral to him. This was agreed and arranged. ..."

*Cost issues – treatment without prior consultation* Mrs A advised:

"After having left [Dr C's] office, I went directly to [the] Medical Centre and inquired as to how much it would cost. The receptionist on that day said she did not know, but that [Dr B] would have to consult with me first and make a diagnosis. I said that I had just seen [Dr C] who had diagnosed it already and that it only needed to be cauterised by [Dr B], also that I could not afford to pay for another consultation as I had just paid [Dr C] \$65.00 and did not have a medical aid. ..."

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Mrs A advised me that she told the receptionist that if it were necessary to pay for another consultation, then she would go back to Dr C instead. The receptionist said she would check with Dr B, and get back to her. The receptionist took a copy of Dr C's referral letter, which stated:

"Dear [Dr B], please can you cauterise the telangiectasia of this lady's left temple. Regards [Dr C]."

Mrs A continued:

"She said that she would phone me at home which she kindly did later that same afternoon. Her exact words were 'I have spoken to [Dr B], he said that no consultation (fee) is necessary and that you could just come in and have it cauterised.' On that basis an appointment was made for Tuesday,  $2^{nd}$  March 1999. ..."

Mrs A did not ask for the name of the receptionist she spoke with. She said the woman who called her was the same one who was on the reception desk when she called in after seeing Dr C.

On 2 March 1999, Mrs A visited Dr B, who looked at the mark and decided not to cauterise it, but rather to freeze it. No one else was present during the consultation. Dr B advised:

"I am aware she attempted to arrange for me to treat her without prior consultation, a request I declined. I advised my staff to book any such inquiries to see me preop as is standard medical practice.

I do not ever perform surgical procedures without consultation and insisted on her attending an appointment pre op. This was wise as my diagnosis was different to [Dr C's] (telangiectasia) and the appropriate treatment was also different. Specifically she had shallow superficial basal cell carcinoma on her face which was best treated with cryosurgery, performed stat after a discussion which she acknowledges. ..."

Dr B was asked how he declined Mrs A's request for treatment without prior consultation. Dr B could not recall precisely but said he would imagine both his

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receptionist and nurse would have told her that. Dr B's receptionist at that time was Ms D, and his nurse was Ms E.

Mrs A and the nurse, Ms E, know each other. Both confirmed that they did not have any conversations with regard to Mrs A's treatment prior to her appointment on 2 March 1999.

However Ms E recalled speaking with Mrs A on 2 March 1999. Ms E said she saw Mrs A sitting in the waiting room, prior to her appointment with Dr B, and briefly spoke with her. Mrs A told her she had been referred to Dr B by another doctor, and would be paying for the procedure, but not the consultation with Dr B. Ms E said she told Mrs A she should discuss this with Dr B. Ms E could not recall anything further about their discussion. She was not aware of Mrs A having had a discussion with another staff member at this time.

Mrs A advised me that she did not see Ms E at all prior to her appointment. She saw her briefly afterwards, but they only said hello before Ms E left.

Ms D, Dr B's receptionist, recalled Mrs A, and said that she had spoken with her before, possibly more than once. However Ms D could not recall any specific details of her conversations with Mrs A. Ms D could not recall a discussion with Mrs A about seeing Dr B without paying for a prior consultation. Ms D was able to advise that, in general, a patient who wants a surgical procedure must have a consultation first. This applies even if there is a referral from another doctor. Ms D also advised that there were probably one or two temporary staff employed at that time, and one of them could have spoken to Mrs A. However Ms D felt it would now be too difficult to track these people down.

Dr B continued:

"[Mrs A] attended for a long consultation which is usually 30 minutes, in which general preventative skin care re UV damage is covered, appropriate use of UV screens, sun avoidance, the role of water and moisturisers, and in her case glycolic acid creams which she was keen to hear of and to purchase ....

... Any goods purchased or services performed were discussed and quoted beforehand as I do for many other such patients on approximately 4/10 of each week. These extended consultations are

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familiar to me and I discuss any adverse outcome up front as well as self care to avoid complications as bruising or infection. ..."

Mrs A advised me that she did not ask for any of the information that Dr B provided, and that he did not explain in advance that he intended to supply additional information as part of a long consultation. She advised me that the sole purpose of her visit was to have her mark cauterised.

Mrs A continued:

"I was rather taken aback (shocked) that he called [the mark] 'basal?' and then proceeded to talk about the moles on my face, that I should think about having them removed and that he could do them for me. I said that I was very happy with my moles and that they have never troubled me. He then started talking about skin peeling and that I would be a good candidate for this type of treatment. He then left the office and came back with a book on skin peeling, gave me a pamphlet on it, ... and said to use one of his creams. [Dr B] did so much talking and I did not want to appear to be rude as I was extremely worried about the red mark on my face and the freezing of it. ..."

Mrs A advised that Dr B made no mention of her earlier conversation with the receptionist regarding the consultation fee, when she saw him on 2 March 1999. Mrs A said that it did not occur to her at the time to mention it again, as she thought it had been clearly agreed that she did not have to pay for another consultation.

Dr B said that Mrs A did mention her request to see him without prior consultation. He told Mrs A that he did not do procedures without having a consultation first.

According to Dr B, the consultation was 40 minutes in length.

Mrs A said that the consultation was fairly long, and that the reason for this was because of all the talking that Dr B was doing. During the consultation, Dr B spoke with Mrs A about skin care, and Mrs A said he "*kept trying to press things on her*". She thought that Dr B was overzealous in his behaviour during the consultation. Mrs A never asked for any of the information Dr B provided, and when he suggested something she politely said she "*didn't want any thank you*".

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She said she really thought he was just making conversation, and likened it to when she visits her own GP sometimes and he tells her about his golf. Mrs A did not know that Dr B would be charging her for the extra time.

Dr B did not offer Mrs A the option of a shorter consultation.

Dr B said he would have raised the issue of skin care, and problems with Mrs A's skin, because her skin showed evidence of sun damage, and he was trying to prevent further damage. Dr B advised:

"I don't just treat people. If I see them with sun damage, and I'm treating a sun damaged lesion, if I don't talk about prevention and general skincare and how to stay away, I'm not doing my job. ..."

Dr B could not recall whether Mrs A did much talking during the consultation. When asked if he could recall anything that Mrs A said, Dr B said he remembered her raising the issue of not wanting to pay for her consultation. Dr B said it was likely that, due to her sun damage, he offered Mrs A a skin peeling treatment, recommended a facial cream, and provided a pamphlet to her during the consultation.

Mrs A provided a copy of a booklet on facial peels that Dr B gave her.

*Consent to removal of moles* Dr B stated:

"[Mrs A] had two prominent facial moles which she agreed to have removed under local anaesthetic by the use of radiosurgery (Surgitron, Ellman). There was no medical indication and she was more than happy to have these cosmetic removals (at a cost of \$50.00 per lesion). ..."

Dr B advised me that his usual charge for mole removal is \$150.00 to remove either one, two or three moles. In Mrs A's case he charged her \$100.00 for the removal of two moles, which was a discount.

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Mrs A disputes Dr B's assertion that she consented to her moles being removed. She also advised me that the cost of mole removal was never mentioned during their consultation:

"As I was told to lie down I asked how much this [the freezing of the mark on her temple] was going to cost, because it had not been mentioned, and he said \$10.00. I closed my eyes (tightly) while he froze the mark which was now burning and then he proceeded to inject the mole above my left eye (same side as mark) and one on my right cheek. I was absolutely numb and dumbstruck, as I did not say that I wanted them removed at any stage. I felt so many emotions, one of them embarrassment that I could be put in such an awkward position by injecting and removing them without me having asked for it. I was so stunned and upset that this had happened. I only came in to have a mark cauterised! ..."

Mrs A advised me that the mole above her eye was only slightly raised and light coloured. The mole on her cheek was a bit bigger and darker but flat. She did not see them as a problem, or else she would have had them removed two years earlier, when she had medical insurance.

Mrs A could not recall how long the mole removal took. She said that when she felt the needle go in above her left eye, she wondered what was happening. Then the needle went into her right cheek, and she realised he must be doing something to her moles. He burnt them off with some sort of wire instrument.

Dr B could not recall who raised the topic of Mrs A's moles and their removal, but said it was possible it could have been him. When asked how long it takes to remove moles, Dr B advised:

"It's very quick. I mark them out, I put in a local and I remove it. By the time I set the machine up, the actual surgical removal is quick. It may only take a matter of minutes but then you also have to clean your equipment, you have to autoclave the gear, so there is actually a turnover time with the equipment."

Mrs A advised me that Dr B did not 'mark anything out' prior to removing her moles. He simply put in a local anaesthetic and removed them.

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#### Mrs A further advised:

"When I went to the reception to pay, I was told that it would be \$245.00 and nearly died on the spot. ... I queried the amount to which the receptionist [Dr B's wife] took offence and I was told how good the doctor is. As she was filling in for the receptionist on that day and was struggling with the computer, I asked that a revised account be sent to me. ... I was most upset and unable to deal with the situation at that very moment, especially when a good friend of mine had come to see [Dr B] and was standing next to me at the reception counter. ..."

#### General consent issues

Dr B was asked about his usual procedure for obtaining consent. He advised that he expects a consent form to be completed for every procedure he performs. However in Mrs A's case, he omitted to have a consent form completed in error.

Dr B's medical notes on 2 March 1999 refer to the removal of Mrs A's moles, but do not mention consent being obtained, or the cost of the mole removal.

Ms E, who was Dr B's nurse for two and a half years until early 2001, was also asked about Dr B's consent procedures. Ms E confirmed that written consent is required for all procedures performed. She advised that normally, she would see the patient first, and a consent form would be signed in her presence before the patient saw Dr B. However, sometimes a patient was in the consulting room with Dr B when a procedure was agreed to. In this case Dr B would obtain consent.

Ms E also advised that a few people complained to her during her time at the Medical Centre, because Dr B had done more treatment than he said he was going to do. Ms E said that according to what she has been told, Dr B didn't always explain what the additional cost would be if he did an extra procedure during a consultation.

#### Purchase of face cream

Mrs A advised me that Dr B had mentioned face cream to her during the consultation, asking what face cream she currently used. When Mrs A told him, he offered her a cream called "Dermatech", that he said was better than the one she was using. She replied "*No thank you I'm fine*". He then went out and put the cream on the reception counter. It was there when Mrs A approached the

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desk for her account, and she was asked if she was taking it. Mrs A asked how much it cost. It was something like \$75.00, which Mrs A thought was too expensive. She said she didn't want the cream, and left it where it stood, and did not take it with her.

Ms F, Mrs A's friend, confirmed that she remembered coming into the Medical Centre and seeing Mrs A after her appointment with Dr B. Mrs A was talking to the receptionist when Ms F arrived. Ms F did not overhear their conversation. Ms F left for her own appointment while Mrs A was still talking to the receptionist, and advised that she and Mrs A were only at the desk together for a couple of minutes. However Ms F did recall Mrs A asking the price of something, which she recalled as being in a display case behind the reception counter. It may have been face cream, or sun block; Ms F wasn't sure. When Mrs A was told the cost, she said that it was too expensive and she didn't want it. As far as Ms F was aware, Mrs A didn't pick it up, and didn't intend to purchase it. She also couldn't recall Mrs A carrying anything else. Ms F did not see Mrs A leave.

Dr B advised that Mrs A agreed to purchase the cream, but later returned it, leaving it on the reception desk. Mrs A was not seen returning the cream by either Dr B or his nurse. Dr B advised that if anybody saw her, it would "*have been the front desk*". He could not tell exactly when the cream was returned, as there was no note in the records. He also advised that the cost of the cream was credited to Mrs A's account on 15 March 1999, 13 days after her appointment.

Subsequent events Mrs A advised:

"I got home in a total state, even my visiting mother-in-law (nursing sister) was shocked and furious at what had happened. I phoned [Dr C] who was not available, told his nurse/receptionist who was equally shocked at what had happened and I have yet to hear from him. ..."

An entry in Dr C's medical notes for Mrs A, dated 2 March 1999 states as follows:

"Tele. Very upset because when she saw [Dr B] he did other treatment. Felt she had ended up paying far too much by seeing two doctors."

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Ms G, Dr C's nurse, recalled Mrs A calling her on 2 March 1999, and confirmed she made the above note of the call. Ms G advised me that Mrs A was upset following her appointment with Dr B, partly at how much her treatment had cost because of seeing two doctors. Ms G also thought Mrs A was upset because Dr B had performed other treatment. Ms G could no longer recall the type of treatment Mrs A had, but said she got the impression that Mrs A expected a specific type of treatment, but the doctor performed other treatment as well. Ms G said that whatever the treatment was, "it was treatment that she was not expecting to have". Ms G said she sympathised with Mrs A's problem, but told her there was little she could do. Ms G was asked whether she recalled Mrs A saying anything about her facial moles. Ms G could no longer recall, but said that it was possible.

#### 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 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 ....

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

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1) Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise.

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### Opinion: No jurisdiction

#### Waiver of consultation fee

Mrs A stated that prior to seeing Dr B, she asked his receptionist whether it was possible to see the doctor for treatment of the mark on her face, without paying for a prior consultation.

Dr B advised that his usual policy was not to provide treatment without prior consultation. I accept that this is an entirely proper approach for a health professional to take.

According to Mrs A, Dr B agreed, via his receptionist, to treat her without a prior consultation first. Dr B denied this and said that Mrs A's request was declined, in accordance with his usual policy. Dr B could not say exactly how Mrs A's request was declined, but presumed that both his nurse and receptionist would have told her this. Ms E said that on the day of Mrs A's appointment, she told Mrs A that she should discuss her intention not to pay for a consultation with Dr B. However she did not inform Mrs A that her request was declined at any stage. Mrs A disputes that any conversation with Ms E took place prior to her consultation. Dr B's receptionist, Ms D, recalled speaking with Mrs A, but could not recall any details of their conversation(s).

Mrs A said that Dr B did not discuss her request that he treat her without a prior consultation. Dr B denied this, and said that the issue was discussed, and that he told Mrs A he would not agree to treat her without prior consultation.

I have been given conflicting accounts of the information Mrs A was provided with prior to, and during, her consultation with Dr B. I do not believe that Dr B would have agreed to cauterise a lesion of the face without first examining the patient. I do not accept that Dr B agreed that a prior consultation was not necessary.

It is possible that Dr B or his staff told Mrs A that the consultation fee would be waived. However, there were no witnesses to the conversations between Dr B and Mrs A, or between the receptionist and Mrs A. In these circumstances, it is unclear whether Mrs A was told that she was able to have a procedure with Dr B without paying for a consultation first.

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Even if it had been established that Dr B, or his staff, agreed that the consultation fee would be waived, the jurisdiction of the Health and Disability Commissioner does not extend to an alleged breach of contract in relation to fees.

### **Opinion:** No Breach

#### **Right 7(1)**

#### Removal of moles without consent

Mrs A visited Dr B in order to receive treatment for a lesion on her face that had been there for a year but had "*suddenly flared up*". She initially saw Dr C for treatment of this lesion. In Dr C's opinion the mark needed to be cauterised, and he referred Mrs A to have this done, because Dr B had better equipment for cauterisation. According to Mrs A, this was the sole purpose of her visit to Dr B. Dr C's referral letter supports this.

Mrs A was clearly concerned about the cost of the treatment. She conveyed this concern to a staff member of the Medical Centre when she told her she could not afford to pay for another consultation, and did not have medical insurance. Dr B confirmed he was aware of Mrs A's request to see him for treatment without paying for a prior consultation.

Mrs A advised me that she did not consent to removal of her moles. She advised that Dr B suggested that she should consider cosmetic removal of her moles, to which she replied that she "*was happy with her moles*". She advised me that if she had have been concerned about the moles, she would have had them removed two years earlier, when she had medical insurance.

Dr B advised me that Mrs A had consented to having her moles removed, and that she was quoted the cost of having this done in advance. Dr B could not recall who raised the issue of mole removal, but said that it could have been him.

There were no witnesses to Dr B's and Mrs A's discussion.

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Dr B advised the mole removal procedure in itself was quick, and could be completed within minutes. Mrs A did not stop Dr B during the course of the procedure. She said this was because she felt shocked, upset, and embarrassed that she had been placed in the position of having her moles removed when she had not consented to it. She advised that she was still upset when she arrived home, and called Dr C's rooms that same day. Ms G, Dr C's nurse, confirmed that Mrs A telephoned on 2 March 1999, and Ms G made a note in their records that Mrs A was "very upset because when she saw [Dr B] he did other treatment ...".

Dr B acknowledged that he did not follow his usual consent procedures when he removed Mrs A's moles. Dr B advised that he expects a consent form to be completed for any procedure he performs, however this did not occur in Mrs A's case, in error. There was no record in Dr B's notes to indicate that Mrs A's consent was obtained for the procedure.

Ms E, Dr B's nurse, confirmed that written consent is required for all procedures performed. Ms E advised me that normally she sees the patient first and written consent is obtained prior to the person seeing Dr B. If the procedure is agreed to during the procedure, Dr B would normally obtain written consent.

Documentary evidence of consent does not necessarily prove that a patient gave voluntary informed consent. Conversely, the failure to obtain written consent does not prove that a patient failed to consent.

Mrs A's claim that Dr B removed two moles without any request or referral, is tantamount to saying that Dr B assaulted her by undertaking an unwanted and unrequested procedure. Mrs A further claims that she was too shocked and embarrassed to ask Dr B to stop the procedure.

I do not find Mrs A's evidence credible, notwithstanding Dr B's failure to follow his normal procedure for documenting consent. In my opinion the probable explanation is that Dr B suggested removal of the two moles, and Mrs A reluctantly agreed. When she later received a bill for \$245.00, she was naturally upset, and called Dr C's nurse to complain.

Accordingly, Dr B did not breach Right 7(1) of the Code.

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### Opinion: Breach

#### **Right 6(1)(b)**

Failure to advise cost of mole removal

Mrs A had the right to information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including an explanation of treatment options and the costs of each option.

In my opinion it was reasonable for Mrs A to be told the cost of having her moles removed. This is particularly so given Mrs A's clearly expressed concern about the cost of her treatment, and Dr B's admitted knowledge of her concerns.

Dr B informed me that the cost of the mole removal was quoted to Mrs A in advance at a discounted rate of \$100.00 for the removal of both moles. This quote was not recorded in Mrs A's medical notes.

Mrs A advised me that she is quite clear that the cost of mole removal was not mentioned during her consultation with Dr B.

It is clear that the cost of treatment was of significant concern to Mrs A, and Dr B has admitted that he knew this. There is no documentary evidence that Dr B quoted a fee to Mrs A for removal of her two moles. I accept that Mrs A was upset when she learnt that the total cost of the treatment (\$245.00), as corroborated by the evidence of Ms G, who was telephoned by Mrs A immediately after her appointment.

In all the circumstances, I find the evidence of Mrs A on this issue credible, and accept that Dr B did not tell her the cost of removing her moles.

Accordingly, in my opinion Dr B breached Right 6(1)(b) of the Code.

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#### **Other Comments**

#### Consultation options

Dr B saw Mrs A during what he referred to as a long "skin" consultation, which was 40 minutes in duration. Dr B could not recall who did most of the talking during this time, but acknowledged that he would have raised issues of skin care, sun damage and related issues, because Mrs A had presented to him with sun damage.

Mrs A informed me that the information Dr B supplied was unwanted. Mrs A did not see Dr B because of concerns about her skin in general. She saw him for a specific purpose, treatment of a lesion on her face, and this was also the only stated purpose of her referral to Dr B on the letter from Dr C. Mrs A was also clearly concerned about the cost of her treatment. Dr B confirmed he was aware of Mrs A's concern in this respect.

I acknowledge Dr B's comments that he was attempting to be thorough in providing Mrs A with information on sun damage and prevention of skin problems. However, in my opinion, if Dr B wished to raise these additional issues with Mrs A, he should only have done so if he had made it clear that the issues were being discussed as part of a longer consultation on skin care that he intended to charge her for. There is no evidence he did this. Dr B should make clear to patients that longer consultations will increase his fee.

#### Face cream

I do not accept that Mrs A agreed to purchase face cream, as claimed by Dr B. Mrs A said that she did not want the cream as it was too expensive, and did not take it with her. This is supported by Ms F, who recalled Mrs A telling the receptionist she did not want an item that was in a display case behind the reception counter because it was "too expensive". Dr B claimed the cream was returned later and left on the reception desk, but was unable to supply any evidence to support this.

However, as Dr B has credited Mrs A's account with the cost of the cream, no further action is necessary in relation to this aspect of the complaint.

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#### Actions

I recommend that Dr B take the following actions:

- Apologises in writing to Mrs A for his breach of the Code. This apology is to be sent to the Commissioner and will be forwarded to Mrs A.
- Reviews his practice in light of this report.

#### **Further actions**

• A copy of this opinion will be sent to the Medical Council of New Zealand. A copy of this opinion, with identifying features removed, will be sent to the Royal New Zealand College of General Practitioners, for educational purposes.

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