General Practitioner, Dr B

Opinion – Case 98HDC15904

Complaint

The Commissioner received the following complaint from the consumer, Ms A, about services provided by Dr B, general practitioner, during two consultations in March and May 1998:

- *Ms A consulted Dr B twice. The first consultation was on 21 March 1998 and cost $240 including vitamins and homeopathic remedies. Ms A had expected the initial consultation to be expensive but had not expected Dr B to dispense medicines from his office necessitating she pay for them at this time.*
- *The second consultation, plus further medicine, cost $175. From written information provided to Ms A, she expected this consultation to take about 15 minutes and cost $35. She knew that Dr B charged for each extra five minutes.*
- *During the first consultation Dr B conducted muscle testing and concluded Ms A was suffering from brucellosis of an intracellular kind that no other practitioner would be able to diagnose. During this testing process Ms A felt rushed, pressured and belittled. Ms A thought the muscle testing was a sham. Ms A had a blood test for brucellosis done independently which was negative.*
- *At the first consultation, Ms A was offered and accepted spiritual healing as a means of treatment but expected this not to be to the exclusion of a course of antibiotics. At the second consultation Dr B conducted another muscle test which showed that the spiritual healing had cleared the condition and so antibiotics were no longer needed.*
- *Ms A was dissatisfied with the way in which the spiritual healing was conducted. Dr B did not explain that the healing would entail a very religious prayer and that afterwards she would have to thank the Lord in front of Dr B. Ms A expected to do this in private, not semi-publicly and in front of her nine year old daughter. This made Ms A feel like a school child.*
- *Ms A had been feeling very distressed and desperate about her medical condition. She was prepared to go to great lengths for a cure but by the end of the first consultation was feeling rushed, pressured, confused and belittled.*
- *Ms A cancelled her third appointment and has left $100 owing to Dr B unpaid as she feels the treatment was a sham.*

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Investigation Process

The complaint was received on 6 July 1998 and an investigation commenced on 7 August 1998. Information was obtained from:

Ms A	Consumer
Dr B	Provider / General Practitioner
Dr C	General Practitioner

New Zealand Charter of Health Practitioners
The Communicable Disease Centre (Institute of Environmental Science and Research)
National Centre for Disease Investigation (Ministry of Agriculture and Forestry)

Relevant medical records were reviewed. Expert advice was obtained from an independent general practitioner and an independent homeopath. Following Dr B's response to my provisional opinion, advice was obtained from a medical microbiologist, and a general practitioner and physician who practises homeopathy.

Information Gathered During Investigation

Dr B is a general practitioner who provides both conventional and homeopathic treatments at a medical centre in the city. The consumer, Ms A, consulted with Dr B on Saturday 21 March 1998, and Tuesday 5 May 1998.

Dr B stated that his practice philosophy is "*to provide a wide range of modalities mostly unavailable from other medical practitioners to give patients a wider choice of options for treatment than is available elsewhere*".

Ms A said that an Anglican Minister with whom she had had professional contact, recommended Dr B to her. Dr B had helped the Minister's son with chronic diarrhoea that traditional medicine had not been able to cure. Ms A felt that this was a reputable recommendation, and as Dr B was both a conventional practitioner and a natural therapist he would not be a "*goofball*".

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A said that she had had a series of bizarre symptoms and muscle problems, and was searching for a diagnosis, leading up to her consultations with Dr B.

She had been unwell for quite some time with symptoms that traditional doctors were struggling to diagnose. Ms A's final diagnosis was fibromyalgia (widespread muscle pain and fatigue), made after she had stopped seeing Dr B. Ms A explained that this is an end-of-the-line diagnosis made only after all other alternative diagnoses have been eliminated. Ms A said that she had also seen a herbalist in the area, as well as her general practitioner and doctors at the public hospital. She said that she did not have much money to spare, so she was fussy about choosing practitioners to treat her, as she did not want to waste her money. Her daughter was also very sick at this time and the family was quite stressed as a result.

Ms A telephoned Dr B's surgery to make an appointment and was then sent an explanatory handout sheet. This sheet had a detailed list of instructions about preparing for the first consultation. Ms A stated that the preparations required were quite dramatic, and built up to the climax of the first consultation. The requests were unusual and time consuming. Ms A had to write a list of all illnesses and surgical procedures she had ever had, gather into a box all medications, supplements and herbs she was using for Dr B to inspect, and take a urine sample in a clean jar. There was no explanation given for why Dr B wanted these things. The handout also explained the charges for the appointment. Ms A thought the charges were very high, but believed they would include all treatment as well. She stated that she was not told that the cost of medications would be extra. Ms A said that she did not expect to receive this explanatory sheet after she had made the appointment.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Dr B advised that when new patients make a telephone inquiry they are told that Dr B offers both conventional and alternative treatments, and are sent an information sheet. Dr B provided a copy of the information sheet that was sent to Ms A. It lists Dr B's qualifications (all conventional), address, and items that should be brought to the first consultation: a medical history summary, any lab test results, a small urine sample, all medications, creams and vitamins or supplements currently being used, and a small sample of water from the tap and boiled tap water. This sheet stated that Dr B's hourly rate was $195.00 and that the first consultation usually took about an hour. It stated that follow-up visits usually took 15 or 20 minutes and charges were based on the hourly rate; medication charges were additional to consultation charges.

A subsequent copy of this information sheet supplied by Dr B listed on the reverse the "*Services and Modalities*" he offered. On this sheet he described himself as a registered general practitioner and a practitioner of complementary medicine. The list includes all the alternative therapies referred to in this case and others. The first modality listed is "*all standard medical diagnosis methods available in general practice*".

Ms A recalled that at the consultation on 21 March, Dr B did some of the basic things one would expect of a doctor at a consultation, such as taking her blood pressure and pulse.

With regard to the urine sample she provided, Ms A stated that "[Dr B] *did not send this to a laboratory for tests. He did some type of test in front of* [me] *– possibly for acid and/or he may have used his 'muscle testing' technique which* [I am] *very sceptical about*."

Ms A stated that the discussion of her medical history was limited to the essential facts and obvious conditions, such as her diabetes. Dr B had the list she had prepared of past illnesses and surgery, but Ms A said that he did not seem very interested in it, or ask many questions about it. She said that Dr B was in a hurry and would cut off her explanations before she could finish. Ms A said that she did not realise it would be such a long consultation.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A said that Dr B was not open to discussion during the consultations. She said that he asked very pointed questions, to which he wanted quite specific answers. The questions were leading; if she disagreed with him and said, "*no it wasn't quite like that*", Dr B would respond that she was wrong. She stated that he had his own ideas about what answers to his questions should be and brushed off her concerns. For example, Dr B would ask, "*do you get x?*". If she replied "*no*", he would respond by saying "*you probably do get x, but aren't aware of it*".

After the discussion Dr B proceeded to conduct muscle testing. Ms A stated that he did not give her a choice about his diagnostic technique, nor did he explain what muscle testing was or what it would entail. When she asked questions about the process he gave her only brief answers.

Dr B has explained that his muscle testing procedure is based on a "double O ring test" that was patented by a Japanese professor of medicine. It is also referred to as "peak muscle resistance testing". Dr B submitted that as this technique has been patented, it cannot be considered to be "*rubbish*" or a "*sham*".

Ms A described the muscle testing as a laborious and lengthy process. Dr B rushed through it, which she found disorienting. She put her left hand facing upward on a metal plate with a finger and thumb held together. Her right hand held a metal wand that she would touch to vials of substances held on a tray, as Dr B instructed her. Ms A understood that the test measured how much strength there was in the fingers of her left hand that were being held together. Dr B would try to pull her fingers apart, to ascertain whether she was weaker when touching certain substances. Weakness would indicate susceptibility to the substance concerned. Ms A commented that Dr B seemed to pull her fingers in two different ways. Sometimes he would apply pressure in an outward motion, which was easier for her to resist and made her hands seem stronger. At other times he would push upwards which meant it was easier for him to pull her fingers apart.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A said that the muscle testing process was conducted very quickly and Dr B became annoyed when she got confused about which vials to touch as he was instructing her. She stated that he barked at her to pay attention, whereas a simple solution would have been for him to slow down. She felt rushed, pressured and belittled. Dr B did not offer to have somebody else to help her when conducting the tests.

After each muscle testing procedure Ms A said that she asked Dr B a few questions. He gave her short, inadequate and insubstantial answers. There was no time during the process itself to pose questions. Ms A said that she was sceptical about the muscle testing process and she believes it is easy to deceive someone with these tests.

Dr B diagnosed Ms A with brucellosis of an intracellular kind that he stated no conventional practitioner would be able to diagnose, and told her that with treatment, she should be feeling better in about a week. Ms A said she was very sceptical of this diagnosis but it gave her hope. Dr B did not explain to her how she could have contracted brucellosis but did say that brucellosis can become intracellular, a form which conventional blood tests cannot diagnose. He said that any veterinarian could confirm his explanation. He also compared brucellosis to tuberculosis, in that tuberculosis also becomes intracellular. Ms A does not recall Dr B having taken blood from her at the first consultation.

Dr B subsequently explained to me that his muscle testing was positive when brucellosis was in the circuit. This showed that Ms A had been exposed to brucellosis and a resonance of brucellosis remained, rather than showing that she actually had the disease. "*What I don't know, and what no-one else can know, is if it is still there and hiding intracellularly, … or it is long dead and only toxins … remain, from which I picked up a resonance signal*." He explained that this hypothesis has yet to be established in the orthodox realm.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Dr B also explained that a diagnosis of brucellosis is not necessarily ruled out by a negative blood test. Additionally, that Ms A had a "*near perfect match*" of her symptoms as explained to him and symptoms of brucellosis. He referred specifically to sweating, weakness, malaise, headache, anorexia, pain, sore throat, arthralgia, visual disturbances, insomnia and arthritis.

Brucellosis is a bacterial infection, a chronic disease of farm animals, which can be transmitted to people by contact with an infected animal or by drinking non-pasteurised contaminated milk. The symptoms include a fluctuating fever, tiredness, headaches, weight loss, irritability, and muscle aches and pains. Conventional treatment is with antibiotics.

The National Centre for Disease Investigation (NCDI) advised that brucellosis was eradicated from New Zealand cattle in the late 1980s. They explained that although there is an occasional positive blood test for brucellosis in a human, the test can produce false positive results and NCDI is therefore sceptical of reports of human infection. The Communicable Disease Centre (CDC) advised that it was not notified of Ms A's brucellosis diagnosis. The CDC has also never been notified of any brucellosis diagnosis made by Dr B.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Dr B advised that:

> "*Muscle testing … is able to distinguish between the two forms of brucellosis … by testing the antibiotic sensitivities against the patient with the brucellosis vials in the circuit. The extracellular form is able to be attacked by white blood cells of the lymphocyte series and antibodies are formed. This can be readily detected with a blood test, and is treated with either tetracyclines or even penicillin. On the other hand, the intracellular form, by gaining access to the inside of our cells is totally out of range of antibody forming lymphocytes and hence the blood test report 'No antibodies' detected. However, on muscle testing, it is sensitive only to Sulpha drugs and this is evidence for it being in a different form, probably a pleomorphic form. Muscle testing can distinguish this antibiotic sensitivity and hence which form. I have checked this with numerous antibody tests in the past and find it completely reliable diagnostically and accurately predictive from an antibiotic treatment point of view. I have successfully treated over 150 cases previously undiagnosed, being treated symptomatically ….*"

Dr B explained further that:

> "*The test process is by necessity, long, involved and requires of the person focussed concentration. I had to ask her on a number of occasions (about 3 or 4) early on in the procedure to please focus on the testing as she needed to pay attention as this was essential or the technique would not work. The procedure is an interactive process that the person must concentrate on and continue to interact with for it to be valid. I explained this to her and things went fine, from then on, so far as the actual testing went. There are huge numbers of vials to test and everyone including me is under pressure to finish it in one session, so that an overall balanced approach to a management plan may be formulated and the person set off on a rational course of therapy. This of course saves the patients unnecessary cost, with having to come back to finish the testing on a second occasion ….*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Also the nature of the test procedure means that I can either talk or test, but not both together as lack of concentration on my part brings in an error variable to the procedure. I fail to understand how this is seen as belittling, when the technique demands certain constraints ….

As I have already explained, the nature of the testing is intense and involves focussed attention and concentration, which at the start [Ms A] *was not prepared for initially. Many patients struggle with this at the start, but 'come right' with both concentration and co-ordination as they put their mind to it, when they realise how vital it is to the accuracy of the testing.* [Ms A] *is not the first patient I have had, who has struggled with the mechanics and concentration required for the testing, but usually I can call on one of my staff to 'surrogate test' for her. However, I work alone in the weekend, as I will not ask one of my staff to give up half of their weekend, just because I am silly enough to voluntarily work weekends. I explained this to her, and appealed for some understanding of the situation.*"

Ms A stated that Dr B told her there were two ways to treat her brucellosis. First, he said he could give her a seven to ten day course of antibiotics. He then asked her whether she was open to spiritual healing. Ms A replied that yes she was, as in general terms she is open to the concept of spiritual healing. However, Dr B did not qualify or explain what spiritual healing would entail any more than that, and she was not aware that in agreeing to spiritual healing she had given up the option of having antibiotics.

Dr B subsequently advised me that, having diagnosed a brucellosis resonance, he conducted further muscle testing to discover that the appropriate treatment was a sulpha drug rather than an antibiotic. This was consistent with his experience that intracellular brucellosis responds to sulpha drugs rather than the antibiotics usually used to treat the extracellular form.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A stated:

> "*In answering 'yes', I was not aware I was agreeing to receive spiritual healing from him or anyone else. I took it as an open question. He took it as some form of consent – which it was not. (ie his question was 'Are you open to spiritual healing?' not 'Would you like/permit me to perform some spiritual healing?'. – The sign outside does not say '*[Dr B] *– Spiritual Healer'. I was totally unprepared for this question or his actions. For all I knew, he was going to give me the title of a good book to read on spiritual healing. I did not expect him to launch into any sort of prayer or ritual.)*"

Ms A said that Dr B then went into an elaborate and charismatic prayer with "*very Christian*" content. He made her bow her head during the prayer.

Straight after the prayer Dr B began writing notes, still with his head bowed. He told Ms A to "*thank the Lord*". Ms A thought that this was a private issue, and she wanted to think things through first and do it in her own way, at home, in her own time, if she felt that this was warranted. There was a silence after Dr B told her to thank the Lord, then said "*I haven't heard you thank the Lord*". At this point Ms A said that she felt mortified, like she was being treated like a schoolchild, and that Dr B was "*off the wall*". She did as he asked and said something along the lines of "*thank you God*". Then she stated that she was hustled out the door.

Dr B advised me that it was out of concern for his patients' wellbeing that he asked them to pray in his presence.

> "*I never talk down to anyone, but try and show respect to everyone, in view of where I'm coming from. I am deeply sorry that* [Ms A] *feels like this now in retrospect, but it was never my intention for this to be perceived thus. I can only offer my sincere apologies to her if she feels that way, but nothing was intended.*"

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Dr B subsequently explained that he had assumed Ms A was a Christian, as she spoke about an Anglican Vicar who was her friend and he therefore believed that he was "*coaching an established Christian through the prayer*".

Dr B also explained that he uses prayer to reduce the time and cost of the treatments that he offers. He described his work in this area as "*pioneering*" and has acknowledged teething problems.

Dr B stated:

> "*I asked her, as I ask everyone at the very end of the session, 'do you have any more questions' – she answered 'no'. I then told her, as I tell everyone, 'if you have any concerns, simply phone in and run anything past my staff who are very experienced, and if they are not able to help then to phone me in my ring in time in the morning'.* [Ms A] *did not call me.*"

Dr B gave her homeopathic medications with instructions about how to take them and other instructions about dietary restrictions and other lifestyle restrictions. Ms A does not recollect any discussion about possible risks of treatment Dr B prescribed for her. She said that her life became very structured according to the homeopathic treatment and the therapy became the focus of her life. Ms A felt that it was all very dramatic, and stated that:

> "[I] *followed the explicit and very involved instructions to the letter – completing the course of treatment. This was very involved.* [I] *had to exclude all caffeine, chocolate (inc milo, etc), mint or mint flavourings (inc having to buy special lemon flavoured toothpaste) from* [my] *diet.* [Dr B] *even dramatised the special way I needed to transport the 'medicines' home. They must be kept away from any electrical wiring or machinery, light or smells according to* [Dr B]."

Ms A stated that Dr B did not tell her she could purchase the remedies he prescribed for her elsewhere. She purchased the prescribed homeopathic remedies directly from Dr B.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A described the whole consultation as "*weird*", and emotionally very uncomfortable, which is unusual for her as she is quite accustomed to dealing with medical people, on both professional and personal matters. Ms A said that at the end of the consultation she came away with the impression that Dr B was a religious fanatic of the charismatic variety. He built up the atmosphere during the consultation, to the climax of his diagnosis. Ms A did not express her concerns to Dr B during this consultation.

Ms A said that at her first consultation, Dr B told her that she would feel better in one week. When she felt no better after two weeks Ms A phoned Dr B's nurse who told her that some people take longer to experience an improvement in their condition. At the time she made this complaint in July 1998, Ms A had still not noticed any improvement and she felt that Dr B had raised her expectations unrealistically.

Dr B subsequently explained his use of the "*placebo effect*" in treating patients. His approach is to build up "realistic hope" in his patients, in order to motivate them to persist with treatment that may be difficult, and he estimated that this results in up to a 20% improvement in treatment outcomes. Dr B explained the disadvantage of this approach being that patients may misunderstand and mistakenly believe that he has guaranteed them a cure. Dr B stated that he never uses such guarantees to motivate people.

On 25 March 1998 Ms A consulted Dr C, her general practitioner, and they discussed Dr B's diagnosis. Dr C telephoned a laboratory to discuss the situation, and took a blood sample from Ms A to test for brucellosis. The Brucella Screen, dated 25 March 1998, was negative.

In the time between her two consultations with Dr B, Ms A discussed her situation with other practitioners and friends. By the second consultation she had thought through events and her reactions and opinions, but stated that Dr B was such a foreboding figure she did not have the courage to express her concerns to him.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A had expected the second appointment to cost about $35.00, but was aware that Dr B charged for every additional five minutes. She said she had no reason to expect this would be a long appointment and there was no warning from Dr B that it would take a long time, yet the appointment cost $175.00.

At the second consultation on 5 May 1998 Ms A asked Dr B about antibiotics, as she did not want to rely on spiritual healing alone. She said to him that she understood the prayer, or spiritual healing, did not exclude antibiotics or other medical treatments. Dr B told her that there was no need to use antibiotics as spiritual healing had cured her of the brucellosis, which was now "*as dead as a doornail*". He then proved that she was cured, by conducting another muscle test. He did not pray during this consultation.

Ms A advised that she had not thought spiritual healing would be to the exclusion of other treatments. However, Ms A had felt no improvement in her symptoms so was doubtful about Dr B's assertion that she had been cured.

Dr B advised that although Ms A complained that his treatment had not worked, she had told him, when he specifically questioned her, that her pain had "*gone from 10/10 to 8/10 in her back*".

Dr B stated that he explained to Ms A the likely negative effects of a long course of antibiotics, including complications that they might cause in the control of her diabetes. He said Ms A chose to avoid antibiotics. Dr B advised that antibiotic and spiritual healing treatments are alternatives. Following his prayer on 21 March he asked Ms A whether she was happy with the treatment she had received and she answered in the affirmative, so he did not prescribe antibiotics. Dr B stated that at this point, if a patient wished to have antibiotics as well as spiritual healing, he would prescribe antibiotics. In Ms A's case he stated that he progressed on to the detoxification phase using homeopathy, and prescribed further homeopathic remedies.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Dr B stated that he had provided Ms A with information that x-rays negate the positive effects of homeopathy for three months, at her first consultation. He stated that during the second consultation on 5 May 1998 Ms A informed him that she had been to the public hospital for a chest x-ray. In Dr B's view, having an x-ray "*... just three and a half weeks into the six week homeopathic course completely inactivated the course*". In addition, Dr B pointed out that Ms A did not tell him that she was awaiting the results of nerve conduction studies, and therefore he could not take this into account in his clinical assessment of Ms A's case. This had affected his comments to her regarding her prognosis.

With regard to the x-rays that were taken, Ms A said that there were long waits in the public hospital system to receive treatment. She had had a mild ongoing fever with no discernible infection and Dr C decided to hospitalise her, so that all the disciplines could consider her case at the same time. On admission to hospital, chest x-rays were taken. Ms A said that it seemed reasonable to allow these x-rays to be taken at the time, even though she was aware that Dr B's initial handout had said that x-rays were contraindicated during homeopathic treatment. Ms A was already sceptical about Dr B's treatment and this happened well after the time by which he said that she should have felt better. However, at the second consultation Ms A did tell Dr B she had had an x-ray, at which point she said that he "*went through the roof*" and told her off for allowing this. He then gave her a homeopathic treatment to counteract the effect of the x-rays.

Dr B explained his reaction as simply an expression of incredulity at Ms A's decision to allow x-rays to be taken after he had instructed her not to have any x-rays while taking his homeopathic medications.

Ms A stated that after this consultation she did follow through with the new remedies Dr B prescribed her, but only for a couple of weeks and not to the end of the course. Dr B's treatments had not helped her and she then believed his practice was entirely a sham, so decided to complain. Due to the stress she was under at that time with both her own illness and that of her daughter, Ms A asked an advocate to write to the Commissioner on her behalf.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Information Gathered During Investigation *continued*

Ms A's first consultation cost $242.30; $165.00 for the consultation and $73.30 for the vitamins and homeopathic medicines provided by Dr B. The second consultation cost $172.30. This was $98.00 for the consultation and $74.30 for further homeopathic and herbal remedies. From information provided by Dr B, Ms A understood that a second consultation usually took 15 minutes. She did not therefore expect her second consultation to cost so much and was also not expecting to have to purchase further medicines.

Dr B explained that this second consultation took longer than he had anticipated, as he needed extra time to address the complications caused by Ms A's x-rays, and the fact that she had not previously told him about the nerve conduction studies.

Dr B advised that upon making verbal enquiries before consulting him, potential patients are told that homeopathic minerals and vitamins are charged for in addition to his base hourly rate and that such information is provided to patients in the handout already described. Dr B subsequently advised that he dispensed homeopathic medicines from his clinic so that the exact medicines can be tested against the patient for compatibility. The medicines he prescribed could be purchased either from his clinic or from the manufacturers in the city.

Dr B sent Ms A several invoices for the remainder of her account. Ms A told Dr B that she had complained and did not intend to pay the remainder of the account.

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner

The following expert advice was obtained from an independent general practitioner and an independent homeopath:

General practitioner

"*In replying to your questions regarding this complaint I need to state that I am a conventional medical practitioner and I practise traditional evidence-based medicine. Thus while I am able to discuss complaints regarding* [Dr B's] *practice of traditional medicine, I am unable to pass comment on his practice of homeopathy or alternative medicine as I have no knowledge of this.*

…

(a) Under the basis of medicine which I practise, I do not see how [Dr B] *could have concluded that* [Ms A] *was suffering from brucellosis following muscle testing. Under the model of medicine that I traditionally practise this would not be a diagnosis that would be made on this basis.*

(b) Likewise with the question of whether or not brucellosis of the intracellular form being out of the range of antibody-forming lymphocytes and hence the blood test report of 'No antibodies detected', I find it very hard to follow this line of reasoning and certainly, once again, with conventional medicine this would not be acceptable.

(c) I am unable to say on what basis [Dr B] *could have concluded following a muscle test that spiritual healing had cleared the condition.*

(d) I do not feel that in the realms of traditional medicine there is any supporting medical information enclosed which would cause me to change my opinion about this.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

(e) The basis of this complaint needs to be that the complainant had to understand that she was not receiving conventional medical treatment. She was receiving alternative treatment and as long as she understood that, then what [Dr B] *performed for her can only be judged by a practitioner of alternative medicine. None of what* [Dr B] *did would be acceptable in conventional medical practice but if he was not claiming to provide this then that is not the issue.*

The issue has to be whether or not the complainant clearly understood that she was not receiving conventional medical therapy and thus what she was receiving is entirely different from what she might expect from a practitioner of conventional medicine.

It is much more difficult in my opinion when a practitioner practises both types of medicine. There is potential for confusion as has obviously occurred in this situation. It is clear and much more straightforward when a practitioner sets out to practise either one form or another of medicine."

Homeopath

"*The parameters of this report are strictly limited to aspects in the complementary field of medicine and do not cover any aspect of allopathic* [conventional] *treatments.*

[Dr B] *states 'Homeopathy was the modality that I was using (the rest were complementing the homeopathic at that stage)' and I will confine my review mainly to this.*

On first reading these documents one is immediately confronted with a sense of astonishment that a medical practitioner could make such claim that [Ms A] *was 'suffering from Brucellosis of an intracellular kind* ***that no other practitioner would be able to diagnose****' and that 'spiritual healing had cleared the condition' ….*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

I Should [Dr B] *have concluded that* [Ms A] *was suffering from brucellosis following muscle testing?*

[Dr B] *practised an advance*[d] *type of muscle testing on* [Ms A], *which enabled him to do a diagnosis of her condition. With this type of testing a patient is usually requested to hold one vial of a particular solution at a time and if found weaker while holding it some indication of susceptibility is given. There are numerous types of these test procedures available.* [Dr B] *used the Ramsay and Edmond method.*

It must be emphasised that it is a SUBTLE 'gentle' technique. Muscle testing can be a great aid in learning much about a patient's condition, and some amazing results have been reported over the years by practitioners when conducted properly. It can give misleading results too if either or both parties have distracted thoughts, are influenced by subtle suggestions or a willingness to prove a certain point. The practitioner in particular must be completely objective in his approach.

[Dr B] *mentions a number of factors which he should have born in mind when making his one and only diagnosis of brucellosis.*

1. a) [Ms A] *quite clearly had not been adequately informed of the procedure and 'I had to ask her on a number of occasions (about 3 or 4) early in the procedure to please focus on the testing …' and 'she struggled with the mechanics and concentration required for the testing'.* [Ms A] *herself states that she is still 'sceptical about this process and believes that it is easy to deceive someone with these tests'. Her willing co-operation and motivation was clearly lacking. She was therefore not a very suitable candidate for the tests and the results should have been confirmed by 'calling on one of my staff to "surrogate test" for her' or confirm his diagnosis by other means. It would only take a few seconds to test her against brucellosis with a surrogate.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

b) He should have been fully aware of the subtleties of the test requiring 'intense and focused attention and concentration' and having 'prospered on successful treatments over 12 years of using bio-energy techniques'. When [Ms A's] *co-operation was not forthcoming, he should have advanced with caution.*

2. Considering the seriousness of the disease diagnosed and fickleness of the muscle test, other procedures should have been called for to confirm the diagnosis. This was undertaken by the patient herself approaching another practitioner who provided laboratory tests indicating an incorrect diagnosis had been made.

3. [Dr B] *produced NO evidence of any historical or current symptoms of brucellosis in the patient to confirm his muscle test diagnosis either allopathically or homeopathically.*

II Should [Dr B] *have advised that brucellosis of the intracellular form 'by gaining access to the inside of our cells is totally out of range of antibody forming lymphocytes and hence the blood test report – "No Antibodies" detected'?*

I am not competent enough to answer this question as it is beyond the range of Homeopathy …. I fail to appreciate the significance of this information as the aim of Homeopathy is [holistic], *to treat the whole person and not minute pieces. In any case, I doubt if there is any medication of any type that is specifically available to treat such a condition.* [Dr B] *states (and I agree) 'Homeopathic medicine is tailored to people' and not the disease. Homeopathic remedies are prescribed according to a set of rules aimed at matching all the patient's symptoms (or as close as possible) to those which would be produced by a specific remedy – similia similibus curentur (like cures like) – ….*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

He does not state what brucellosis symptoms [Ms A] *had. He also states 'diabetics in the advanced stage can have autonomic nerve dysfunction'. 'This can be due in part to the chemicals ? and brucellosis toxins that she had on board. Because I did not know about it, there was no way I could take this into account in my clinical assessment of her case ....' Again I fail to find if an intracellular form of brucellosis (should such a condition ever exist) is of any significance in treating a patient with diabetes. Once again the same procedure would apply – the approach would be wholistic and be 'similia similibus curentur' and the treatment would take significant account of diabetic symptoms and not brucellosis.*

III Should [Dr B] *have concluded following the muscle test, that spiritual healing had cleared the condition?*

... I am reluctant to deny that spiritual healing could not clear this condition.

What does however bring some doubt into my mind, after examining the other evidence, if [Dr B's] *attitude to spiritual healing is not similar to that of his attitude to Homeopathy. On her first visit to* [Dr B] [Ms A] *was diagnosed as suffering from brucellosis 'of an intracellular kind ...'. She was later told at the next consultation when she inquired about antibiotics treatment for brucellosis that 'there was no need, that the spiritual healing had dealt with it and it was "as dead as a doornail"'. 'He "proved" this by conducting another muscle test.'*

The question now arises if the condition was as 'dead as a doornail', why a further 'six week homeopathic course of treatment' (for brucellosis) was provided when obviously not necessary.

...

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

IV Are there any other issues which arise from the supporting information enclosed?

[Dr B] *states 'the intracellular form (of brucellosis) is out of range of antibody forming lymphocytes and hence the blood test report "no antibodies detected"'!! This is a very doubtful explanation requiring further investigation. When available, Homeopaths appreciate all the evidence to hand including laboratory reports, in monitoring the patient's progress and these are taken into serious consideration'.*

[Dr B] *states 'Homeopathics was the modality that I was using (the rest were complementing the homeopathics at that stage). This had been gone over thoroughly in her session with me and was CLEARLY INDICATED in both homeopathic sheets items 6 & 7 in red'.*

[Dr B] *has provided not one item of fact beyond muscle testing techniques to substantiate this statement. He has not provided any information whatsoever that he even attempted to apply the very basics of homeopathic* [principles] *in this case although he claims 'Homeopathic medicine is tailored to people ...' presumably implying some attempt to relate to the law of similars.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

No evidence of taking the case down or repertrisation are provided nor any attempt to apply the law of similars to the materia medica are mentioned. In fact he does not even mention what remedy he provided. All we have to go on is a general pamphlet on 'Taking Homeopathic Medicine by Naturapharm' and a similar one on 'American Complex Homeopathy'. From what is available on the little evidence provided it would be reasonable to assume that the patient was provided with at least 2 bottles of what are known as 'complex remedies', usually over the counter mixtures of a multiple of remedies. From a homeopathic point of view these are likened to prescribing mixtures of a range of broad spectrum antibiotics and shooting in the dark. The reaction on the patient would be difficult to determine and monitor. Providing this type of remedy is not according to professional or even basic homeopathic [principles] *whatsoever.*

Herbal remedies were provided; what type and for what reason he fails to mention. He further makes repeated reference to 'completely inactivating the (homeopathic) course by her exposure to x-ray treatment at the [public hospital] *just three and a half weeks into the six week course'. This is the first time in my homeopathic career that I have been made aware of this phenomenon and it can 'block the action of homeopathic medicines ... in spine and chest for 3–5 months'. I have never experienced this situation with any of my patients. In a biweekly or tri-weekly basis, one patient or another undergoes x-ray treatment for some or other reason. I often provide remedies for pain after tooth extraction or tooth canal drainage etc, entailing x-rays and the response to homeopathic medication from the patient is usually satisfactory.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

[Dr B] *also prescribes the 'drops 3 times daily for 28 days of the month'. Homeopathy is not prescribed in this fashion, and by doing so much harm can be done to the patient. The instruction sheet also states 'refrain from taking certain drugs such as prednisone, ß-blockers, some Vitamin C brands …'. I regularly treat people who are on these medications with homeopathic remedies (with the approval of their regular practitioners) and have never experienced any problems. In a serious case which entails the use of prednisone or beta-blockers, I would never* [prescribe] *complex homeopathic remedies, although I would not deny the possibility that a complex remedy could cause a problem with beta-blockers etc.*

'Homeopathic medicine is tailored to people and the way I dispense it is to test it against the patient with bio energy testing for compatibility (i.e. is it tolerated) AND FOR ALLERGY.' I am in a quandry here as to understand what [Dr B] *means. I have never heard that one could be allergic to a homeopathic remedy. An allergy could be treated with a remedy, or an aggravation could be produced but this way of describing Homeopathy is foreign to me.*

…

Services were not provided with an appropriate standard during the muscle testing as grave doubt must be expressed regarding the validity of the brucellosis diagnosis. The claim that Homeopathy was being practised is totally misleading. There is a strong suspicion that [Ms A] *was exposed to harm by over prescribing.*

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General Practitioner, Dr B

Opinion - Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

She was misinformed i) According to [Ms A], [Dr B] *concluded that she was suffering from brucellosis, but of an intracellular kind that no other practitioner would be able to diagnose … and ii) when inquiring about antibiotic treatment she was told there was no need that spiritual healing had dealt with it and it was 'as dead as a doornail' iii) She was also no better some considerable time later iv) She was told the blood test was of no significance. The professional standard provided by* [Dr B] *in explaining her condition is totally unacceptable and she quite rightly felt her intelligence was insulted and so stated that the treatment was a 'sham'.*"

In response to my provisional opinion Dr B raised several issues. Additional advice was obtained from a general practitioner and physician who also practices homeopathy, and a medical microbiologist.

General practitioner / Homeopath

"***1. Were* [Dr B's] *diagnostic techniques appropriate?***

I do not think [Dr B's] *diagnostic techniques were appropriate.*

The 'vega-type' testing as used by [Dr B] *seems to have been modified and developed by him, and has as far as I know no outside opinions of its validity.*

Muscle testing/biokinesiology would not be an appropriate way of diagnosing brucellosis.

[Dr B] *stated that* [Ms A] *was suffering from brucellosis of an intracellular kind, that no other practitioner would be able to diagnose. I find the evidence given for this condition totally unconvincing, and would have to question the validity of a diagnosis that could be made by only one person.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

2. Did* [Dr B] *carry out the muscle testing/biokinesiology appropriately? Did this result in a reliable diagnosis?

Muscle testing/biokinesiology is a subjective testing form, where results can be significantly changed by many different variables.

Indeed in some comments [Dr B] *sometimes tested the finger strength sometimes from above and sometimes from below the patient's hand, with no explanation to the patient as to why he has done so.*

I think that muscle testing/biokinesiology is best used for minor testing where there are no real clinical or diagnostic issues, but it is not appropriate for significant decisions or clinical diagnoses.

This would especially apply if other conventional tests have not been done, or if a disease was claimed that other practitioners would doubt, whether they be orthodox or alternative/integrative.

I think that it would not be possible to use these techniques to make a reliable medical diagnosis.

3. Was* [Dr B's] *diagnosis of brucellosis based on an adequate patient assessment?

I do not think [Dr B's] *diagnosis of brucellosis was based on an adequate patient assessment. The notes I have received show scant history taking and examination findings. He did no blood tests, which is extraordinary, given the nature of the diagnosis.*

4. Was* [Dr B's] *diagnosis of brucellosis supported by a credible scientific rationale?

No. As I have said previously, muscle testing/kinesiology and indeed vega and 'vega-type' testing would not be able or sufficient to make a diagnosis of brucellosis.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

Formal blood tests would be standard and necessary, in order to make the diagnosis, and also to exclude any other causes for the symptoms.

5. Do the diagnostic methods and medical evidence support the diagnosis of brucellosis?

The evidence does not support, or even suggest the diagnosis of brucellosis.

6. Please comment on* [Dr B's] *discussion of intracellular brucellosis and the resonance that remained of a previous brucellosis infection.

I do not think such a condition as 'intracellular brucellosis' exists.

It is true that some organisms such as cytomegalovirus become intracellular within the body, by being engulfed by white blood cells. But this is part of the body's response to acute infections, and is associated with the development of antibodies, which can subsequently be measured in the blood. There is no mention in the standard medical literature of 'intracellular brucellosis'.

I think that sometimes such suggestions are made to explain (possibly false or spurious) testing results. For example, if [Dr B] *found a positive test for brucellosis in his testing, and yet there was no evidence of brucellosis clinically or on blood tests, then he could claim a diagnosis of 'intracellular brucellosis' in an attempt to give validity to his diagnosis and management.*

With regard to the 'resonance' remaining from a previous infection, I am not sure what [Dr B] *means when he talks about 'resonance'. There can be some problems of understanding when a physics term is used in a 'loose' or jargon manner.*

I think there can be a number of suspect conclusions that can be drawn from muscle testing/biokinesiology.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

Firstly, because something shows up on testing, it does not mean it is clinically important. This has never been subjected to a systematic testing (1).

Secondly, because a 'resonance' is picked up with regard to a testing vial, that does not necessarily mean that the test represents the actual substance in the vial.

Thirdly, it does not mean that that person has that specific illness.

Fourthly, there is no objective evidence that 'resonances' remain in the body after infection, that this is associated with illness, or that getting rid of the 'resonance' will 'cure' the patient.

7. Was the treatment* [Dr B] *gave* [Ms A] *in accordance with accepted principles in this area? Was the treatment safe and appropriate?

The treatment was totally at variance with accepted principles of homeopathy, and of standard medical practice.

The homeopathic remedies given were all in a low potency, but even low potency remedies need to be used with wisdom and caution. So the remedies were likely to have been safe, but did need to be monitored.

I don't think the treatment was appropriate, because the diagnosis was suspect, no differential diagnoses were considered, and only one of the remedies given was specific for the assumed diagnosis.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner ***continued***

8. Please comment on* [Dr B's] *assertion at the second consultation that the brucellosis had been cured so antibiotics were no longer needed. Was this a reasonable conclusion to draw in the circumstances? Was this conclusion based on an adequate assessment and supported by the objective evidence?

Here again there is a discrepancy between the test finding of a 'resonance' of previous brucellosis, and actually using the diagnosis of brucellosis, especially when no real history and examination had been performed, and no blood tests arranged.

I do not see how he could have said that her brucellosis was cured, before re-examining her or re-testing her, merely because prayer had been performed.

I do not believe that antibiotics should have been used in her case, but I fail to see how [Dr B] *can insist that either a patient have either antibiotics or his treatment including prayer. Many homeopathic doctors use antibiotics alongside homeopathy, as complementary treatments.*

I do not believe that the diagnosis of brucellosis was reasonable, nor was his assertion that it had been cured, as there had been no proof by way of blood tests.

His conclusion was not based on an adequate patient assessment, nor supported by objective evidence, as would be required by a careful practitioner.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner ***continued***

9. Please comment on the fact that further homeopathic medications were prescribed after this cure was pronounced. Was further medication necessary, safe and appropriate?

In classical homeopathy, the remedies are carefully chosen in order to stimulate the body to do its own healing. So if a person is well, or is continuing to improve, normally no treatment should be given. To do so would run the risk of an aggravation of symptoms, thus adversely affecting the patient.

I do not understand why he continued with treatment if he thought the patient was 'cured'.

10. Any other issues concerning* [Dr B's] *practice and theories?

[Dr B's] *theories are of concern and at variance with both accepted medical practice and alternative/integrative practice.*

It sounds from the patients' comments, that he can be rude and intimidating, rushes them in their consultations and doesn't readily allow questions. A short question from him at the end of the consultation is not sufficient.

He is not readily accessible to patients and their relatives. By his own admission he leaves his staff to cope with problems that arise from his care, and he restricts the times that patients can contact him. He has made no arrangement for after hours care for his patients.

He should explain about his practice of prayer before getting his patients' consent for this, and should be sensitive to any concerns they have.

I note that it is very telling of his extreme attitudes that when he is asked for clarification he 'counterattacks' and continues to justify the questionable parts of his behaviour and practice.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

…

GENERAL ISSUES

1. It is of concern that despite [Dr B's] *medical training, in these two cases he has used almost exclusively alternative medicine.*

Moreover the modalities he has used are of kinds that are not widely accepted in alternative medicine.

'Vega-type' testing, laser treatment to the ear and prayer are all unusual treatment modalities, which would be acceptable to very few alternative practitioners, and virtually no medical practitioners.

2. It seems to me that his training in alternative/integrative medicine has been only partial and unstructured, and that then he has gone on further to make his own private assumptions, without reference to others in comparative fields. There is a difference between theory and fact, and it seems that he uses some theories or hypothesis as proven fact.

3. I see that the Medical Council's Guidelines on Complementary, Alternative, or Unconventional Medicine have already been commented upon in this file, but I would like to do so as well.

'Where patients are seeking to make a choice between evidence-based medicine or alternative medicine, the doctor should present to the patient all the information available concerning his or her recommended treatment thus allowing the patient, if a competent and consenting adult, to make an informed choice which should then be treated respectfully.'

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

I think that if one is presenting oneself as a Medical Practitioner then one must practise orthodox medicine to a satisfactory standard, whether or not one is also practising alternative/integrative medicine in addition.

4. The Medical Council has also said that in the case of unconventional practice it will particularly consider the following questions:

'Has an adequate patient assessment been conducted in each case, including history and physical examination, laboratory studies, imaging and other evaluative measures to determine that the patient has the condition for which treatment is being prescribed?

a) Is the methodology, if any, promoted for diagnosis, as reliable as other available methods of diagnosis?

b) Is the risk/benefit ratio for any treatment greater or less than that for other treatments for the same condition?

c) Is the treatment extrapolated from reliable scientific evidence, including properly conducted clinical trials, and/or is it supported by a credible scientific rationale?

d) Is there reasonable expectation that the treatment offered will result in a favourable patient outcome?

e) Is the practitioner excessively compensated for the service provided?

f) Are the practitioner's promotional claims supported by reliable scientific evidence?

g) Is the benefit achieved by the practitioner greater than that which can be expected by placebo alone?

h) Has the patient's informed consent been obtained and adequately documented in the medical record?

i) Has a normally constituted ethical committee given its approval to the investigation or treatment?'

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

In these two cases before the Commissioner there is no evidence of any of these clauses being fulfilled.

5. *<u>Accountability</u> is necessary in all professional disciplines. In order to be accepted into orthodox medicine, alternative/integrative medicine is developing its own education (3), regulation (4, 5) and research (6).*

It is important for all medical practitioners to have peer review, and for general practitioners practising alternative/integrative medicine to have peer review in both fields.

This is in order to assure that standards are maintained, that practitioners keep up with changes in accepted practice, and that there is no risk of practitioners going 'out on a limb' within their practices.

I do not think that [Dr B] *has shown any accountability in his practice: indeed when questioned about his practice he only proceeds to justify his opinions and actions.*

6. *<u>Integrative medicine</u> is described as practising medicine in a way that selectively incorporates the elements of complementary and alternative medicine, integrating comprehensive treatment plans alongside solidly orthodox methods of diagnosis and treatment. This is further discussed in a recent editorial in the British Medical Journal (7).*

Like orthodox medicine, alternative/integrative medicine has a background of theory and knowledge, and accepted guidelines and standards of practice. I do not think that [Dr B] *has upheld these principles in the documentation I have received.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

7. In answer to the question in Appendix II of Guidelines for Independent Advisors, the conduct of this provider in these cases incurs my severe disapproval, and I think it must also incur severe disapproval of other peers.

8. I trust that this opinion reflects a flexible unbiased approach in the evaluation of the case.

..."

Medical Microbiologist

"*The opinions expressed below are in my capacity as a medical specialist in the field of medical microbiology and communicable disease. Aspects of the case have also called on my general knowledge of the sciences, and particularly of the epistemology of science and medicine.*

I have no commercial, personal or professional interests either with or in competition with [Dr B].

I must, however, declare that I have a moral aversion to the practices followed by [Dr B], *which I see as cruelly exploitative, if not outright fraudulent. This inevitably must colour the opinions I express on the particulars of this case, although I have attempted to be as objective as possible.*

I do not contend that there is no value in alternative and complementary medicine per se. Generalisations are dangerous because there is so great a diversity in what is effectively a lumping phrase for all healing practices other than the 'conventional' or 'biomedical' system.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

At one extreme of this spectrum there are such long established systems as Ayurvedic medicine, Chinese traditional medicine and Maori healing, which rest on theoretical underpinnings (albeit quite distinct from those of biomedicine, being metaphysical rather than physical), centuries of accumulated experience, a moral code, and coherence with the spiritual and cultural traditions of both practitioner and client.

The other end of the spectrum are the practices of snake oil merchants, charlatans and confidence tricksters, who exploit public perception of the limitations of biomedicine. Their mode of business is to confuse with an impressive sounding but meaningless pseudoscientific jargon, to make extravagant promises, and to slander conventional medicine by accusing it of a conspiracy to suppress their 'knowledge'.

I would put [Dr B's] *practice close to the latter end of the spectrum. His written response to the investigating officer's questions, and the reported information given to patients, are expressed in language which attempts to mimic that of science, but is inconsistent with scientific theory and method.*

I have little doubt that my advice will be challenged on the grounds that I do not have a background in the variant of homeopathy which [Dr B] *purports to practise. However, by remaining on the medical register,* [Dr B] *creates an expectation that he is bound by the scientific standards of Medicine and so must expect to be judged against them.*

[Dr B] *has used the outward respectability conferred by his qualifications and registration as a practitioner of conventional medicine to allay the healthy scepticism of at least some of his patients about his methods, and so to abuse their trust. This is not in the spirit of informed consent.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

Background

[Ms A] *consulted* [Dr B] *on 21 March 1998 for a variety of symptoms which at that time were undiagnosed, but which are now ascribed to fibromyalgia.* [Dr B] *gave her three diagnoses, of brucellosis, maldesen poisoning, and one which she has forgotten.*

The supposed brucellosis was treated with prayer and homeopathic remedies, and was pronounced cured at a consultation of 5 May 1998.

[Ms A] *was dissatisfied with the conduct of the diagnosis, the treatment,* [Dr B's] *manner and the fees asked. She did not experience any improvement in her symptoms, and conventional serological tests were negative for brucellosis.*

The background is described in detail in the referral letter from the [advocate].

Specific Matters:

1. a. Please comment on the diagnosis of brucellosis.

Brucellosis is not an easy diagnosis either to make or exclude, as its clinical presentation is highly variable (as indeed is pointed out in the supporting document provided by [Dr B]*).*

Diagnosis relies on clues from both history and physical examination, and on confirmation by laboratory testing.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

The first thing to be sought should be a history of contact with infected animals or unpasteurised milk or milk products. The most important species of Brucella affecting humans are Brucella abortus (acquired from cattle, in which it causes contagious abortion), Brucella suis (from pigs) and Brucella melitensis (from sheep and goats). As a result of a highly acclaimed veterinary public health effort in the 1970s, brucellosis has been eradicated from farm animals in New Zealand.

No mention is made in the notes of whether [Ms A] *had travelled in enzootic areas abroad, or consumed imported dairy products made of unpasteurised milk, nor whether these crucial questions were even asked by* [Dr B].

The physical signs of brucellosis are fairly non-specific and variable, being related to almost any organ of the body. Notable components are a gradual onset, often an 'undulant' fever, general malaise, fatigue and depression.

Laboratory investigations are the key to diagnosis. The most specific indicator is culture of Brucella organisms from blood or bone marrow. Unfortunately, culture is not very sensitive, and is often negative, particularly if cultures are taken late in the course of the disease.

Older serological tests which relied on agglutination were notorious for giving false negatives, the 'prozone' phenomenon. This was well known to laboratory workers, and compensated for by taking the serum to higher dilutions. Modern enzyme-linked immunosorbent assays are not subject to the prozone phenomenon, and are highly reliable, with a sensitivity of 97% and negative predictive value of 94%. [The sensitivity is the probability that a person with the disease will test positive, the negative predictive value is the probability that a person with a negative test does indeed not have the disease.]

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

While [Dr B] *is correct in saying that Brucella tends to be located intracellularly, this is not a cause of negative serology, and indeed antibody levels may be very high (the cause of the prozone phenomenon).*

The negative serology, when taken in conjunction with the lack of a suggestive history, virtually rules out a diagnosis of brucellosis.

b. Please comment on the remaining resonance.

[Dr B] *speaks of a 'resonance' remaining after the elimination of brucellae from the patient.*

It is true that brucellosis is sometimes characterised by a prolonged period of convalescence, with ongoing malaise and depression.

Such post-infectious malaise is not unique to brucellosis. It is also characteristic of viral infections. In the case of viral infections the post-infectious malaise has been ascribed to the interleukins, a group of non-specific components of the immune response.

Use of the term 'remaining resonance' to describe this is at best metaphorical. There is no scientific reason to believe that any Brucella bacteria or their components remain in the patient.

[Dr B], *however, appears to claim that some physical principle of the brucellae remains which 'resonates' with a homeopathic dilution of Brucella in a vial.*

He calls on Physics to explain his use of the term 'resonance', and so we must assume that it is in the sense of Physics that he means it.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

'Resonance' as a physical property describes the phenomenon in which systems with characteristic standing wave frequencies are coupled, and energy transferred from one to the other. Examples are the wine glass, the pitch of which is the same as, or an harmonic of the pitch of a violin string. When the string is played, the glass vibrates. More prosaically, the electrical circuit of a radio receiver has a characteristic frequency determined by a capacitor and a resistor. As either is varied, the characteristic frequency of the circuit is changed. If it is made the same as that of a transmitter, the radio circuit resonates with and is said to be 'tuned' to that frequency.

A quantum physical analogy to resonance exists at the molecular level, in that the electron cloud of a molecule has a series of discrete conformations, each associated with an energy state. Transitions between these conformations require the absorption or emission of a photon, a quantum of electromagnetic radiation.

This is the basis of fluorescence. An organic molecule such as fluorescene is 'excited', that is, its electron cloud transitions from a low to a higher energy state, on exposure to a high energy radiation, such as ultraviolet light. Over time the excited molecule 'decays' to a lower energy state in a stepwise fashion, emitting photons of visible light at wavelengths determined by the separation of the energy levels of the excitation states.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

The molecules which constitute a Brucella bacterium are similar to those of the enormous numbers of bacteria of other genera which inhabit the human body, particularly the gut. (It is estimated that there are tenfold more bacterial cells within the envelope of the human body than there are human cells.) Further, any Brucella structural components or toxins will be cleared by the body's innate detoxifying and phagocytic mechanisms within at most a matter of hours after the bacteria are 'as dead as doornails'.

Perhaps [Dr B] *is postulating a 'memory' by body water of past contact with Brucella, analogous to that which the lactose water of a homeopathic medicine is supposed to retain. Again, though, if body water retains a memory of Brucella, why not also of the thousands of other bacterial species with which the body is in daily contact?*

Even assuming that there is some physical reality to the 'resonances' left by brucellosis, there is no plausible physical mechanism by which these resonances could interact with those of the substance in the vial, and in turn interact with the nervous system to cause a muscular twitch.

The vial will contain numerous impurities at higher concentration than the brucella products which it contains in homeopathic (that is to say, infinitesimal) concentration. Many of these will also be in the patient's body. How does [Dr B] *explain the absence of a background noise of interaction arising from these impurities, and totally swamping the Brucella signal?*

In short, the concept of 'resonance' as it appears to be meant by [Dr B] *is totally preposterous by the standards of Science.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

c. Please comment on the basis for* [Dr B's] *hypothesis and his explanations.

The bases of [Dr B's] *homeopathic and biokinetic ideas are covered in the advice on 1. b. above and 2. below.*

[Dr B's] *explanation for both his diagnostic method and his treatments relies on the homeopathic idea that there are interactions between substances and the diluent in which they are mixed, which persist for a substantial time. (In contrast the interactions known to science would last for that fraction of a second in which the molecules are in contact.)*

[Dr B] *expands upon this already preposterous theory by imagining that there is a detectible interaction between these molecular principles at a macroscopic distance (of the order of decimetres).*

2. Does reliable scientific evidence or a credible scientific rationale support* [Dr B's] *claims?

[Dr B's] *diagnoses are based on the idea that there is some sort of interaction between a toxic principle in the patient's body, and the same in homeopathic dilution in a vial. This interaction is supposedly detected through its electrical effect on the patient's muscles.*

Given that homeopathic dilutions are generally so dilute that there is virtually zero probability of finding even a single molecule of the active ingredient, homeopaths claim that the diluent contains a 'memory' of the active ingredient.

That this is absurd is easily demonstrated by the thought experiment of considering the many thousands, even millions, of substances with which the diluent will have had contact at least as material as that with the highly dilute active ingredient.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

A glass of water from the [local] *River (or, for that matter the Elbe) will have had contact with every animal, vegetable, microbial and mineral compound to be found in that river's catchment, and by the reasoning of homeopathy should remember all, and have biological effects related to every one!*

How then, can a homeopath claim that a remedy has a single action?

Similarly, if there is indeed some sort of 'resonance' between a compound or its 'memory' in the patient's body and the same compound or 'memory' in a glass vial, it would be expected that the same resonances would occur between the many thousands of other compounds or their memories in both body and vial. There is nothing in [Dr B's] *description of the biokinetic diagnostic method to suggest how the signal given by the substance of interest is rendered clear of the noise of so many potential interferences.*

Some homeopaths have claimed that the memory of which they speak is in some way related to the resonances of the electrons and nuclei of the diluent.

This suggestion has been tested. Nuclear magnetic resonance studies are able to find no difference between homeopathic solutions, or between different strengths of the solution.

In short, there is no evidence for the phenomena on which [Dr B's] *diagnostic methods or treatments relies.*

More tellingly, there is no internal logical consistency to his theories.

[Dr B] *also uses prayer as a means of healing.*

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

There is no evidence in the scientific literature that prayer can heal objective physical disease, such as infections. It is, however, extraordinarily difficult to design an appropriate trial of prayer, with satisfactory controls.

It seems reasonable to suppose that prayer may be of help in treatment of disorders arising from the psyche or influenced by the psyche. There is good scientific evidence that the immune response to infection is influenced by the individual's emotional state. Stress and anxiety particularly if prolonged, cause a reduction in the immune response to both infectious and neoplastic disease.

It also seems reasonable to expect that any benefits from prayer would accrue only insofar as the prayer is congruent with the beliefs of the person on whose behalf the prayer is made.

There is no indication as to what [Ms A's] *faith is, or indeed if she has a faith. I assume from her name, and the comments she makes about her sense of the inappropriateness of* [Dr B's] *praying, that she is not Christian.*

If [Dr B] *had a genuine belief in the power of prayer to aid this patient, it would seem reasonable to expect that he would refer her to a priest or spiritual advisor of the appropriate faith. His failure to do so, and his imposition on her of his Christian prayer seems both disrespectful towards her, and the act of a charlatan for whom the prayer is show without substance.*

3. Was an adequate assessment carried out to determine whether or not* [Ms A] *did indeed suffer from brucellosis?

An adequate assessment would have comprised a full occupational, travel and dietary history, comprehensive physical examination, and most importantly, blood culture, bone marrow culture, and serological tests for brucellosis.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

None of these appear from the notes to have been done by [Dr B]. *Subsequent investigation by another general practitioner found no evidence of brucellosis.*

4. Any other issues raised by the supporting documentation.

The same documentation was provided by [Dr B] *to support his position in regard both to this and to another complaint. I have therefore duplicated much of the advice given on that case in the discussion below.*

a. Does a patent imply efficacy?

[Dr B] *asserts that the muscle testing is based on a Japanese patented 'double "O"-ring' test, and he states: '... the point of patenting it, is to make the point that you can't patent rubbish, ie something that doesn't work and is a sham'.*

This is not so. The test of patentability is only that an invention be novel, and that its construction be clearly described. There is no requirement in Japanese patent law for an invention to be proven to work.

A much more convincing demonstration that a testing method works and is not a sham would be publication of both the method and of the results of independent evaluative studies in the peer reviewed scientific literature. [Dr B] *produces no such evidence.*

b. What does the registration of a homeopathic medicine in Germany indicate?

The homeopathic preparations used by [Dr B]*, for one of which he provides an information sheet from the manufacturer, Staufen-Pharma GmbH.*

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

Homeopathy originated in Germany, and has a large following there. Germany also has a reputation for the implementation of industrial standards and quality measures. It would therefore not be surprising if there is a public perception that a homeopathic preparation originating in Germany is to be trusted.

Medicinal products are regulated in Germany by a Federal agency, the Bundesinstitut für Arzneimittel und Medizinprodukte.

While conventional pharmaceuticals are subject to a rigorous and costly authorisation process, which demands proof of efficacy and safety, homeopathic remedies are specifically excluded from this requirement, and need merely be registered.

This uneven and unscientific approach has been criticised by leading German pharmacologists, but persists for purely political and economic reasons.

…

It must be stressed that the registration and legal right to sell homeopathic remedies is nowhere based on any objective evidence of efficacy or safety.

[Dr B] *states in his comments on Medical Council guidelines that the use of homeopathic treatment 'is neither unproved nor experimental'. This is incorrect. The treatment is not proven. In a sense it is indeed not experimental, but that is insofar as it has not been subjected to controlled investigation.*

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

I have been unable to find any reference in the medical literature of any properly conducted clinical trials of a homeopathic remedy for brucellosis. There are indeed papers claiming efficacy for other homeopathic remedies, but not one has withstood critical analysis of its methodology.

The packaging of homeopathic remedies originating in Germany clearly indicates, in accordance with German Law, that no representation (Angabe) is made with respect to therapeutic indications.

c. Interferences with homeopathic treatment.

One of the documents supplied by [Dr B] *is a patient information sheet 'Taking homeopathic medicine'.*

The patient is cautioned to avoid storing the homeopathic medicine near any electrical wiring or apparatus, and also to avoid various drugs and foodstuffs, and x-rays. These are all said to 'interfere' with the 'homeopathic process'.

These instructions are irrational. We are all bathed in a flux of electromagnetic radiation across the whole spectrum from long wavelength radio waves to x-rays. Most of this electromagnetic radiation is of natural origin, coming from the sun and electrical storms.

To suggest then that the small contribution of electromagnetic radiation contributed by household appliances will negate homeopathic treatments, when background radiation will not, is absurd. It is also a most convenient explanation for treatment failure!

Similarly, all plants, and so all food plants, contain an array of biologically active substances, such as alkaloids. Any distinction between 'herbs' and any other plants is quite arbitrary.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

It also occurs to me that imported homeopathic remedies are likely to be x-rayed at the ports of entry to New Zealand, as part of customs and biosecurity screening. If this is the case, then [Dr B's] *own information sheet would indicate that none of them can be expected to have any activity.*

Unless [Dr B] *can produce documentary evidence that the remedies he sells are protected from ionising radiation through the whole passage from factory to his rooms, either his claims for their efficacy, or his precautionary information, or both, must be false.*

d. The Great Smokies Diagnostic Laboratory Manual.

[Dr B's] *referencing the Great Smokies Diagnostic Laboratory does no credit to his judgement.*

In addition to a standard range of laboratory tests, Great Smokies Laboratory provides a number of decidedly dubious and non-standard ones.

Great Smokies Diagnostic Laboratory is listed in Dr Stephen Barrett's Quackwatch site. (Dr Stephen Barrett is a retired psychiatrist and well known author, editor, and consumer advocate. He is vice-president of the [US] National Council Against Health Fraud, a Scientific Advisor to the American Council on Science and Health, and a Fellow of the Committee for the Scientific Investigation of Claims of the Paranormal (CSICOP). In 1984, he received an FDA Commissioner's Special Citation Award for Public Service in fighting nutrition quackery.)

The most notorious of the Great Smokies tests is its 'comprehensive digestive stool analysis'.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

Since this is in my area of specialist expertise, I had a critical look through the claims made for this investigation in the Great Smokies manual. While the claims made are plausible in terms of knowledge of the bacterial ecology of the gut, they are most certainly not proven. Though an impressive list of references is given at the end of the section on stool analysis, the references are all to relatively uncontentious statements in the section, and are tangential to the main issue of the rationale behind and interpretation of the Great Smokies analysis. Such controversial statements as that Klebsiella, Proteus, Pseudomonas and Citrobacter may be involved in the etiology of various chronic and systemic problems, are unsupported by the references.

There is no mention of stool microbiology methods remotely resembling those offered by Great Smokies in the American Society for Microbiology's Manual of Clinical Microbiology, generally regarded as the gold standard of clinical microbiology texts.

It is alarming to see that Great Smokies has an agency in New Zealand: […] *which collects and couriers specimens to the US. A number of questions need to be asked:*

- *Is* [the agency] *a registered and accredited clinical laboratory?*
- *Is* [the agency] *under the direction of a pathologist holding vocational registration with the Medical Council of New Zealand?*
- *Is* [the agency] *transporting the clinical samples in compliance with New Zealand and international postal regulations? (The instructions in the manual for submission to* [the agency] *do not comply.)*

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

- *What is the legal position of Great Smokies, an American laboratory, performing pathology investigations on New Zealand residents?*

e. Financial conflicts of interest.

I would concur with [the conventional general practitioner advisor's] *opinion that* [Dr B's] *fees are extraordinarily high.*

Even more disturbing is that [Dr B] *sells the homeopathic remedies which he prescribes.*

The separation of prescribing from dispensing is an important ethical tradition in conventional practice. The rationale is that the profit made on selling drugs could act as an unwholesome incentive either to overprescribe or to prescribe medicines on which the profit margin is greatest, rather than those best for the patient.

Where necessity (such as remote rural practice) forces a prescriber to dispense, it is prudent to so arrange the accounting so that no profit arises from the sale of medicines.

***f.* [Dr B's] *response to the opinions given by* [the general practitioner advisor].**

One of the documents provided is a lengthy diatribe by [Dr B] *against the opinions expressed by … an expert engaged by the Health and Disability Commissioner.*

I have little doubt that [Dr B] *will attack my advice in similar vein! (In passing I should add that I am in complete agreement with everything that* [the general practitioner] *said.)*

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

The essence of [Dr B's] *argument is that, because* [the general practitioner] *has no knowledge of the 'complex homeopathy', 'isopathy' and 'biokinetics' practised by* [Dr B], *he cannot meaningfully comment on their effectiveness. This is nonsense. Were there any objective evidence of the effectiveness of these treatments and diagnostic methods, it would most certainly have been published, and would be accessible on the bibliographic databases to which any interested person has access. The truth is that there is no such evidence. Those papers which have been published purporting to show efficacy of homeopathic practices have, without exception, been able to be shown to be methodologically flawed.*

The anecdotal successes which [Dr B] *claims are simply that. Most acute ailments are self-limiting, and many chronic ones have undulant courses of progression and remission. When a patient improves, the treatment being received at the time of improvement will be credited with success, whether it has had anything to do with the improvement or not. Similarly, the 'placebo effect' is well known in medicine. Any therapy will engender an expectation of improvement, and the expectation will, to some extent, be fulfilled.*

The only way objectively to know whether a treatment is effective is to subject it to trials in which the expectations of both subject and investigator are controlled by double blinding.

[Dr B's] *diagnostic method of 'biokinetics' is also without objective validation. It confirms what he expects it to confirm, without any reality check against an independent diagnostic method.*

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Independent Advice to Commissioner *continued*

Summary

There is no plausible basis in the natural sciences for the biokinetic diagnostic methods used by [Dr B], *nor, indeed, are most of the diagnoses he made on* [Ms A] *plausible on clinical and epidemiological grounds.*

The isopathic/complex homeopathic remedies used by [Dr B] *are also without evidence of efficacy in the scientific literature.*

Both the high fees charged, and [Dr B's] *very different therapeutic approach when dealing with potential immediate dangers, suggest that he is very well aware that his homeopathic and biokinetic methods are bogus, and that his exploitation of those who have put their trust in him as patients is quite conscious, ruthless and unprincipled.*"

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

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 1
Right to be Treated with Respect

1) Every consumer has the right to be treated with respect.

RIGHT 2
Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

RIGHT 4
Right to Services of an Appropriate Standard

1) Every consumer has the right to have services provided with reasonable care and skill.
2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

RIGHT 5
Right to Effective Communication

2) Every consumer has the right to an environment that enables both consumer and provider to communicate openly, honestly, and effectively.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Code of Health and Disability Services Consumers' Rights *continued*

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; ....

2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.

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

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.

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Professional Standards

Medical Practice in New Zealand – A Guide to Doctors Entering Practice (Medical Council of New Zealand (1995))

7. Unconventional Medical Practice

…

7.2 … The following postulated **criteria**, might indicate issues of misconduct faced by unorthodox doctors. They may be called to question if there is:

- Harm to the patients.
- Inadequate information and consent, which includes false representation of both the theory and the training of the doctor.
- Short cuts in standard methods of diagnosis with use of unproven and unrecognised methods, often pseudo-scientific.
- Treatment programmes that are inappropriate, unproven and unjustified and are not supported by a substantial body of medical opinion.
- Exploitation of the 'registered doctor' role in terms of securing patients and in financial gain.

7.3 Consent in Unorthodox Management

A leading medico legal advisor has stated that "*if doctors choose to suggest therapies which are well outside what the profession at large would regard as being reasonable treatment, I believe they have a duty to their patients to tell them that [this] is outside the boundaries of conventional medicine, and would not have the support of most medical practitioners*".

In light of the newer requirements for informed consent in New Zealand, it is imperative that such consent to unorthodoxy is given and well documented.

…

General Practitioner, Dr B

Opinion - Case 98HDC15904, continued

Opinion: No Breach

Right 6(1)(b)

In my opinion the general practitioner, Dr B, did not breach Right 6(1)(b) of the Code of Health and Disability Services Consumers' Rights in the following respect. Before the consumer, Ms A's, first consultation, Dr B sent her a form setting out the cost of his services. This form stated that his hourly rate was $195.00 and initial consultations usually took one hour, that follow-up visits usually took 15 to 20 minutes, and charges were based on the hourly rate, and that medication charges were additional.

While the cost of his services may have exceeded Ms A's expectations, in my opinion Dr B provided her with sufficient information about the costs of the consultations and did not breach Right 6(1)(b) of the Code.

Opinion: Breach

In my opinion the general practitioner, Dr B, breached Right 1, Right 2, Right 4(1), Right 4(2), Right 5(2), Right 6(1)(b) and Right 7(1) of the Code of Health and Disability Services Consumers' Rights.

Right 1(1)

The consumer, Ms A, was entitled to be treated with respect. In my opinion Dr B failed to treat her with respect.

Ms A stated that Dr B was in a hurry during the consultations, and would cut her off when she was speaking to him. She stated that he launched into the muscle testing process very quickly and became annoyed when she became confused about the procedure instead of slowing down or re-explaining the procedure. Dr B told Ms A to pay attention.

After he had prayed for her, Dr B told Ms A to "*thank the Lord*", and after a silence in which Ms A was considering the situation he repeated his command. Ms A stated that she then felt she was treated like a schoolchild, so complied with his request.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach *continued*

Ms A left the consultation feeling mortified, pressured and belittled. Although she had concerns about his practice she was too intimidated by Dr B to express these to him.

Although Dr B has stated that it was not his intention to treat Ms A with any lack of respect, and would be willing to apologise if she felt that she had not been respected, he took no steps during the consultation to make things easier for Ms A.

In my opinion Dr B did not treat Ms A with respect, and therefore breached Right 1(1) of the Code.

Right 2

Ms A had the right to be free from financial exploitation.

Dr B represented himself to Ms A as a doctor. She was clear that because he is a general practitioner as well as a practitioner of alternative therapies she was confident to consult him as he "*would not be a goofball*".

In my opinion, Dr B overemphasised his qualifications as a registered general practitioner in relation to the actual diagnostic methods and treatments he utilised, and therefore exploited his role as a doctor. As a result he gained financially from the two consultations and medications he prescribed for Ms A. Furthermore, to charge Ms A for extra treatment on 5 May, after she had apparently been cured, was to take financial advantage of her. If she had in fact been cured, then she should not have required another six weeks' medication.

In my opinion, Dr B financially exploited Ms A and breached Right 2 of the Code.

Right 4(1)

Ms A was entitled to have health services provided to her with reasonable care and skill. In my opinion, Dr B did not exercise reasonable care and skill in providing Ms A with medical and homeopathic services.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach *continued*

Dr B is a general practitioner at a medical centre in the city. He is registered with the Medical Council of New Zealand (MCNZ) and holds a current practising certificate. He holds himself out as being both a conventional medical practitioner and a provider of alternative therapies.

Dr B represented himself to Ms A as a registered general practitioner. The information sheet which he provided to her and his practice letterhead do not list any qualifications in alternative medicine. Dr B stated that he uses all the modalities of traditional medicine as well as offering alternative or complementary treatments.

Ms A was clear that the fact that Dr B is a general practitioner as well as a practitioner of alternative therapies gave her the confidence to consult him about her problems. She believed he would therefore have something substantial to offer her, and not just be a "*goofball*".

Advice on this case was originally obtained from a conventional general practitioner and a classical homeopath. Dr B objected to the use of these advisors, as he did not consider them to be true peers. In response to this submission from Dr B, this point was clarified.

The Chief Executive Officer of the New Zealand Charter of Health Practitioners was consulted. The Charter is the registration body for alternative healthcare practitioners. The CEO confirmed that the homeopath advisor is well and appropriately qualified to review Dr B's use of alternative practices.

Additional advice was obtained from a general practitioner and physician who also practises homeopathy. Dr B's submissions concerning the scientific grounds for his theories and treatments were reviewed by a medical microbiologist.

I note that each of my advisors has independently concluded that Dr B's theories and practices are unacceptable, both in the conventional and alternative realms of medicine.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach *continued*

Diagnosis

I accept my advisors' advice that Dr B's diagnostic methods were not of an appropriate standard. His clinical notes do not show that an adequate patient assessment was carried out and are not adequate to support his diagnosis. He relied on the results of the muscle testing, which is discussed below. Dr B's record of Ms A's medical history and his examination findings is inadequate. There were no laboratory reports or record of a physical examination to confirm his diagnosis following the muscle testing. Dr B did not consider conducting a blood test either to confirm his brucellosis diagnosis or to exclude other potential causes of Ms A's symptoms. This is an especially serious omission, given the gravity of the diagnosis. I also note that brucellosis is a disease that must be notified to a Medical Officer of Health, under section 74 of the Health Act 1996. No notification was made.

I accept my homeopathic advisor's advice that Dr B's muscle testing technique was not of an acceptable standard. The procedure was not explained adequately to Ms A, who consequently proved to be an unsuitable candidate due to her scepticism and lack of co-operation. I accept my homeopathic advisor's advice that considering the severity of the disease diagnosed and the fickle nature of the muscle testing, Dr B should have used other means to confirm his diagnosis. His failure to do so is inconsistent with his claim of 12 years' experience in this area, and with acceptable practice standards in homeopathic medicine.

For such a serious disease, I consider Dr B's actions to have been irresponsible. In my opinion it was not acceptable for Dr B to dismiss the negative brucellosis test results from Dr C.

My general practitioner advisor stated that under a conventional evidence-based model of medicine, the conclusion that Ms A was suffering from brucellosis following muscle testing cannot be made. The explanation that the blood tests for brucellosis were negative because the intracellular form was out of the range of antibody forming lymphocytes, is also unacceptable.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

My microbiologist advisor commented that a diagnosis of brucellosis is not an easy one to make. It should properly be based on a full occupational, travel and dietary history, physical examination, blood and bone marrow cultures and serological testing. It was pointed out that the physical signs are non-specific and variable, and that laboratory tests are highly reliable. Although Dr B's assertion that brucella tends to be located intracellularly was correct, this is not a cause of negative serology.

My homeopathic advisor described Dr B's diagnosis and methods as inappropriate and stated that they led to wrong decisions and potentially harmful medicating.

My general practitioner/homeopath advisor stated that muscle testing is a subjective testing method and is not an appropriate way to diagnose brucellosis. It is more appropriately used for minor testing rather than for significant decisions or clinical diagnoses, especially if other conventional tests have not been performed and a diagnosis was claimed that other practitioners would question. The "*vega type*" testing used by Dr B is unique to his practice.

I reject Dr B's assertion that because his muscle testing technique is based on one patented in Japan, it is therefore reputable.

It was also pointed out by my general practitioner/homeopath advisor that simply because something shows up on testing, does not necessarily mean that it has clinical significance. The fact that a "*resonance*" was picked up does not necessarily mean that the test represents the actual substance in the vial or that the person has that specific illness. Finally, there is no objective evidence that resonances remain in the body after infection, that this is associated with illness, or that removing the resonance will cure the symptoms.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

Dr B stated that he alone is capable of an intracellular brucellosis diagnosis, and that he has had much success in treating previously undiagnosed cases. Yet none of my advisors recognised this condition. Dr B should either take appropriate steps to have his discoveries scientifically validated and thus accepted by other practitioners, or should cease those parts of his practice which do not conform to generally accepted principles of conventional or alternative therapy.

In my opinion, Dr B did not exercise reasonable care and skill in his diagnosis of Ms A.

Treatment

My homeopath advisors stated that Dr B's prescription of homeopathic remedies was not undertaken in accordance with accepted homeopathic principles. It was highly likely that Ms A had been exposed to harm through over-prescribing. Even if the remedies themselves were safe, they were not appropriately monitored. The advisor noted that Dr B's notes do not provide evidence of his application of homeopathic principles to Ms A's condition, nor do they record the remedies or dosages he prescribed for Ms A.

I accept my general practitioner/homeopath advisor's advice that Dr B's treatment was not appropriate because his diagnosis was suspect, no differential diagnoses had been considered, and only one of the remedies given was specific for the assumed diagnosis.

Only necessary treatments should be recommended. In my opinion Dr B has not shown that additional treatment at the second consultation was necessary. If spiritual healing had indeed cured Ms A, it should not have been necessary for Dr B to prescribe her another six weeks' medication on 5 May.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

My advisors stated that several aspects of Dr B's practice are inconsistent with generally accepted standards in the practice of alternative therapies. The modalities he has used are not widely accepted in alternative medicine. His theories of diagnosis and treatment appear to be based on his own opinions, have no credible scientific basis, and are inconsistent with accepted theory in both the conventional and alternative realms. They have not been subjected to peer review or objective testing of their efficacy. Indeed, although Dr B has justified his position by describing himself as a pioneer and asserting that there is a strong scientific basis for his "cutting edge paradigms", an expert medical microbiologist strongly disagrees.

Dr B has submitted that there is in fact a strong scientific basis for his theories and practices, and has described his work as "*pioneering*". My medical microbiologist has evaluated Dr B's submissions, and concluded that although Dr B's explanations are expressed in language that mimics that of science, they are inconsistent with scientific theory and method.

I note that my microbiologist advisor is strongly critical of homeopathic theory and practice in general. It is important to note that my opinion of Dr B's practice of alternative medicine is based on the advice I have received from other alternative practitioners. My microbiologist advisor has evaluated Dr B's claim to have a scientific basis for his theories.

In my opinion Dr B did not exercise reasonable care and skill in his treatment of Ms A. His diagnosis of a serious condition was based on insufficient evidence, the treatments provided were not recorded, and his prescribing practice was potentially harmful. None of the variety of homeopathic treatments that Dr B prescribed resulted in any appreciable improvement in Ms A's symptoms, yet he declared that she had been cured.

I also note that my homeopathic advisors' advice that Dr B's advice not to take some conventionally prescribed medications, and his insistence that antibiotic treatment and spiritual healing were mutually exclusive treatments, do not conform to accepted practice standards in this area.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

In my opinion Dr B did not exercise reasonable care and skill in his treatment of Ms A and therefore breached Right 4(1) of the Code.

Right 4(2)

As a registered medical practitioner Dr B has a duty to comply with the relevant standards of his profession when providing health services, whether or not he also offers alternative treatments.

The MCNZ's 'Guide for Doctors Entering Practice' (1995) lists criteria which may indicate issues of misconduct for practitioners who offer alternative therapies as well as conventional treatments. Dr B is subject to these guidelines (which have since been updated and are now found in Cole's Medical Practice in New Zealand, Medical Council of New Zealand, 1999).

I accept the advice of my general practitioner advisors and my medical microbiologist advisor that under a traditional model of evidence-based medicine both Dr B's diagnosis of brucellosis and the manner in which he reached this conclusion are unacceptable. I am also advised that there was no scientific basis for the treatment Ms A received, nor for Dr B's claims that his treatment had cured the condition.

My general practitioner/homeopath advisor agreed that Dr B's theories are of concern, and are at variance with both accepted medical and alternative practice standards. Despite Dr B's medical training he used almost exclusively alternative medicine, the specific modalities of which are not widely accepted in the realm of alternative medicine.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

For the reasons set out earlier, in my opinion Dr B did not provide care with reasonable care and skill. In failing to do so Dr B's practice met all the criteria which the Medical Council guidelines state may indicate problematic practice in the practice of unorthodox medicine. In particular, in my opinion Dr B took shortcuts in standard methods of diagnosis with use of improper methods; instituted a treatment program that was inappropriate, unproven, and not supported by a substantial body of medical opinion; exploited his status as a 'registered doctor'; and did not obtain informed consent (discussed below). In doing so, in my opinion, Dr B breached Right 4(2) of the Code.

Informed consent

The informed consent of the consumer is essential before any procedure is provided. In terms of the Code of Rights, informed consent is not a one-off event, but a *process* containing three essential ingredients, namely,

- Effective communication between the parties,
- Provision of all necessary information to the consumer (including information about options, risks and benefits), and
- The consumer's freely given and competent consent.

These ingredients work together and are represented in the Code by Rights 5, 6 and 7 respectively. Based on the evidence provided to me, I have formed the opinion that Dr B failed to meet the standard of informed consent required by the Code in his treatment of Ms A. For the sake of clarity, I have referred below to breaches of Rights 5(2), 6(1)(b) and 7(1) separately.

Right 5(2)

Ms A had the right to an environment that allowed her to communicate openly, honestly and effectively with Dr B. In my opinion Dr B did not facilitate this environment, and so breached Right 5(2) of the Code.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach *continued*

At the conclusion of her first appointment on 21 March 1998 Ms A said that she felt pressured and belittled. Ms A said that discussion of her medical history was limited and Dr B was in a hurry and would cut off her explanations before she could finish. Ms A said that Dr B was not open to discussion during the consultations, and that he asked pointed questions to which he wanted specific answers. The questions were leading and if she disagreed with him Dr B would suggest she was wrong. She stated that he had his own ideas about what the answers to his questions should be, and he brushed off her concerns.

Dr B conducted the muscle testing very quickly, and Ms A could not keep up with his instructions. Ms A said that he "*barked at her to pay attention*". There was no time in the process to ask questions. Dr B admitted that he had to ask Ms A on three or four occasions to focus on the testing and stated that the muscle testing procedure required focussed concentration from both participants. Dr B said that he was under pressure to finish on time so as to save her from having to attend a second consultation at a further cost. Dr B said he could talk or test but not both, as a lack of concentration would disrupt the procedure. He did not see how this would be belittling. Dr B said at the end of the consultation he asked if Ms A had any questions, and she replied "*no*". Ms A said at the conclusion of the consultation she was hustled out the door.

After the first appointment Ms A discussed her situation with other practitioners and friends, and thought through the consultation. She stated that Dr B was such a foreboding figure she did not have the courage to express her concern to him.

During the second consultation on 5 May 1998 Ms A told Dr B that she had an x-ray in the interval between the two appointments. Ms A said he went "*through the roof*" and told her off for allowing this.

Dr B explained that he simply expressed his disbelief at her decision to explicitly choose to disobey his instructions. He was also disappointed that Ms A had not brought her concerns directly to his attention so that he could have addressed the situation directly.

Continued on next page

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

I accept that Ms A felt that she could not communicate her concern and scepticism to Dr B. When she did provide information to Dr B he questioned her views and the value of the information provided to him. These responses, in my opinion, created an environment which stifled honest, and open communication. A simple question by Dr B at the end of the consultation, whether she had any questions, was not sufficient.

In my opinion, the environment created by Dr B did not encourage Ms A to communicate openly, honestly and effectively with Dr B. Open, effective and honest communication is crucial in establishing a good relationship and mutual trust between the provider and the consumer. Dr B failed to create such an environment and so breached Right 5(2) of the Code.

Right 6(1)(b)

Ms A had the right to receive information that a reasonable consumer in her circumstances would expect to receive, including an explanation of the available treatment options.

In my opinion Dr B breached Right 6(1)(b) of the Code, as he did not give Ms A this information.

Muscle testing

Dr B did not provide Ms A with an adequate explanation of the muscle testing, which he used as a diagnostic test. Ms A said that Dr B did not give her a choice about the diagnostic method he used. He did not explain what muscle testing was or what it would entail. She further stated that when she asked direct questions about the diagnostic procedure Dr B provided only brief responses to her questions, which she considered inadequate and insubstantial.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach *continued*

Dr B advised that after asking Ms A three or four times to focus during the early stages of the muscle testing procedure, he explained to her that the muscle testing procedure was an interactive process that needed concentration. Dr B stated that after his explanation the testing went more smoothly. In my opinion Dr B should have explained the muscle testing procedure before he began, to enable Ms A to understand her role in this procedure, and to give her the opportunity to consent to testing being undertaken in this way.

Homeopathic medications

During the consultations on 21 March and 5 May Ms A was prescribed homeopathic medications and vitamins. She bought these from Dr B each time. The medications cost $73.30 after the first consultation, and $74.30 after the second consultation.

Dr B advised that he dispensed medications from his clinic so that the exact medications can be tested against the patient for compatibility, but that the medications can be purchased from him or from the manufacturers in another city.

In my opinion this is information that a reasonable consumer in Ms A's circumstances would have expected to receive before she purchased the medications. Ms A stated that Dr B did not tell her that she could purchase these medications elsewhere.

Treatment

In my opinion, a reasonable consumer in Ms A's circumstances would expect to receive or be directed to information about the side effects of medication prescribed, and the risks of such medication. While Dr B gave Ms A information about how to take the medications, he gave her no information on the risks or possible side effects.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

There is no evidence in the records to show that an acceptable amount of information was provided to Ms A about the nature of the treatments provided, the diagnostic technique of muscle testing, or the possible side effects of the treatment. The information sheets Dr B provided are brief and do not explain the nature of the homeopathic treatments he offers or spiritual healing or give any specific details about the particular homeopathic remedies provided to her. It appears that no information about the effectiveness of the treatment was provided by Dr B, other than his personal views based on his own experience. In my opinion Ms A did not receive the information that a reasonable consumer in her circumstances would expect to receive about the treatments offered to her by Dr B.

Spiritual healing

Dr B stated that he gave Ms A a choice between antibiotic treatment for her brucellosis, or spiritual healing, and that he explained to her the likely negative effects a course of antibiotics would have and that antibiotics and spiritual healing were alternatives. He also stated that Ms A chose not to take antibiotics, and that had she requested them he would have prescribed them.

Ms A, however, stated that she did not consent to Dr B performing spiritual healing, and she had understood that spiritual healing would not be to the exclusion of antibiotic treatment.

Ms A advised that she had intended to use both alternative and standard treatments, and that she advised Dr B of this. While I accept that Dr B explained to Ms A that there was more than one way to treat her condition, including using antibiotics, Ms A did not appreciate that Dr B would not prescribe antibiotics in conjunction with alternative medicines. In my opinion, a reasonable consumer in Ms A's circumstances would expect to be given this information. Dr B should have provided further information to Ms A about his proposed course of treatment to enable her to give informed consent to such treatment. This is particularly important given that Dr B practises both conventional and alternative medicine.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

Ms A stated that when Dr B asked her if she was open to spiritual healing she replied "yes", meaning she was open to the concept in general. Dr B did not explain that he wished to use spiritual healing to treat Ms A before he began to pray for her, nor did he explain what his spiritual healing would entail. He took her affirmative reply to his general question as consent, and proceeded directly to pray. Ms A is clear that she did not know this was going to happen, and did not consent to it.

Dr B has subsequently explained that he assumed Ms A was a Christian, and that she did not indicate to him at any point that the prayer was unacceptable to her. Assumptions of this nature are unacceptable. Dr B should have explained more clearly what this meant and why he was supporting it, and explicitly asked Ms A whether she agreed or had any questions or concerns. As already explained, the environment in which these consultations were conducted was not conducive to Ms A bringing up her concerns with Dr B.

Conclusion

In my opinion Dr B did not give Ms A an adequate explanation of his diagnostic technique, the options for purchase of homeopathic remedies, the medications prescribed or spiritual healing. For these reasons Dr B breached Right 6(1)(b) of the Code.

Right 7(1)

Ms A had the right to receive information she needed in order to make an informed choice about treatment. Services may only be provided when a consumer has given his or her informed consent.

The Guide to Doctors Entering Practice clearly states that consent for unorthodox treatment must be explicit and well documented. Ms A did not consent in writing to the treatments that Dr B provided her with. Nor did Dr B record in her notes that Ms A had consented.

My homeopathic advisor observed that Dr B's explanations to Ms A were totally unacceptable. It is clear from Ms A's account of events that she did not fully comprehend the diagnostic methods used, and treatments given to her, by Dr B.

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General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Opinion: Breach ***continued***

In my view Ms A did not receive the information she required to enable her to make an informed choice or give informed consent to Dr B's muscle testing, spiritual healing and homeopathic remedies. Dr B did not take adequate steps to ensure Ms A was fully aware of all the treatment options he offered and all that they entailed. Without this information Ms A was unable to make an informed choice and give informed consent.

In my opinion in failing to give Ms A this information Dr B breached Right 7(1) of the Code.

Actions

I recommend that the general practitioner, Dr B, take the following actions:

- Apologises in writing to the consumer, Ms A, for breaching the Code of Rights. This apology is to be sent to the Commissioner and will be forwarded to Ms A.

- Reimburses Ms A the $414.60 paid to Dr B for her treatment with him. A cheque should be sent to the Commissioner and will be forwarded to Ms A.

- Develops procedures to ensure that:

    - Each patient understands that he practises both conventional and alternative medicine before the consultation commences.
    - Patients are able to make an informed choice between conventional and alternative modes of diagnosis and treatment.
    - Patients undergoing spiritual healing are provided with sufficient information about the procedures to be adopted during the process, and their wishes are respected in relation to this aspect of his treatment.

- Familiarises himself with the Medical Council's 'Guidelines on Complementary, Alternative or Unconventional Medicine', in 'Cole's Medical Practice in New Zealand', (MCNZ 1999), and alters his practice to comply with these guidelines.

General Practitioner, Dr B

Opinion – Case 98HDC15904, continued

Other Actions

- A copy of this opinion will be sent to the Medical Council of New Zealand with a request that a review of the general practitioner, Dr B's, competence to practise medicine be undertaken.
- Copies of this opinion will be sent to the Royal New Zealand College of General Practitioners and the New Zealand Medical Association.

Director of Proceedings

I will refer this matter to the Director of Proceedings under section 45(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any action should be taken.

Other Comments

- Section 74(1) of the Health Act 1956 states that where a medical practitioner has reason to believe that any person professionally attended by him is suffering from a notifiable disease, that practitioner shall give notice in the required form to the Medical Officer of Health. Infectious diseases that are notifiable to the Medical Officer of Health, include brucellosis as defined in section B, first schedule to the Act. I am concerned that the general practitioner, Dr B, diagnosed the consumer, Ms A, with brucellosis and did not inform the Medical Officer of Health. I am also concerned that Dr B has claimed to have diagnosed and treated over 150 cases of brucellosis, yet none of these have been notified to the appropriate authorities. I will therefore refer this matter to the Ministry of Health, along with a copy of my opinion.