A Clinic

General Practitioner, Dr A

A Report by the
Health and Disability Commissioner

(Case 21HDC03172)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Contents

Executive summary

1. This report concerns the care provided by a general practitioner (GP) at a clinic, in particular the issuing of medical certificates for COVID-19 vaccine related matters and continuing to practise in person whilst unvaccinated.

2. Pursuant to the COVID-19 Public Health Response (Vaccinations) Order 2021, from 11.59pm on 25 October 2021 onwards, the GP was required to be vaccinated to practise as a health practitioner. Subsequent transitional provisions in the Order stated that if a person received their first vaccination before 15 November 2021, they were to be treated as being vaccinated before that date.

3. Despite being unvaccinated by the close of 15 November 2021, and without seeking clarification from the Ministry of Health in relation to the ability to practise while awaiting consideration of an exemption application, the GP continued to see patients face to face. Despite another letter from the Ministry of Health on 9 December 2021 reminding the clinic and the GP that the exemption had been declined, the GP continued to see patients face to face until 15 December 2021.

4. In addition, between 25 October and 15 December 2021, the GP issued an estimated total of 282 medical certificates to adult consumers regarding the COVID-19 vaccine. At least some of these medical certificates (which stated that the vaccination was unsuitable/ inappropriate based on medical conditions) were given in situations where there were no medical conditions. The GP also omitted to provide evidence-based information about the vaccine to patients when they presented for a medical certificate with concerns about the safety of the vaccine.

Findings

5. As per Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards. In this case, the Commissioner considered that for consumers who were issued medical certificates by the GP, or seen in person by the GP during this time, this Right was not upheld. The Commissioner noted that the standards and law relevant to this case were vital to support the public health response to the COVID-19 pandemic, and she was critical that they were not adhered to. As such, she found the GP in breach of Right 4(2) of the Code.

6. The Commissioner also found that the clinic breached Right 4(2) of the Code by allowing the GP to see patients against the Order.

Recommendations

7. The Commissioner considered the information that the GP has since deregistered from the Medical Council of New Zealand, resigned from membership with the Royal NZ College of General Practitioners (RNZCGP), and now resides in another country. As such, the Commissioner recommended that should the GP return to practice in New Zealand, the Medical Council of New Zealand consider undertaking a review of the GP's competence.

Complaint and investigation

8. The Health and Disability Commissioner (HDC) received a complaint about the services provided by Dr A and a clinic during the COVID-19 pandemic in 2021. A Commissioner Initiated Investigation was commenced into the following issues:

- *The appropriateness of services provided by Dr A during the COVID-19 pandemic in 2021 including the issuing of vaccination certificates to Mr D and others and continuing to practise whilst unvaccinated.*
- *The appropriateness of services provided by the clinic during the COVID-19 pandemic in 2021 including its responsibility for Dr A issuing vaccination certificates to Mr D and others and continuing to practise whilst unvaccinated.*

9. The parties directly involved in the investigation were:

The clinic	Provider
Dr A	Provider
Mr B	Clinic owner
Ms C	Mr D's mother
Mr D	Consumer

10. Further information was received from the Ministry of Health and the Medical Council of New Zealand (MCNZ).

11. In-house clinical advice was obtained from GP Dr David Maplesden (Appendix A).

Information gathered during investigation

Background

12. In December 2021, a Commissioner Initiated Investigation was commenced into the care provided by GP Dr A[1] during the COVID-19 pandemic in 2021.

13. The clinic (owned and operated by Mr B) advertises itself as a comprehensive, medically supervised, non-surgical wellness centre. Dr A's legal counsel told HDC that the clinic does not provide general GP services, nor does it take care of sick or unwell patients, and, as such, it encourages all its patients to be enrolled at a GP practice of their choosing.

[1] At the time of events, Dr A was a registered GP and had an annual practising certificate from the Medical Council of New Zealand and was a member of the Royal New Zealand College of General Practitioners (RNZCGP). Dr A has since deregistered from the Medical Council of New Zealand and resigned from membership with RNZCGP and now resides overseas. As such, Dr A no longer practises in New Zealand.

14. Dr A's legal counsel said that at the time of events, Dr A was the only staff member engaged by the clinic, and was engaged as a volunteer. Typically, Dr A's workload would have included consultations with patients 2–3 days per week.

15. Dr A had a religious and spiritual objection to receiving the Pfizer COVID-19 vaccine available in New Zealand at the time, and therefore was unvaccinated against COVID-19.

16. This report concerns the care provided by Dr A at the clinic, in particular Dr A's issuing of medical certificates for COVID-19 vaccine related matters and continuing to practise in person whilst unvaccinated.

Practising while unvaccinated — relevant legislative framework

17. Pursuant to the COVID-19 Public Health Response (Vaccinations) Order 2021, from 11.59pm on 25 October 2021 onwards, Dr A was required to be vaccinated to practise as a health practitioner. From 11.59pm on 7 November 2021 onwards, the law changed to allow Dr A to practise unvaccinated so long as Dr A was not seeing patients in person.

18. The clinic was also prohibited from allowing Dr A to practise unless Dr A was vaccinated or had a legal exemption. The clinic was legally obligated to, among other things, notify Dr A of the requirement to be vaccinated.

19. However, the following are statements from Beehive[2] press releases:

> 'It's a comprehensive Order, and will require all health and disability workers and education workers to have received their first dose of the COVID-19 vaccine by 15 November 2021.
>
> …
>
> In finalising the Order, it's been decided that it will now apply to healthcare and disability workers from 15 November, as the date when they'll be required to have had their first dose.'

20. The 15 November 2021 date appears to relate to the transitional provisions in the Order, which state that if a person[3] gets their first vaccination before 15 November 2021, they must be treated as being vaccinated before that date.

21. As noted above, Dr A had a religious and spiritual objection to receiving the Pfizer COVID-19 vaccine, and therefore was unvaccinated against COVID-19.

22. Records provided to HDC by Dr A indicate that Dr A had around 462 in-person patient encounters between 26 October and 15 December 2021. Around 246 of these were prior to 15 November.

[2] The official website of the New Zealand Government.

[3] Being 'an affected person who belongs to a group specified in Part 7 of the table in Schedule 2'.

2021 Temporary Significant Service Disruption Exemption (TSSDE) Application

23. On 12 November 2021, the clinic submitted an application to the Ministry of Health to request an exemption for Dr A to continue to practise while unvaccinated on the basis that such an exemption would prevent a significant disruption to the health service. The TSSDE application was sent back on 14 November 2021, as it was incomplete, and an amended application was submitted to the Ministry of Health on 15 November 2021. The clinic noted the reasons for the application as follows:

> '[Dr A] is the ONLY doctor in New Zealand with … qualifications and expertise in … There are no doctors available in New Zealand let alone locally to replace [Dr A] …
>
> Without [Dr A], the BUSINESS WOULD CLOSE resulting in the abandonment of patient care for over 800+ patients.'

24. The form noted that the exemption request was based on Dr A's religious beliefs and requested an exemption for a maximum of six months, in the hope that by that time a vaccine acceptable to Dr A would be available in New Zealand.

25. The clinic told HDC that the Ministry of Health's acknowledgement of receipt of the application did not specify a requirement that Dr A cease seeing patients in person immediately, pending consideration of the application. Further, Mr B did not perceive there to be a clear statement directing that consultations must cease while an application for an exemption was pending.

26. Mr B considered that in this context, where the intention of the exemption was to prevent 'disruption to services', it would be acceptable to proceed and maintain services for patients in need until the application was approved or otherwise. The clinic told HDC that clarification on this matter was not sought from the Ministry of Health, on the understanding that nowhere did it specify that work could not continue while awaiting an exemption, and the in-person limitations applied only to patients who were seen for 15 minutes or longer within 2 metres.

27. As such, Dr A continued to see patients in person despite being unvaccinated against COVID-19, while waiting for a response from the Ministry of Health.

28. The clinic told HDC that it put safeguards in place to protect Dr A and patients, detailed in its COVID-19 policy, which included mask use, temperature checks and social distancing directives. The clinic said that Dr A had a mask exemption[4] for asthma but Dr A had agreed to wear a mask if going within 2 metres of a patient, or if a patient requested it.

29. On 2 December 2021, COVID-19 Response Minister Chris Hipkins wrote a letter to the clinic declining its exemption on behalf of Dr A.

[4] Dr A was unable to provide HDC with a copy of this exemption. Dr A stated that the country now resided in does not mandate the use of facemasks and an exemption card has not been retained.

30. Records provided to HDC by Dr A indicate that by that time Dr A had seen around 418 patients in person since 26 October whilst unvaccinated.

Continued practice

31. The clinic told HDC that after receipt of Mr Hipkins' letter, it intended to pursue a further, amended application, and that in the meantime, Dr A continued to consult with patients in person. Dr A's lawyer told HDC that Dr A was operating in good faith when Dr A did so, but under a mistaken interpretation of the Order. The clinic told HDC that it operated under the same mistaken belief.

32. On 9 December 2021, the Ministry of Health wrote to the clinic again, reminding it that the TSSDE exemption for Dr A had been declined. The Ministry noted that it is critical for staff working in the health and disability sector to be vaccinated because they are caring for people who are at increased risk of severe illness from COVID-19.

33. The clinic told HDC that the requirement for Dr A to cease seeing patients in person was appreciated by Dr A and the clinic only after receiving this email from the Ministry of Health. The clinic told HDC:

> 'The [clinic] appreciates now the misunderstanding it was operating under in respect of the requirements of the Order. The breach of the Order through allowing [Dr A] to continue to practi[s]e while unvaccinated and awaiting the outcome of the exemption application was inadvertent and derived from the [clinic] seeking to ensure continuity of care for its patients.'

34. The last date on which a person was seen in person by Dr A was 15 December 2021.

35. Dr A told HDC that once the communication from the Ministry of Health was received (on 9 December 2021), the clinic endeavored to reschedule all patients to remote/telehealth consultations. However, Dr A stated that a few patients could not be contacted, and when some patients attended the clinic for their appointments, Dr A did not feel comfortable turning them away. Dr A said that less than 15 minutes was spent with these patients, with social distancing.

36. Dr A saw 10 patients between 9 and 15 December 2021.

37. In response to the provisional opinion, the clinic's legal counsel submitted that the clinic acted in good faith to ensure that patient care continued and its patients were supported, and noted that a failure to give at least 30 days' notice of termination of care is consistent with 'patient abandonment' in most settings. The clinic's legal counsel stated that abandonment issues were a particularly important consideration for patients in need of Dr A's specialist expertise, and that undertaking those consultations by telehealth at short notice was not possible for all patients.

38. On 11 January 2022, the Ministry of Health issued Dr A an infringement notice and a $300 fine for breaching the Order by providing health services while unvaccinated on 2 December 2021.

Medical certificates

39. Prior to 7 November 2021, if Dr A, as a health practitioner, determined that a person had certain needs that made it inappropriate for the person to be vaccinated, in some circumstances that person could use Dr A's advice by way of a medical certificate as an exemption from the vaccine requirements.

40. However, from 8 November 2021 onwards, if a person wanted a vaccine exemption on medical grounds, the appropriate exemption could be granted only by the Director-General of Health.

Issuing of medical certificates

41. On 11 November 2021, HDC received a complaint from Ms C about the services Dr A provided to her 17-year-old son, Mr D. In particular, Ms C was concerned that on 8 November 2021 Dr A provided Mr D with a medical certificate implying that he was not suitable for the COVID-19 vaccine despite having never met Mr D previously, and not having access to his medical notes or history.

42. Mr D had presented to the clinic at 4.30pm on 8 November 2021, and was seen by Dr A. Dr A told HDC that prior to this date Mr D had not attended the clinic, and he presented requesting that a medical certificate be written on his behalf as he did not want to be vaccinated. Dr A stated that the purpose of the appointment was to assess Mr D and ascertain whether it was clinically appropriate to issue a medical certificate as requested by Mr D.

43. On the clinic's 'New Patient History Form', Mr D had ticked that he did not have any past medical history (such as any heart conditions, high blood pressure, or history of strokes) other than a history of seizures.

44. Dr A told HDC that Mr D explained that his basis for not wanting to be vaccinated was because he felt he should not be forced to accept treatment. He said that he was particularly against the vaccine mandates and explained that such a directive did not align with his spiritual and cultural beliefs. Dr A told HDC that Mr D was also hesitant because he did not know all the ingredients present in the vaccine, as Pfizer had not released this information, and because it was a novel treatment with limited long-term safety data. Dr A said that these factors made Mr D feel unsafe. Dr A stated that Mr D also expressed his concerns about the side effects being reported about the vaccine, including neurological events, as he had had seizures as a young child, and this compounded his anxiety regarding the vaccine. Dr A stated:

> '[Mr D] was working, of legal age and competent to make decisions about his health. Where his position was clear, I considered there was no reason for me not to support him in the independent decision that he had made.'

45. Dr A told HDC that Mr D's concerns were unable to be alleviated to an extent that made him feel comfortable to receive the vaccine, or that would have prompted a change in view regarding the vaccine. Dr A stated:

> 'I explained that having regard to his strong aversion to the vaccination, I considered he would not be able to properly and freely consent to it — if he was provided the choice, "be vaccinated or lose your job". I wrote a medical certificate for him as I considered it would be inappropriate for him to be coerced into undergoing a medical procedure and any consent he gave in that context would be invalid as is consistent with proper medical consenting laws and policies …
>
> Furthermore, there are adverse neurologic effects reported from the Covid-19 vaccines of which [Mr D] was familiar with from his research. As this information is readily available in the public domain including but not limited to vaccines being associated with seizures and the data from Israel includes neurologic complications including seizures I, in good faith, was unable to be definitive to him that there were no risks related to seizures and the vaccine.'

46. On the consultation form, Dr A noted the following:

> '1. Should not be forced to have. Ethical issues [with] mandates. Spiritually/culturally not aligning [with] beliefs.
> 2. Unknown ingredients.
> 3. Makes me feel unsafe
> 4. Experimental in nature
> 5. No long-term safety date til[l] 2023
> 6. SE [side effect] concerns
> 7. [History of] seizures.'

47. The form concluded: 'Per above reasons, will write a [medical certificate] vaccination exemption for [patient].'

48. At the time of issuing the medical certificate, Dr A did not have access to any of Mr D's clinical notes from his usual GP practice. Mr D's usual GP practice told HDC that it did not receive a request for his notes from any other medical practice.

49. The medical certificate, dated 8 November 2021 and signed by Dr A, was provided to HDC by Ms C. The certificate states:

> 'This letter certifies that [Mr D] has been examined by me and I have determined based on his medical condition(s) that it would be inappropriate/unsuitable for him to be vaccinated with the current COVID-19 vaccines.'

50. Mr D was charged $60 for the consultation, and $20 for the certificate.

51. Dr A told HDC that when Mr D was assessed and provided with a medical certificate, Dr A was alert to professional obligations. Dr A considered that it was in Mr D's best interests to issue the certificate, and genuinely believed it was required and justified. Dr A stated:

> 'To deny [Mr D] a medical certificate with his stated reasons would have been a violation of his rights under the NZ Code of Health and Disability Services Consumers' Rights, specifically Right #1 (respect), Right #2 (freedom from discrimination, coercion), Right #3 (dignity and independence), Right #4 (services of appropriate standard), Right #6 (fully informed), Right #7 (make an informed choice and given informed consent), and finally Right #8 (support).'

Other patients

52. Dr A's legal counsel told HDC that between 26 October and 15 December 2021 (inclusive), Dr A issued an estimated 282 medical certificates to adult consumers regarding the COVID-19 vaccine. However, there are no electronic or paper copies of these medical certificates, as the original and only copies of the documents were provided to the patients.

53. Dr A confirmed that most of the certificates issued were largely in the same format as Mr D's, although occasionally, based on the conversations had, further detail would be included.

54. HDC was provided with a sample of 40 patient records where a medical certificate had been issued by Dr A. For each patient, the only objective assessment undertaken by Dr A was a blood pressure measurement, and the medical history obtained was self-reported.

55. The records from the issuing of these certificates shared the following common reasons for not wanting to be vaccinated against COVID-19 (among individual medical concerns):

- Safety concerns about the vaccine (having witnessed side effects, or the individual having undertaken research about the vaccine);
- The vaccine violating their belief system (spiritual, religious or otherwise);
- Being uncomfortable with the vaccine mandates and feeling coerced; and
- Preferring natural immunity.

56. The medical certificates were given to the patients on the basis that they were unable to consent to the vaccine for these reasons.[5] Of the 40 records, the notes indicate that 18 certificates contained no individual medical concerns and appeared to be given solely on the basis that the patient had concerns about the vaccine.

57. In response to the provisional opinion, Dr A's legal counsel stated (on behalf of Dr A):

> '[Dr A] considers that if a procedure violates a person's choice of bodily autonomy or their spiritual belief system or their culture etc., it would be medically not appropriate to administer. [Dr A] considers this is consistent with consenting procedures and expectations in New Zealand. [Dr A] does not consider their statements in the medical certificates reviewed were inaccurate or misleading.'

[5] Each record had the following box ticked: 'due to above reasons … unable to properly consent'.

58. Dr A's legal counsel stated that it was considered by Dr A that it would be harmful to these patients' health/wellbeing if they were pressured or coerced into a medical procedure against their will solely based on economic or employment pressures. The medical certificates were provided to support this not occurring, if possible.

Information provided to consumers

News service video

59. On 2 December 2021, a New Zealand news service sent an undercover reporter to visit Dr A at the clinic to obtain a medical certificate, and to film the interaction. The video footage shows Dr A talking to a group of patients about the vaccine mandates, the application processes for various vaccine exemptions, and the medical certificates, before undertaking an individual consultation with the reporter. The video footage is muted in certain places, and the news service told HDC that this was to protect the reporter's identity. The news service stated that it was the full video otherwise, with identifying details only removed, and told HDC that this was what they did when they sent the footage to the Ministry of Health.

60. The footage shows that during the group discussion, Dr A acknowledged that the reason for the group being at the clinic was their concern about the vaccine mandates. Dr A stated:

> 'What we will find today is some reason or way to give you what we call a medical certificate; these are not exemptions, exemptions are basically dead … so instead what we are trying to do is give a medical certificate saying that you have been assessed and it is not appropriate for you to receive the current vaccine. How will that help you, it depends on negotiations with your employers, it depends on how much they change the law …'

61. The footage shows Dr A discussing how difficult it is to obtain an exemption through the Ministry of Health. Dr A notes that the process is designed to get everybody vaccinated 'even though the efficacy isn't there'. Dr A explains that they have had some success stories reported back to them from using the medical certificates, such as a patient being able to fly to Australia.

62. Once the 12-minute group discussion was over, the unnamed reporter had an individual consultation with Dr A. The consultation proceeded as follows:

Dr A: 'Could you tell me why you don't want to be vaccinated.'

Reporter: 'Oh I've been researching it.'

Dr A: 'And what do you find that you are worried about.'

Reporter: 'Oh I don't know where to start.'

Dr A: 'Safety?'

Reporter: 'Yeah. I suppose you're not vaxed either?'

Dr A: 'Nah you couldn't force me, I'll stop practising medicine before I get vaccinated, with this vaccine … I'm going to check your blood pressure if that's alright, and really that's just to show that in fact you were physically here, okay?'

Reporter: 'Sure.'

…

Dr A: 'Is it affecting your mental health at all?'

Reporter: 'Mhmm.'

Dr A: 'And if you were to be coerced into having a jab that you don't want do you think that that would worsen your mental health?'

Reporter: 'Yep.'

Dr A: 'Absolutely.'

63. Dr A then gave the reporter a medical certificate, before telling him to 'sell it'. The individual consultation took just over six minutes, and there was no evidence-based information provided by Dr A on the vaccine. While the reporter's records have the box ticked that 'discussed risks/benefits of vaccination' there are no details about what this discussion contained, and it was not on the recording. Dr A's legal counsel stated that Dr A considered that the extent of those discussions in Dr A's practice could be less 'thorough' than those required of a practitioner who was administering the vaccine as the majority of the relevant patients presented to Dr A having already made up their mind about vaccination. Dr A's legal counsel stated:

> 'Based on how [the reporter] represented and what he said, a discussion about the evidence of the risks and benefits of vaccination, in [Dr A's] view, would not have assisted his health or resolved his presenting issue.'

Information from Dr A

64. Dr A's lawyer told HDC that when engaging with clients, Dr A was clear that the medical certificate was not a recognised 'vaccine exemption' as issued by the Ministry of Health. The lawyer stated that while the certificate could be useful in discussions with employers who were considering the implementation of mandatory vaccination outside the professions/workforces identified in the COVID-19 Vaccinations Order, it was by no means guaranteed.

65. Dr A told HDC that generally what would be discussed with patients was the differences between exemptions and medical certificates, in particular that typically exemptions are not possible save for a few very select medical problems that require specialist documentation. Dr A stated:

> 'Providing medical certificates to patients who held and expressed a clear desire not to be vaccinated and faced stress and anxiety at the prospect of their employers requiring the same, was a means to notify employers of the effect of their policy on the health and wellbeing of my patients. It was hoped that the medical certificate

could serve as a way to start a productive conversation about possible alternatives to requiring vaccination (if any).'

66. Dr A said that it was explained to Mr D that the medical certificate was intended to:

a) Protect him from untoward health effects of being coerced to receive treatment against his will;

b) Support him in his decision regarding vaccination;

c) Assist him in discussions with his employer if the employer sought to implement non-legally required vaccine mandates with which he was not comfortable; and

d) Prevent him from being coerced into a medical procedure against his will.

67. In her complaint to HDC, Ms C said that Mr D thought that the medical certificate provided by Dr A was 'legitimate'.

Further information

Dr A

68. Dr A's lawyer told HDC that the clinic is not a GP practice, and it did not offer COVID-19 vaccinations to its clients. Accordingly, Dr A did not seek to 'convince' or 'coerce' clients to be vaccinated or not to be vaccinated. Instead, Dr A considered that Dr A's role was to listen to the clients' presenting concerns and assist them if it was proper and appropriate to do so.

69. Dr A's lawyer told HDC that the clients who presented to Dr A had made a choice about the COVID-19 vaccine — based on their own religious, spiritual, political, mental, physical or other reasons — prior to attending the clinic. Many of them felt coerced, distressed and scared. Each client was deemed competent, and it was considered that in their specific circumstances, the issuing of a medical certificate would constitute a way to help them, through providing support for the decision they had made not to be vaccinated.

Clinic

70. Currently, the clinic does not employ or engage healthcare providers who see patients in person, and it is open only for retail services. The clinic stated:

> 'In the event the [clinic] recommences providing health and wellness services from its premises in the future, it will do so in full accordance with the prescribed vaccination requirements.'

Medical Council of New Zealand

71. On 22 December 2021, the Medical Council of New Zealand considered all information about Dr A's practice, including Dr A's request to be removed from the Council's register, and resolved to direct the Registrar to remove Dr A from the register.

Responses to provisional opinion

72. The clinic and Dr A were provided with the opportunity to comment on the provisional opinion. Both parties dispute the proposed findings, and Dr A's legal counsel stated (on Dr A's behalf):

> '[The clinic and Dr A] of course accept and agree that patients should have services provided that accord with legal, professional and ethical obligations to which health providers are subject. This is a unique case, however, where legal obligations around vaccination mandates, and ethical obligations to ensure patients are not abandoned, were in conflict. [Dr A] and the [clinic] consider it wrong for the legal obligations to be found to "trump" [Dr A's] moral and ethical commitment to patients in the unique circumstances of this case.'

73. Dr A's specific submissions are addressed throughout this report where relevant.

Opinion: Dr A — breach

Practising in person while unvaccinated

74. Pursuant to the COVID-19 Public Health Response (Vaccinations) Order 2021, from 26 October 2021 onwards, Dr A was required to be vaccinated to practise as a health practitioner. However, the transitional provisions in the Order are complex, and the communications from the Beehive arguably suggested that the requirement to be vaccinated applied to health practitioners only from 15 November 2021 onwards. Accordingly, I am not critical of Dr A practising whilst unvaccinated prior to 16 November 2021. From 16 November 2021, in my view there can be no doubt that it was clear that all health practitioners who were seeing patients in person were required to have been vaccinated.

75. As noted above, Dr A had a religious and spiritual objection to receiving the Pfizer COVID-19 vaccine, and therefore was unvaccinated against COVID-19.

76. Dr A ceased seeing patients in person on 15 December 2021, only after an application for an exemption made by the clinic had been declined. Between 15 November 2021 and 15 December 2021 (inclusive), Dr A had at least 216 in-person 'patient encounters'. These are discussed below.

Seeing patients in person between 15 November and 2 December 2021 (inclusive)

77. From 15 November 2021 to 2 December 2021, Dr A had an application for a TSSDE pending with the Ministry of Health. The application was declined on 2 December 2021. During this time period, Dr A had around 172 in-person patient encounters despite being unvaccinated and the law requiring Dr A to be vaccinated.

78. The clinic explained to HDC that the Ministry of Health's acknowledgement of receipt of the second application (which was originally sent on 12 November 2021) did not specify a

requirement that Dr A cease seeing patients in person immediately, pending the application being considered. Further, Mr B did not perceive there to be a clear statement directing that consultations must cease while an application for an exemption was pending.

79. Mr B considered that in this context, where the intention of the exemption was to prevent 'disruption to services', it was acceptable to proceed and maintain services for patients in need until the application was approved or otherwise. The clinic told HDC that clarification on this matter was not sought from the Ministry of Health, on the understanding that nowhere did it specify that work could not continue while awaiting an exemption, and that the in-person limitations applied only to patients who were seen for 15 minutes or more within 2 metres.

80. In my view, this explanation does not reflect that from 15 November 2021 onwards the law was clear that Dr A was required to be vaccinated. Accordingly, in the absence of Dr A seeking specific clarification from the Ministry of Health regarding the law while awaiting the exemption application, it was not appropriate to proceed on the basis that Dr A was permitted to see patients, even if in a socially distanced manner.

Seeing patients in person between 3 December and 9 December 2021 (inclusive)

81. When the TSSDE was declined on 2 December 2021, and it was noted that another vaccine had become available for Dr A's consideration, Dr A did not seek to become vaccinated, and Dr A continued to see patients face to face.

82. Dr A had around 34 in-person patient encounters during this time period, despite being unvaccinated and the law requiring them to be vaccinated.

83. The clinic told HDC that after the receipt of Mr Hipkins' letter, it intended to pursue a further, amended application, and in the meantime, Dr A continued to consult with patients in person. Dr A's lawyer told HDC that Dr A was operating in good faith when Dr A did so, but under a mistaken interpretation of the Order. The clinic told HDC that it operated under the same mistaken belief.

84. I do not accept this explanation. Dr A was aware that from 15 November 2021 onwards (if not earlier) Dr A was required to be vaccinated. The only exemption that had been applied for had been declined. In my view, there was no reasonable basis on which it could have been considered that Dr A did not need to have been vaccinated to see patients in person.

Seeing patients in person between 10 December and 15 December 2021 (inclusive)

85. The Ministry of Health sent the clinic a further email on 9 December 2021, reminding it and Dr A that the exemption had been declined. The Ministry of Health noted that it is critical for staff working in the health and disability sector to be vaccinated because they are caring for people who are at increased risk of severe illness from COVID-19.

86. The clinic told HDC that the requirement for Dr A to cease seeing patients in person was appreciated by Dr A and the clinic only after receiving this email from the Ministry of Health.

87. Dr A told HDC that once the 9 December 2021 communication from the Ministry of Health was received, the clinic endeavored to reschedule all patients to remote/telehealth consultations. However, Dr A stated that a few patients could not be contacted, and that when some patients attended the clinic for their appointments, Dr A did not feel comfortable turning them away. Dr A said that less than 15 minutes was spent with these patients, with social distancing.

88. In response to the provisional opinion, the clinic's legal counsel submitted that the clinic acted in good faith to ensure that patient care continued and its patients were supported, and that a failure to give at least 30 days' notice of termination of care is consistent with 'patient abandonment' in most settings. The clinic's legal counsel stated that abandonment issues were a particularly important consideration for patients in need of Dr A's specialist expertise, and that undertaking those consultations by telehealth at short notice was not possible for all patients. Dr A had around 10 in-person patient encounters from 10 to 15 December 2021.

Discussion

89. Despite being unvaccinated by the close of 15 November 2021, and without seeking clarification from the Ministry of Health in relation to the ability to practise while awaiting consideration of the exemption application, Dr A continued to see patients face to face. Despite another letter from the Ministry of Health on 9 December 2021 reminding the clinic and Dr A that the exemption had been declined, Dr A continued to see patients face to face until 15 December 2021.

90. I accept that Dr A was entitled to hold opinions regarding the COVID-19 vaccine, and Dr A was entitled to choose not to be vaccinated. However, I consider that continuing to see patients in person whilst unvaccinated, without a reasonable basis for considering such consultations to be legal, and whilst being aware that the Order was intended to protect vulnerable populations, was wholly irresponsible. Dr A submitted that the clinic did not see patients who were unwell. However, I consider that the very nature of the clinic's work meant that it could have expected to see high-risk patients. In any case, it is extremely concerning that Dr A continued to fail to follow the Order without adequate explanation, and I am critical of Dr A on this basis.

91. I note Dr A's submission that the failure to give at least 30 days' notice of termination of care is consistent with 'patient abandonment' in most settings. However, I disagree that making changes to the way consultations were undertaken in accordance with Dr A's legal obligations during the public health response to COVID-19 can be categorised in that manner. Moreover, while Dr A has said that the denial of the exemption was 'wholly unexpected', it was also not guaranteed. There was opportunity from the date of the exemption application for Dr A to have been considering how to consult with patients lawfully in the event that the exemption was not granted.

92. In addition, in response to the provisional opinion, Dr A and the clinic stated their view that ensuring wellness care for the population of patients served should have been of upmost priority — and a 12A exemption should have been issued as per the application.

Whether or not an exemption should have been issued is not relevant to my decision. What matters is that Dr A knew that an exemption was required in order to practise and, further, Dr A continued to consult with patients in person when Dr A was aware that no such exemption was in place.

Medical certificates

Provision of medical certificates

93. Between 25 October and 15 December 2021, Dr A issued an estimated total of 282 medical certificates to adult consumers regarding the COVID-19 vaccine. This included one to Mr D. The medical certificates stated that the patient had been examined by Dr A and Dr A had 'determined based on [the patient's] medical condition(s) that it would be inappropriate/unsuitable for [the patient] to be vaccinated with the current COVID-19 vaccines'.

94. According to the patient notes (a sample of 40), most patients shared the same reasons for not wanting to be vaccinated against COVID-19 (among individual medical concerns), which included safety concerns about the vaccine; the vaccine violating their belief system (spiritual, religious or otherwise); being uncomfortable with the vaccine mandates and feeling coerced; and preferring natural immunity. The certificates were given to patients by Dr A on the basis that they were unable to consent to the vaccine for these reasons.

95. Dr A told HDC that each patient was deemed competent, and it was considered that in their specific circumstances, the issuing of a medical certificate would constitute a way to help them, through providing support for their decision not to be vaccinated.

96. Dr Maplesden, my clinical advisor, told HDC that if Dr A observed symptoms and signs of anxiety in those patients professing anxiety at the prospect of vaccination, and if that anxiety could not be allayed through evidence-based discussion of vaccine safety (this is discussed below), it might be reasonable to consider pathological anxiety as a medical condition making vaccination unsuitable or inappropriate if it prevented the patient from consenting to vaccination.

97. Similarly, Dr Maplesden stated that if there is robust evidence that the vaccination could exacerbate a pre-existing medical condition, and if after presentation of relative risks and benefits of the potential effects of the vaccination or COVID-19 itself on that medical condition the patient feels unable to consent to vaccination, it may be reasonable to provide certification (as opposed to application for vaccine exemption) that vaccination may be unsuitable or inappropriate based on the medical condition. He advised that this would be consistent with the MCNZ statement on medical certification,[6] which includes the following:

> 'Any statement you certify should be completed promptly, honestly, accurately, objectively and based on clear and relevant evidence … The information disclosed

[6] https://www.mcnz.org.nz/assets/standards/0541c585e7/Statement-on-medical-certification.pdf.

> should be accurate and based upon clinical observation, with patient comment clearly distinguished from clinical observation.'

98. However, Dr Maplesden noted that in many of the sample notes he assessed (and these were only 40 of at least 178 patients for whom certificates were provided over the time frame examined), he could not find robust and evidence-based medical reasons for a statement that medical conditions made vaccination inappropriate or unsuitable. Dr Maplesden advised:

> 'In the case of [Mr D], there is insufficient background provided on his seizure history to comment further. I note he was not on anticonvulsant therapy (making a diagnosis of epilepsy unlikely) and even had he been diagnosed with epilepsy, most international epilepsy foundations were recommending vaccination (and continue to do so) as the risks of getting the disease far outweigh the risks of the vaccine in a patient with epilepsy.'

99. In addition, the patient histories provided were self-reported and without any notes from the patient's usual provider to determine the full clinical picture. I consider that a full clinical picture was required to confirm or quantify the seriousness of any reported medical issues and determine the risks versus benefits of the vaccination. This is evidenced by Dr Maplesden's comments above about Mr D's history of seizures.

100. In response to the provisional opinion, Dr A submitted that there is no established practice or expectation in primary care in New Zealand that patients cannot be treated based on what they self-report, and that access to broader information must occur prior to patient care being rendered. Dr A stated that practitioners can and do provide care based on what they are told by patients. I acknowledge that there is no requirement to obtain broader information from other providers before providing care, and that patients can be treated based on self-reported issues. However, medical certificates are legal documents and should be based on clear and relevant evidence (as per the above MCNZ statement) and, in Mr D's case, I accept Dr Maplesden's advice that Dr A had insufficient information to make an assessment of the risks of the vaccine to him.

101. I also note that out of the 40 sample notes provided to HDC, the notes indicate that 18 certificates were given solely on the basis of concerns about the vaccine, rather than any concerns about a medical condition. In Mr D's case, six out of seven of the reasons listed for the medical certificate were around spiritual beliefs or safety concerns about the vaccine.

102. Dr Maplesden considered that the issue of a spiritual, political or philosophical objection to vaccination as the patient's sole concern, or concern that the vaccination is experimental with unknown side effects, does not provide grounds for a medical certificate that states that the vaccination is unsuitable/inappropriate based on medical conditions. He advised:

> 'I am moderately critical that at least some of the medical certificates provided appear to have been done so purely on the basis of spiritual, political or philosophical objection to vaccination when the certificate represents these as medical concerns.'

103. I accept this advice and reject Dr A's submissions contrary to this position. While I acknowledge that in some circumstances, a medical certificate advising against the COVID-19 vaccination may be appropriate, it is clear from the information outlined above that Dr A provided medical certificates that stated that the vaccination was unsuitable/ inappropriate based on medical conditions, where there were no medical conditions. The MCNZ's statement on medical certification outlines the standards doctors must follow when completing medical certificates — as medical certificates are intended to inform a receiving person to assist in planning and decision-making. Medical certificates are legal documents. They have implications for the person receiving and relying on the certificate and, as such, it is crucial that they are completed honestly, accurately and objectively, using relevant evidence. In my view, Dr A did not adhere to this statement.

Information provided alongside medical certificates

104. As part of Ms C's complaint to HDC, she was concerned that her son was under the impression that the medical certificate provided was 'legitimate'.

105. Dr A's lawyer told HDC that when engaging with clients, Dr A was clear that the medical certificate was not a recognised 'vaccine exemption' as issued by the Ministry of Health. The lawyer stated that while it could be useful in discussions with employers who may be considering mandating vaccination outside of the professions/workforces identified in the COVID-19 Vaccinations Order, it was by no means guaranteed. I note that in the news service video provided to HDC, it is stated clearly that the certificates are not exemptions, and their use/effectiveness will be context specific.

106. However, regardless of the legal standing of the certificates, there is no documented evidence that Dr A provided patients with evidence-based information about the vaccine when they presented for a medical certificate.[7] Dr A told HDC that Mr D's concerns were unable to be alleviated to an extent to which he was comfortable, and Dr A could not in good faith be definitive to Mr D that there were no risks related to seizures and the vaccine. I also note that in Dr A's appointment with the unnamed reporter, the video does not show Dr A providing any evidence-based information to assist the reporter to understand the vaccine, or making any effort to alleviate his concerns about the vaccine.

107. Dr Maplesden noted that by the end of October 2021, there had been over 7 billion doses of various COVID-19 vaccines administered worldwide and 6.88 million doses administered in New Zealand.[8] He stated:

> 'There was mounting evidence regarding the overall safety and relative efficacy of the various vaccines in preventing severe Covid infection, and the morbidity and mortality associated with Covid infection far outweighed that associated with the vaccine. New Zealand GPs had access to Ministry of Health and IMAC [the Immunisation Advisory

[7] For example, that the Pfizer vaccine has a good safety record and has proven to be effective after millions of doses have been administered worldwide, and that the vaccine is safe for people trying to have a baby (https://www.health.govt.nz/system/files/documents/pages/get-the-facts-brochure-27sept2021.pdf).
[8] https://ourworldindata.org/grapher/cumulative-covid-vaccinations?country=OWID_WRL~NZL.

> Centre] resources providing evidence based advice on efficacy and safety of the vaccine.'

108. Dr Maplesden advised that he would expect a responsible and ethical GP, when confronted with a patient expressing concerns about the safety of the COVID-19 vaccination with respect to specific health issues, to acknowledge and empathise with the patient's specific concerns and provide them with an evidence-based and balanced perspective on the relative risks of the vaccine specific to their concerns. He stated:

> 'I would expect the patient to be given objective evidence-based advice relevant to their concerns and would be moderately critical if medical evidence was misrepresented or incorrect advice was provided.'

109. I also note that the MCNZ guidance statement regarding COVID-19 vaccination (28 April 2021) includes:

> 'As a health practitioner, you have a role in providing evidence-based advice and information about the COVID-19 vaccination to others. You should be prepared to discuss evidence-based information about vaccination and its benefits to assist informed decision making.'

110. The statement referred practitioners to the Ministry of Health website for further guidance to support engagement with staff or colleagues and the public who may be hesitant about getting a vaccine.

111. I accept that Dr A, at least in some circumstances, made the limitations of the medical certificates clear to patients, and that Dr A highlighted the fact that they were not formal vaccine exemptions adequately. However, I am concerned at the information (or lack thereof) provided to patients alongside these certificates.

112. In my view, Dr A had an obligation to provide information to consumers pursuant to MCNZ guidelines. As noted above, many of these consumers presented to Dr A requesting a medical certificate because of fears about the safety of the vaccine, and concern that the vaccine would not be suitable for them because of certain medical issues. The video shows that when the unnamed reporter presented to Dr A requesting a medical certificate because of concerns about the vaccine, Dr A did not provide him with any evidence-based information about these concerns before providing him with a medical certificate.

113. In response to the provisional opinion, it was submitted that in Dr A's view, based on how the reporter presented and what he said, a discussion about the evidence of the risks and benefits of vaccination would not have assisted his health or resolved his presenting issue. I acknowledge this submission. However, regardless of Dr A's view about whether a discussion would have assisted the reporter, Dr A still had an obligation to provide relevant evidence-based information.

114. While the records provided to HDC have the box 'discussed risks/benefits of vaccination' ticked, there is no documented evidence as to what information was provided to any of the consumers for whom a medical certificate was provided.

115. In response to the provisional opinion, Dr A asserted that if a patient raised any medical concerns, those concerns would be discussed and any necessary information required by professional obligations would be provided, including quantifying any risks perceived. However, Dr A has not provided this Office with any evidence of doing this. In addition, I note that the reporter's notes have the 'discussed risks/benefits of vaccination' box ticked, despite Dr A's acknowledgement to HDC that Dr A was unaware of any evidence-based information that would counter the reporter's concerns, and Dr A's comment above that a discussion about the evidence of the risks and benefits of vaccination would not have assisted the reporter's health or resolved his presenting issue. That Dr A did not discuss the risks and benefits of vaccination is also confirmed by the video footage. In the circumstances, I am not satisfied that Dr A provided evidence-based information about the vaccination to patients when issuing them with medical certificates.

116. While I find no evidence that Dr A provided misrepresentative or incorrect advice, I consider that Dr A did not adhere to the MCNZ guidance statement, in that Dr A omitted to discuss evidence-based information about the vaccination in order to assist concerned consumers in their decision-making.

Conclusion

117. It is the responsibility of health practitioners to understand and adhere to the legal and professional standards that apply to them in their practice. Despite standards set by both the New Zealand Government and the MCNZ that health practitioners provide evidence-based advice and information about the COVID-19 vaccination to others, and that practitioners be vaccinated against COVID-19 prior to seeing patients face to face, Dr A's actions during the COVID-19 pandemic in 2021 clearly departed from these standards. The standards were put in place to protect consumers.

118. In addition, Dr A issued medical certificates stating that it was inappropriate for consumers to receive the COVID-19 vaccine for 'medical reasons', when in fact the only grounds for concluding that it was inappropriate were non-medical reasons (such as personal beliefs). As a doctor, Dr A was authorised to complete medical certificates, and Dr A was aware that these certificates would be relied on by receiving parties. I am concerned that the certificates were not completed honestly, accurately, objectively and based on clear and relevant evidence, as required by the MCNZ statement on medical certification.

119. As per Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards. In this case, I consider that for consumers who were issued medical certificates by Dr A, or seen in person by Dr A during this time, this Right was not upheld. The standards and law relevant to this case were vital to support the public health response to the COVID-19 pandemic, and I am critical that they were not adhered to. It follows that I find Dr A in breach of Right 4(2) of the Code.

Opinion: The clinic — breach

120. The clinic advertises itself as a comprehensive, medically supervised, non-surgical wellness centre. At the time of events, Dr A was the only staff member engaged by the clinic, and Dr A was engaged as a volunteer.

121. From 26 October until 31 December 2021,[9] the clinic was prohibited from allowing Dr A to practise unless Dr A had been vaccinated or had a legal exemption. The clinic was also legally obligated to, among other things, notify Dr A of the requirement to be vaccinated.

122. The clinic did neither of these things.

123. On 12 November 2021, the clinic submitted a TSSDE application form to the Ministry of Health, to request an exemption for Dr A to continue to practise while unvaccinated on the basis of a significant disruption to health services. Reasons for the application noted on the form by the clinic included Dr A being the only doctor in New Zealand with specific qualifications and expertise.

124. While awaiting the outcome of the application, the clinic still allowed Dr A to see patients face to face, despite being unvaccinated. Even when the TSSDE application was declined on 2 December 2021, the clinic allowed Dr A to continue to see patients face to face until 15 December 2021.

125. The clinic explained to HDC that the Ministry of Health's acknowledgement of receipt of the second application (which was originally sent on 12 November 2021) did not specify a requirement that Dr A cease seeing patients in person immediately, pending the application being considered. Further, Mr B did not perceive there to be a clear statement directing that consultations must cease while an application for an exemption was pending.

126. Mr B considered that in this context, where the intention of the exemption was to prevent 'disruption to services', it was acceptable to proceed and maintain services for patients in need until the application was approved or otherwise. The clinic told HDC that clarification on the matter was not sought from the Ministry of Health, on the understanding that nowhere did it specify that work could not continue while awaiting an exemption, and that the in-person limitations applied only to patients who were seen for 15 minutes or more within 2 metres.

127. As explained above in relation to Dr A, due to the complex legal situation, I am not critical of the clinic for allowing Dr A to practise unvaccinated prior to 15 November 2021. However, in my view, from 15 November 2021 it was clear that Dr A was required to have been vaccinated, and the clinic had an obligation to ensure that Dr A had been vaccinated before practising with patients in person.

[9] Being the limit of the scope of this investigation.

128. Whilst the clinic has stated that Dr A was allowed to practise unvaccinated because of a misunderstanding of the legal position when a TSSDE application was pending, in my view this does not mitigate the breach in any significant way. In my view, the law was clear that from 15 November 2021 onwards (if not earlier), Dr A was required to be vaccinated. Accordingly, without the clinic specifically seeking clarification from the Ministry of Health regarding the law while awaiting the exemption application, it was not appropriate to proceed on the basis that Dr A was permitted to see patients, even if in a socially distanced manner. As a healthcare provider in New Zealand, the clinic had a responsibility to ensure that anyone providing services at its facility adhered to legal and professional standards.

129. Further, the letter from the Ministry of Health on 9 December 2021 was clear that it was a breach of the COVID-19 Public Health Response (Vaccinations) Order 2021 for a GP to see patients in person without having been vaccinated, unless they had a valid exemption. Despite this, Dr A was allowed by the clinic to continue to practise until 15 December 2021, for which there is no excuse.

130. Allowing Dr A to see patients against the Order, regardless of the COVID-19 processes in place at the clinic, not only placed its patients at risk, but also meant that their right to have services provided in accordance with legal, professional, ethical and other relevant standards was not upheld. Accordingly, I find that the clinic breached Right 4(2) of the Code.

Recommendation

131. I recommend that should Dr A return to practice in New Zealand, the Medical Council of New Zealand consider undertaking a review of Dr A's competence.

Follow-up actions

132. A copy of this report with details identifying the parties removed, except the clinical advisor on this case, will be sent to the Medical Council of New Zealand and RNZCGP, and they will be advised of Dr A's name.

133. A copy of this report with the names of the parties removed, except the clinical advisor on this case, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Appendix A: In-house clinical advice to Commissioner

The following clinical advice was obtained from Dr David Maplesden:

> '1. My name is David Maplesden. I am a graduate of Auckland University Medical School and I am a practising general practitioner. My qualifications are: MB ChB 1983, Dip Obs 1984, Certif Hyperbaric Med 1995, FRNZCGP 2003. Thank you for the request that I provide clinical advice in relation to the Commissioner Initiated Investigation into the care provided by [Dr A] to [Mr D] and other unidentified patients in November and December 2021. In preparing the advice on this case to the best of my knowledge I have no personal or professional conflict of interest. I agree to follow the Commissioner's Guidelines for Independent Advisors.
>
> 2. I have reviewed the following information:
>
> - Complaint from [Ms C]
> - Response from [Dr A]
> - Clinical notes for [Mr D] from [his medical centre]
> - Clinical notes for [Mr D] from [the clinic]
> - De-identified clinical notes ([the clinic]) for 40 additional patients seen by [Dr A] who were supplied with medical certificates stating it was inappropriate/ unsuitable for the patient to be administered the Covid vaccine on the basis of medical conditions
> - Responses from [Dr A] per [Dr A's] legal representative and directly to HDC
>
> 3. [Ms C] expressed concern that her son [Mr D], who had just turned 17 years old, had been provided with a certificate from [Dr A] deeming him unsuitable for Covid vaccination. Her son was not a patient of [Dr A] and [Dr A] had no access to his clinical notes. [Ms C] stated her son had a long history of health issues including asthma and pneumonia and the remainder of his family was fully vaccinated against Covid. [Ms C] was of the view that the family of her son's partner, who were anti-vaccination, had persuaded [Mr D] to seek a certificate exempting him from vaccination and [Dr A] had provided this certificate without due cause. [Ms C] notes the certificates have no lasting validity and [Dr A] is charging a significant fee for provision of the certificates. [Ms C] challenges the ethics of [Dr A's] actions.
>
> 4. A Commissioner Initiated Investigation has since been commenced and I have been asked to comment on the following issues:
>
> (i) The appropriateness of services provided by [Dr A] during the COVID-19 pandemic in 2021 including the issuing of vaccination certificates to [Mr D] and others and continuing to practise whilst unvaccinated; and
>
> (ii) The appropriateness of services provided by the clinic during the COVID-19 pandemic in 2021 including its responsibility for [Dr A] issuing vaccination certificates to [Mr D] and others and continuing to practise whilst unvaccinated.

5. The response from [Dr A's] legal representative includes the following points in relation to [Dr A] continuing to see patients face to face while unvaccinated herself despite the health practitioner mandate being in force from close of 15 November 2021 (first vaccination required by that date):

(i) [The clinic] *provides … consultations to "well" patients. All patients are encouraged to be enrolled at a GP practice of their choosing as the [clinic] does not provide GP services and does not take care of sick or unwell patients*.

(ii) [Dr A] worked fluctuating hours at [the clinic] and was the only staff member engaged by the [clinic] when vaccine mandates for health practitioners came into effect. [Dr A] had religious/spiritual objection to receiving the Pfizer vaccine although [Dr A was] made aware by [the clinic] that [Dr A] had a duty to be vaccinated. The [clinic] considered [Dr A] met the criteria in the Order for a Disruption of Service Exemption and an application was made by [Mr B] of [the clinic] for a Temporary Significant Service Disruption Exemption (TSSDE) on 15 November 2021. Background provided in the application includes [Dr A] being *the only [clinician] seeing patients* [at the clinic] … *[Dr A] is the ONLY doctor in New Zealand with [specific] qualifications and expertise in … Unfortunately GPs in New Zealand are not trained in managing …* There is reference to the business most likely having to close if an exemption was not available.

(iii) My observation: The TSSDE application form notes: *Where the affected worker has a contraindication to the available vaccine(s), a temporary medical exemption is required before applying for a temporary service disruption exemption.* It does not appear formal application was made for a temporary medical exemption (a letter requesting spiritual exemption was apparently attached to the application), or that such an application was accepted, prior to submission of the TSSDE.

(iv) Receipt of the TSSDE was acknowledged by the Ministry of Health but it did not specify that [Dr A] was unable to see patients while the application was being processed. [Clinic] management perceived that service could continue to be provided until the TSSDE had been processed given avoidance of disruption to service was the aim of the application. Standard infection control processes (social distancing, mask wearing) were in place. On 2 December 2021 [the clinic] was notified the TSSDE application was declined. The decision letter discussed availability of the Astra Zeneca vaccine as an alternative option for people unable or unwilling to have the Pfizer vaccine and this was interpreted as *an ability to apply for an exemption on other grounds.* The response states an amended application was being prepared and [Dr A] continued to see patients while this was done under the mistaken belief this was acceptable practice in the interim. The Ministry of Health contacted [the clinic] on 9 December 2021 confirming [Dr A] should not be seeing patients face to face and an infringement notice was issued on 11 December 2021. Subsequently telemedicine services were provided until [Dr A] relinquished … New Zealand registration on … 2021.

7. Comments

(i) Concerns might be raised at the competence of [clinic] management in the interpretation of the legislation around the health practitioner vaccine mandate and TSSDE application. I believe it was clear from the outset the application made by [the clinic] without an approved temporary medical exemption could not succeed, and it is notable the application was not made until the deadline for first vaccination had passed despite there being adequate time since notification of the mandate to submit an application. I believe it was at least naïve of [clinic] management to believe it was appropriate for [Dr A] to continue to see patients while unvaccinated beyond 15 November 2021, and I note a significant proportion of the patients seen after this time were seen for matters unrelated to the core business of [the clinic], that core business being the reason for the TSSDE. In summary, I am moderately to severely critical of the [clinic] management of the situation for the following reasons: they deferred application for TSSDE until the deadline for its sole medical practitioner to receive [a] first vaccination with the knowledge [Dr A] would not consent to vaccination with the Pfizer vaccine; they did not have a working knowledge of the health legislation relevant to their business and did not seek clarification of the law if there was uncertainty; they did not provide evidence of a temporary medical exemption, and should have known [Dr A] did not meet the criteria for a temporary medical exemption, as required for the TSSDE in this particular case; while arguing that a TSSDE was required for the core business of … management, they allowed [Dr A] to consult with numerous patients regarding matters not related to this core business or the reason for the application while a decision on the TSSDE was awaited. The grounds under which an amended application was to be made have not been provided.

(ii) I believe [Dr A] had a responsibility as a health practitioner to have an accurate understanding of the relevant vaccine mandate legislation as it applied to [Dr A] and I believe [Dr A's] decision to continue to see patients face to face, and in particular to see patients for matters unrelated to the core business of [the clinic], beyond 15 November 2021 while unvaccinated would be met with at least moderate disapproval by my peers. I have regarded the possibility [Dr A] received incorrect advice from [clinic] management as a mitigating factor but that does not remove from [Dr A] the responsibility for [Dr A's] own actions.

8. [Dr A's] response includes the following points:

(i) [Dr A] describes the usual processes [undertaken] when providing patients, including [Mr D], with medical certificates deeming them unsuitable for Covid vaccination. [Dr A] states [that] initially [Dr A would] address a group of waiting patients and *generally discuss the relevant law, policy and processes around exemptions and medical certificates in a group setting, with the patients waiting to see me. This allowed them a better understanding of whether their requests were possible/appropriate.*

(ii) [Dr A] specifies the following topics addressed in the group discussion of which [Mr D] was a participant on 8 November 2021:

- *The recent changes in the Covid-19 Public Health Response (Vaccinations) Order including the removal of the 7A exemption clause.*
- *The sectors affected by the vaccination mandates (Healthcare, Education, Corrections)*
- *The exemptions available under the Act (9B — medical and 12A — disruption of service by the PCBU).*
- *The process to apply for a 9B or 12A exemption. A review of the limited criteria for a 9B medical exemption.*
- *My role as their advocate to support them in their decision-making, and that my role was not to coerce them into a decision but rather to support them in their independent decision on vaccination that they had made prior to their appointment.*
- *Patients' views that employer directed (as opposed to Government directed) mandates were causing significant concerns regarding the right to refuse medical treatment, WorkSafe violations (i.e. limited/insufficient consideration of reasonable and available alternatives to mitigate risk), the adverse mental health effects of feeling coerced despite the Act not applying to their position, etc.*
- *Proper consenting laws and policies. Discussions included the Ministry of Health and Medical Council policy on proper informed consent and that a person is unable to consent to a procedure (surgery, vaccination, etc) if they feel coerced.*

(iii) Following the group discussion [Dr A] would consult with the patient who had completed a medical history for, a terms of business form and a consent for treatment form. [Mr D] disclosed that he felt coerced to accept the vaccination and personally disagreed with the vaccine mandates which did not align with his spiritual and cultural beliefs. He also reported anxiety at the novel nature of the vaccine and limited long-term safety data, compounded by a history of him having seizures as a young child. [Dr A] assessed [Mr D] as being competent to make decisions about his own personal health and established [Mr D] worked in the … industry and *he wanted a medical certificate "just in case" he might be "forced" to receive a vaccine to keep his job despite the … industry not being covered by the government mandate. [Mr D] did not meet the criteria for a 9B medical exemption (recent Covid-19 infection, decompensated heart failure, etc.), so he would not meet the criteria for an exemption even if the mandate did apply to his employment.*

(iv) [Dr A] states: *I explained that having regard to his strong aversion to the vaccination, I considered he would not be able to properly and freely consent to it — if he was provided the choice, "be vaccinated or lose your job". I wrote a medical certificate for him as I considered it would be inappropriate for him to be coerced into undergoing a medical procedure and any consent he gave in that context would be invalid as is consistent with proper medical consenting laws and policies … Furthermore, there are adverse neurologic effects reported from the Covid-19 vaccines of which [Mr D] was familiar with from his research. As this information is readily available in the public domain, including but not limited to vaccines being associated*

with seizures, and the data from Israel includes neurologic complications including seizures [references provided] *I, in good faith, was unable to be definitive to him that there were no risks related to seizures and the vaccine.*

(v) [Dr A] states: *I explained to [Mr D] that the medical certificate was intended to:*

1) *Protect [Mr D] from untoward health effects of being coerced to receive treatment against his will.*
2) *Support [Mr D] in his decision regarding vaccination.*
3) *Assist [Mr D] in discussions with his employer if they sought to implement non-mandated vaccine mandates in their workplace which he was not comfortable with.*
4) *Prevent [Mr D] from being coerced into a medical procedure against his will.*

(vi) Standard charges for a consultation such as that undertaken with [Mr D] was $60 for the consultation and $20 for provision of the medical certificate. [Dr A] states: *Generally, I discussed with patients the differences between exemptions and medical certificates and particularly that exemptions are not typically possible save for a few very select medical problems which require specialist documentation. Providing medical certificates to patients who held and expressed a clear desire not to be vaccinated and faced stress and anxiety at the prospect of their employers requiring the same, was a means to notify employers of the effect of their policy on the health and wellbeing of my patients. It was hoped that the medical certificate could serve as a way to start a productive conversation about possible alternatives to requiring vaccination (if any). I consider this is something that every doctor in New Zealand should be doing — having conversations with patients, listening to them and then advocating for their personal choices. As doctors we cannot coerce patients into having procedures against their will, that violates all of the consenting policies that the Medical Council has published, is unethical and immoral. If a competent patient has stated they do not want a procedure no matter what it is, I believe it is my legal duty as a physician to advocate and respect their decision.*

(vii) [Dr A] emphasizes that patients were not being provided with vaccine exemption certificates, and a single application was made on behalf of one patient for vaccine exemption under section 9B of the relevant legislation (see Appendix 1) on 25 November 2021 using the appropriate process. This application was declined by the Ministry of Health.

7. Clinical documentation has been reviewed in relation to [Mr D's] consultation and an additional 40 unidentified patients (see section 8). A standard approach appears to have been taken with all patients in that completion of a comprehensive medical history sheet is required together with signing of a "Terms of Business" agreement (which includes a section on health information privacy) and a generic "Informed Consent to Medical Treatment" form which appear to relate to the "wellness" services provided by [the clinic]. The consultation note is handwritten on a pre-formatted page which contains a dedicated section for vaccination discussion and outcome. De-

identified examples of the consultation sheet and medical certificate are reproduced in Appendix 3. [Mr D's] consultation note is consistent with the provider response noting his issues with the ethics of vaccine mandates, clash with his spiritual and cultural beliefs, concern regarding possible side effects and the "experimental" nature of the vaccine and history of seizures as a child. There is no reference to history of pneumonia or asthma and I assume this was not recorded on [Mr D's] medical history form. On review of [his clinical] notes there is a single reference to prescribing of fluticasone and salbutamol inhalers in August 2019 following a chest infection but it does not appear these medications were prescribed regularly and there is no reference to diagnosis of asthma in the notes reviewed. Capacity is noted. While the medical certificate provided to [Mr D] does not specify the reason why vaccination is unsuitable for him, the consultation note records: *violates spiritual beliefs therefore unable to consent to vax.*

8. A further 40 sets of notes, all similar in layout and content, have been reviewed and summarised in Appendix 4. I was unable to determine from the notes reviewed that any of the patients would have likely fulfilled the Ministry of Health criteria for vaccine exemption of a mandated worker. However, I note [Dr A's] emphasis that [Dr A was] not providing certificates for this purpose.

9. By the end of October 2021 there had been over 7 billion doses of various Covid vaccines administered worldwide and 6.88 million doses administered in New Zealand[1]. There was mounting evidence regarding the overall safety and relative efficacy of the various vaccines in preventing severe Covid infection, and the morbidity and mortality associated with Covid infection far outweighed that associated with the vaccine. New Zealand GPs had access to Ministry of Health and IMAC resources providing evidence based advice on efficacy and safety of the vaccine. As noted in Appendix 2, in April 2021 the MCNZ had provided medical practitioners with a statement regarding their professional responsibility with respect to Covid vaccination. This statement includes: *As a health practitioner, you have a role in providing evidence-based advice and information about the COVID-19 vaccination to others. You should be prepared to discuss evidence-based information about vaccination and its benefits to assist informed decision making. There is information on the Ministry of Health (MOH) website to support engagement with staff or colleagues and the public who may be hesitant about getting a vaccine … As regulators we respect an individual's right to have their own opinions, but it is our view that there is no place for anti-vaccination messages in professional health practice, nor any promotion of anti-vaccination claims including on social media and advertising by health practitioners.*

10. I would expect a responsible and ethical GP, when confronted with a patient expressing concerns about the safety of the Covid vaccination with respect to specific health issues (such as those present in the notes reviewed including fertility, childhood seizure, reactions to other vaccinations or medications, co-morbidities such

[1] https://ourworldindata.org/grapher/cumulative-covid-vaccinations?country=OWID_WRL~NZL

as ischaemic heart disease or auto-immune disease), to acknowledge and empathise with the patient's specific concerns and provide them with an evidence-based and balanced perspective on the relative risks of the vaccine specific to their concerns. If [Dr A] observed symptoms and signs of anxiety in those patients professing anxiety at the prospect of vaccination, and that anxiety could not be allayed through evidence-based discussion of vaccine safety, it might be reasonable to consider pathological anxiety as a medical condition making vaccination unsuitable or inappropriate if it prevented the patient from consenting to vaccination. Similarly, if there is robust evidence that the vaccination could exacerbate a pre-existing medical condition (even if that condition is not an acknowledged contraindication to the vaccine), and after presentation of relative risks and benefits of the potential effects of the vaccination or Covid itself on that medical condition the patient feels unable to consent to vaccination, I believe it is reasonable to provide certification (as opposed to application for vaccine exemption) that vaccination might be unsuitable or inappropriate based on medical conditions (as was the wording of the certificates supplied to [Dr A's] patients). This would be consistent with the MCNZ guidance on medical certification (see Appendix 2) that includes: *Any statement you certify should be completed promptly, honestly, accurately, objectively and based on clear and relevant evidence … The information disclosed should be accurate and based upon clinical observation, with patient comment clearly distinguished from clinical observation.* However, I could not find robust and evidence-based medical reasons in many of the sample notes examined (and these were only 40 of at least 178 patients for whom certificates were provided over the time frame examined) for a statement that medical conditions made vaccination inappropriate or unsuitable. In the case of [Mr D], there is insufficient background provided on his seizure history to comment further. I note he was not on anticonvulsant therapy (making a diagnosis of epilepsy unlikely) and even had he been diagnosed with epilepsy, most international epilepsy foundations were recommending vaccination (and continue to do so) as the risks of getting the disease far outweigh the risks of the vaccine in a patient with epilepsy.

11. The issue of a spiritual, political or philosophical objection to vaccination as the patient's sole concern, or concern that the vaccination is experimental with unknown side effects, does not in my opinion provide grounds for a medical certificate that states the vaccination is unsuitable/inappropriate based on medical conditions and I believe the certification supplied by [Dr A] to such patients was inappropriate.

12. Based on the provider response, it appears patients were appropriately informed that the certificates provided did not constitute formal vaccine exemption certificates and would not be recognised by the Ministry of Health for mandated workers or to avoid the requirement for a Vaccine Pass. I am unable to confirm this was the understanding of the patients provided with these certificates as we have no statement from these patients. However, the patients were evidently told (per the provider response) that the certificates could be used to help prevent the patient being "coerced" into having a vaccine. I am not sure how the certificate functioned in this context with patients having the ability to make an informed decision to decline vaccination with or without a "certificate". In my opinion, patients were essentially paying $80 for a medical certificate they did not require under law, and that had no

legal standing with respect to any formal requirement for vaccine exemption. I note [Dr A] had no longstanding professional relationship with the patients to whom [Dr A] provided certificates but [Dr A] did have medical history provided by the patient. I presume most of the patients had their own registered GPs. Up until early November 2021 (as presented in Appendix 1) there was marked lack of clarity surrounding the process the Ministry of Health would require for vaccine exemption certificates including the wording required on those certificates. As a result, the RNZCGP had advised members on 21 October 2021 to cease providing any exemption certificates until the process was confirmed. [Dr A] was apparently a member of the RNZCGP. I regard [Dr A's] decision to continue to provide certificates suggesting patients had valid medical reasons for avoiding vaccination after that date, even if [Dr A] maintains these were not "exemption certificates", as having the potential to undermine the relationship between these patients and their GPs particularly when the GP was following the RNZCGP guidance not to provide such certification. However, I acknowledge the right of the patient to seek a second opinion or to attend the medical practitioner of their choice. Certainly from 8 November 2021 the process for obtaining a vaccine exemption certificate was clarified and the certificates supplied by [Dr A] were not fit for purpose in this regard. Had [Dr A] not informed patients of this situation (and [Dr A] states [that this was done]) I would be severely critical of [Dr A's] ongoing actions in providing medical certificates stating vaccination was inappropriate or unsuitable for medical reasons.

13. In summary, if patients were fully informed that the certificates provided by [Dr A] were invalid for the purpose of formal vaccine exemption (mandated workers/vaccine pass), and were not required by law if a patient wished to avoid vaccination, and patients were aware of the cost of the consultation and certification process, then it is difficult to state the patients were overtly exploited. I would expect the patient to be given objective evidence-based advice relevant to their concerns and would be moderately critical if medical evidence was misrepresented or incorrect advice was provided. Not having been present at the consultations, and in the absence of reports from the affected patients, it is not possible for me to comment further in this regard although I am aware there is some audio-visual record (which I have not seen) that might give some indication of the overall approach used by [Dr A]. I am moderately critical that at least some of the medical certificates provided appear to have been done so purely on the basis of spiritual, political or philosophical objection to vaccination when the certificate represents these as medical concerns. I believe a majority of my peers would share these views.

Appendix 1. Key dates

1. **28 April 2021.** MCNZ/Dental Council: Guidance statement. COVID-19 vaccine and your professional responsibility[2] (supported by the RNZCGP) is released. (See Appendix 2, s1).

[2] https://www.mcnz.org.nz/assets/standards/Guidelines/30e83c27d9/Guidance-statement-COVID-19-vaccine-and-your-professional-responsibility.pdf

2. **14 July 2021.** COVID-19 Public Health Response (Vaccinations) Amendment Order 2021

Clause 7(A) relating to exemption from duty (when vaccination required for certain duties to be completed) inserted as: *Exemption from duty under clause 7 Despite clause 7, an affected person who handles affected items may carry out certain work without being vaccinated if—*

*(a) the affected person has **particular physical or other needs** a suitably qualified health practitioner (in the course of examining the person) determines would make it inappropriate for the person to be vaccinated; and*

(b) the relevant PCBU has provided the register with written confirmation that a suitably qualified health practitioner—
(i) has examined the affected person; and
(ii) has determined that vaccinating the affected person would be inappropriate.

3. **21 October 2021**. RNZCGP update to members[3] includes: *The College is being asked to clarify who can receive a vaccine exemption as patients are requesting them. The College has been working with IMAC on a statement about vaccine exemptions however the Ministry of Health has asked us to pause this work until they provide further clarification.* ***In the meantime, our advice is not to write vaccine exemption certificates until we receive the Ministry's guidance.***

4. **25 October 2021**: COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021

(i) Clause 7(A) amended to include:

(1) This clause applies to an affected person who belongs to a group specified in Part 6, 7, 8, or 9 of the table in Schedule 2. **Part 7.1 of Schedule 2 refers to health practitioners.** *(3) If the affected person is a health practitioner, the examination referred to in subclause (2) must be undertaken by another health practitioner who is suitably qualified to conduct the examination.*

(ii) Part 3 Provisions relating to COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021. Clause 5: Transitional provision for affected persons working in health and disability sector before commencement

(1) If an affected person who belongs to a group specified in Part 7 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—

(a) be treated as vaccinated until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date:

[3] https://rnzcgp.informz.net/informzdataservice/onlineversion/pub/bWFpbGluZ0luc3RhbmNlSWQ9MjM2ODIwMQ==

(b) be treated as vaccinated until 1 January 2022 (and after that date) if they—

(i) have their first dose of a COVID-19 vaccine before the close of 15 November 2021; and
(ii) have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

5. **28 October 2021.** *RNZCGP update to members[4] includes: The College and IMAC have been working with the Ministry of Health to establish both criteria for exemptions and a process to make this standardised and secure for practitioners, patients and employers. This is taking some time and we have heard from our members that there are many requests for these exemption certificates.*

While the formalised process and criteria are agreed and set up, we suggest that members can state that from what we know so far the following are the likely criteria that are exempt:

- *Anaphylaxis to the first dose of the vaccine*
- *Known severe allergy to the excipients of the vaccine*
- *Acute decompensated heart failure Inflammatory cardiac illness within the past 6 months*
- *Myocarditis*
- *Pericarditis*
- *Endocarditis*
- *Acute rheumatic fever*
- *Acute rheumatic heart disease.*

This has not been confirmed by the advisory group yet and may change. We expect a more formal process to be available in the next week that will allow members to produce the validated certificate. Any documents produced in the meantime may give confidence to the patient but will need to be reproduced with the validated process.

6. **29 October 2021**. Ministry of health website reads:

Exemptions from mandatory vaccination
In some situations, health and disability, education and corrections workers may be able to get an exemption from being vaccinated against COVID-19.

When you can apply for an exemption
The exemption process comes into force on 6 November 2021 for corrections workers, and 15 November 2021 for health and disability workers and education workers.

How an exemption is granted
Workers may be exempt from the requirement to be vaccinated if, after examination:

[4] https://rnzcgp.informz.net/informzdataservice/onlineversion/pub/bWFpbGluZ0luc3RhbmNlSWQ9MjM3MjE4MQ==

- *a suitably qualified health practitioner considers that the vaccination is clinically contradicted for the person, and*
- *a suitably qualified health practitioner provides written confirmation of that assessment.*

A worker may not exempt themselves even if they are a suitably qualified health practitioner.

7. **7 November 2021**: COVID-19 Public Health Response (Vaccinations) Amendment Order (No 4) 2021

Clause 7(A) revoked by Clause 9(B) *Director-General may grant COVID-19 vaccination exemption (1) A suitably qualified medical practitioner or nurse practitioner (the applicant) may apply to the Director-General for a COVID-19 vaccination exemption on behalf of a person who—*

(a) belongs to a group specified in Part 6, 7, 8, or 9 of the table in Schedule 2 and—

(i) is not vaccinated:
(ii) has not received a booster dose; or

(b) belongs to a group specified in Part 10 of the table in Schedule 2 and is not vaccinated.

(2) An application may be made only on the ground that the person on whose behalf the application is made (the person) meets the specified COVID-19 vaccination exemption criteria.

(3) The person must—
(a) certify that the information that they have provided to the applicant for the purposes of making the application is accurate; and
(b) sign the application.

(4) An application must be accompanied by a certificate signed by the applicant certifying that they—
(a) have reviewed the person's medical history and assessed the person's state of health; and
(b) have reasonable grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.

(5) The applicant must state their grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.

(6) On receiving an application, the Director-General may ask the applicant or person to provide any evidence or further information that the Director-General reasonably requires for the purposes of deciding whether to grant the application.

(7) The Director-General may grant the application if the Director-General is satisfied, on the basis of the evidence or other information provided, that the person meets the specified COVID-19 vaccination exemption criteria.

(8) A COVID-19 vaccination exemption is valid for the period that the Director-General determines, which must be no longer than 6 months.

(9) The Director-General must notify the applicant and the person of the outcome of the application.

(10) If the application is granted, the Director-General must provide a copy of the COVID-19 vaccination exemption in written or electronic form to the applicant and person that states the date on which the exemption expires.

(11) At any time before or after a COVID-19 vaccination exemption expires, a new application for a further exemption may be made under this clause by any medical practitioner or nurse practitioner on behalf of the person in respect of whom an exemption was granted.

8. **8 November 2021**. Ministry of Health formalises process and criteria for vaccine exemption for mandated workers. Final version of process and criteria published 30 November 2021[5]. As well as listing the specific exemption criteria, the Ministry outlined the principles of temporary medical exemption which included:

- *There are very few situations where a vaccine is contraindicated and, as such, a medical exemption is expected to be rarely required.*
- *Exemptions should be limited to situations where a suitable alternative COVID19 vaccine is not readily available for the individual.*
- *Exemptions should be for a specified time, reflecting, for example, recovery from clinical conditions or the availability of alternate vaccines.*
- *Vaccination should be completed as soon as clinically safe within the exemption timeframe. This is particularly relevant for criteria 1C where it is unlikely that a full six months is required.*
- *It is likely that most people who are not medically exempt can be safely vaccinated, with some requiring extra precautions.*
- ***The practitioner completing the application form should have an existing clinical relationship with the consumer and will support them for completing their vaccinations going forward.***

9. **19 November 2021**. RNZCGP update to members[6] includes:

The issues that arose over the issuing of vaccine exemption certificates, and who would be eligible for an exemption, were particularly difficult. The fact the exemption was announced with no formal process in place meant that GPs were put straight in the firing line across many parts of the country with verbal, and at time physical abuse, and threats. On top of the other demands already on frontline GPs in the COVID response, the way this was rolled out and the unintended consequence was unacceptable.

[5] https://www.health.govt.nz/system/files/documents/pages/vaccine-temporary-medical-exemption-30nov21.pdf
[6] https://rnzcgp.informz.net/informzdataservice/onlineversion/pub/bWFpbGluZ0luc3RhbmNlSWQ9MjM4NDg3Mw==

Appendix 2. Reference documents

1. MCNZ/Dental Council: Guidance statement. COVID-19 vaccine and your professional responsibility[7] (supported by the RNZCGP) released 28 April 2021[8]. Statement includes:

- *You have an ethical and professional obligation to protect and promote the health of patients and the public, and to participate in broader based community health efforts. Vaccination will play a critical role in protecting the health of the New Zealand public by reducing the community risk of acquiring and further transmitting COVID-19.*
- *Patients are entitled to information that a reasonable consumer, in that consumer's circumstances, would expect to receive (Right 6, Code of Health and Disability Services Consumers' Rights).*
- *As a health practitioner, you have a role in providing evidence-based advice and information about the COVID-19 vaccination to others. You should be prepared to discuss evidence-based information about vaccination and its benefits to assist informed decision making. There is information on the Ministry of Health (MOH) website to support engagement with staff or colleagues and the public who may be hesitant about getting a vaccine.*
- *As regulators we respect an individual's right to have their own opinions, but it is our view that there is no place for anti-vaccination messages in professional health practice, nor any promotion of antivaccination claims including on social media and advertising by health practitioners.*

2. MCNZ "Statement on medical certification" (2013)[9] Includes:

- *Certificates are legal documents. Any statement you certify should be completed promptly, honestly, accurately, objectively and based on clear and relevant evidence.*
- *Your obligation is to the patient and to the law. Issues like the type of certificate being completed or who initiated, or pays, for the consultation must not influence your assessment and findings*
- *Completing a certificate may also directly affect the safety and security of others. Certifying a patient to undertake work when he or she is unfit may place the patient or the patient's colleagues at risk.*
- *The information disclosed should be accurate and based upon clinical observation, with patient comment clearly distinguished from clinical observation.'*

[7] https://www.mcnz.org.nz/assets/standards/Guidelines/30e83c27d9/Guidance-statement-COVID-19-vaccine-and-your-professional-responsibility.pdf
[8] https://www.mcnz.org.nz/about-us/news-and-updates/expectations-for-covid-19-vaccination-released-for-doctors-and-dentists/
[9] https://www.mcnz.org.nz/assets/standards/0541c585e7/Statement-on-medical-certification.pdf

Appendix 3 Example of (i) [the clinic] vaccine medical certificate and (ii) consultation form for (patient weight generally recorded, blood pressure recorded on occasions).

(i) Vaccine medical certificate
(ii) Vaccine consultation form

[Documents removed for privacy.]

Appendix 4
Summary of additional patient notes provided

No.	Date seen	Medical hx [Listed indications for medical certificate]
1	8/11/2021	Antiphospholipid synd, violates belief system, sinus tachycardia [antiphospholipid synd, high risk of clots]
2	8/11/2021	prev anaphylaxis unknown aetiology, palpitations, spiritual beliefs violated [anaphylaxis unknown aetiology]
3	8/11/2021	multiple myeloma, arthritis, spiritual beliefs violated [multiple myeloma and unknown safety of vaccine, pt unable to consent]
4	8/11/2021	Violates belief system, would adversely affect mental health [spiritual]
5	8/11/2021	Anxiety, spiritual beliefs [anxiety]
6	8/11/2021	Anxiety, depression, PCOS, hypertension, spiritually not aligning [PCOS, anxiety/depression, unknown risks of vaccine preventing consent]
7	8/11/2021	Anxiety, safety concerns, family hx MS [spiritual beliefs, family hx autoimmune conditions]
8	8/11/2021	Hepatitis, asthma, spiritual beliefs [unknown side effects, risks re hepatitis, spiritual beliefs]
9	8/11/2021	Anxiety, migraines, prefers natural immunity, spiritual beliefs [migraines, anxiety, unable to consent to vaccine]
10	8/11/2021	anxiety, depression, concerned re safety, reactions to previous medications [above reasons and feels unable to consent]
11	17/11/2021	Factor V, increased risk blood clots, wants natural immunity, friends with vax injury, spiritual beliefs, coercion, stress [Factor

		V Leiden, fam hx clots]
12	19/11/2021	Anxiety, safety concerns [not specifically listed]
13	1/12/2021	Stress, concern re long term side effects [stress]
14	2/12/2021	spiritual beliefs, anaphylaxis with multiple medications [hx anaphylaxis]
15	2/12/2021	Breastfeeding, concerned re future fertility/safety [breastfeeding]
16	2/12/2021	Spiritual and political beliefs [nil specifically listed]
17	2/12/2021	Heart arrhythmias, endometriosis, safety concerns, stress [heart arrhythmias]
18	2/12/2021	Anaphylaxis hx (not further defined), vax reaction as child, anxiety, spiritual beliefs [anaphylaxis history]
19	2/12/2021	Anxiety re side effects, fam hx IHD [not listed]
20	2/12/2021	Fam hx vax injury, autoimmune concerns, safety concerns, prefers natural immunity [Autoimmune, fam hx vax injury]
21	2/12/2021	Alt health provider, empath, intact immune system, violates belief system, consider vax a toxin [nil specific listed]
22	2/12/2021	Prev vax injury (reaction to first Pfizer dose not otherwise specified). Coercion. [Prev vax injury]
23	2/12/2021	Fertility, long term safety, spiritual belief system [not listed]
24	2/12/2021	(redacted), natural medicine, future fertility [not listed]
25	2/12/2021	Ingredients, fetal cell lines, pref medication reactions, fam hx vax reactions, faith/belief system [not listed]
26	2/12/2021	(redacted), natural health, alt health approach, treating vax injuries regularly [not listed]
27	2/12/2021	Testing, no long-term safety, hx rheumatic fever age 17, mental health [hx rheumatic fever]
28	2/12/2021	Irreg heart rate, coercion, anxiety, safety, prefer natural immunity [irreg heart beat]

29	2/12/2021	Research, hx of stroke in family, sister with blood disorder, prefers natural immunity, future fertility [migraines]
30	2/12/2021	Fam hx CHD, fam hx and friend vax reaction, safety concerns [not listed]
31	2/12/2021	Fam hx CHD, safety concerns, prefers natural immunity, research [Fam hx CHD]
32	2/12/2021	Spiritual beliefs, natural immunity, coercion, fertility [endometriosis]
33	2/12/2021	Research, safety concerns, feeling coerced, stress and anxiety, fertility concerns [arthritis]
34	2/12/2021	IDDM/autoimmune, coercion, prefers natural immunity [IDDM]
35	2/12/2021	Hx blood clots (on blood thinners), safety concerns [hx blood clots]
36	2/12/2021	Concerns re long term safety, prefer natural immunity [thyroid]
37	2/12/2021	Friends/family with vax injury, coerced, anaphylaxis hx (penicillin) [Hx anaphylaxis]
38	2/12/2021	Autoimmune, chronic fatigue, PMR, safety concerns, knows 13 people who have died [Autoimmune]
39	2/12/2021	Safety, kidney disease, hx psoriasis, safety concerns, chronic fatigue concerns [psoriasis]
40	2/12/2021	Safety concerns, fertility concerns, prefers natural infection, adversely affecting mental health [depression]