

General Practitioner, Dr B

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

(Case 03HDC06091)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer
Dr B	General Practitioner / Provider
Ms C	Counsellor
Dr D	General Practitioner
Mr E	Counsellor / Psychotherapist
Dr F	General Practitioner

Complaint

On 2 May 2003 the Commissioner received a complaint from the solicitors acting for Ms A about services provided to Ms A by general practitioner Dr B. The complaint is that:

Between May and September 1999, while acting as Ms A's general practitioner, Dr B behaved in a way that breached ethical standards. In particular, Dr B:

- *made comments to Ms A of a sexually suggestive nature during consultations in his rooms, in visits to her home and in telephone conversations with her outside Dr B's normal working hours*
- *kissed and touched Ms A intimately*
- *engaged in sexual intercourse with Ms A in his rooms.*

An investigation was commenced on 20 May 2003.

Information reviewed

- Ms A's medical records
- Statement made to the Medical Council of New Zealand by Dr B
- Statement of claim by Ms A provided by her solicitors
- Copy of counsellor Ms C's file in relation to Ms A

Information gathered during investigation

Background

Ms A moved from overseas to New Zealand in 1998. Initially she saw general practitioner Dr D at a medical centre for her medical care. She also consulted with counsellor Ms C at a counselling service where she was seen for stress and depression resulting from a history of severe trauma and abuse (post-traumatic stress syndrome).

Doctor/patient relationship

On 16 March 1999, Ms A consulted general practitioner Dr B for the first time. Dr B gave her a certificate for absence from work, but no specific clinical notes were recorded for this consultation. She next saw him on 25 March 1999 for a tension headache, and it is noted that she had been under stress. Dr B prescribed Voltaren and diazepam at that consultation. On 30 March 1999, Ms A's medical notes were transferred from Dr D's to Dr B's practice. Ms A's next consultation with Dr B was on 15 April 1999, when he prescribed a Premarin repeat for hormone replacement therapy.

On 18 May 1999 Ms C referred Ms A to Dr B for assessment of her need for medication, and of her ability to work in light of her post-traumatic stress disorder. A note in Dr B's record of this date states as follows:

“Depression: Past H/o [history of] Post traumatic syndrome
– sexual abuse
– emotional abuse
– parents murdered in front of her

Nervous breakdown – off work for 1/12! [one month].”

Dr B also noted that Ms A was receiving counselling from Ms C, with a note of Ms C's telephone number.

On 20 May 1999, Dr B saw Ms A again. He noted that this was a follow-up to her previous consultation, and he also treated her for influenza. He prescribed Augmentin (an antibiotic), Telfast (an antihistamine) and Prozac (an antidepressant).

On 21 May 1999, Ms A was seen again. This consultation was for suspected jaundice, scleral yellowing, abdominal tenderness and eczema. Dr B suspected hepatitis, and blood tests were taken.

On 30 June 1999, Dr B saw Ms A again for a urinary tract infection and prescribed Noroxin (an antibiotic).

Developing sexual relationship

Ms A, through her solicitors, advised me that it was while she was being seen by Dr B for the treatment of depression over the period May to September 1999 that he first made sexual comments, and then intimate advances. She advised me that Dr B questioned her lack of sexual desire and, in June 1999, when she had a bladder infection, Dr B admitted to being

attracted to her, and commented that he found her “very sexy and very attractive and would like to ravish [her] sexually”. According to Ms A, it was shortly after that consultation that Dr B asked “if he could kiss me which he did”. A few weeks later he called Ms A into his office and they chatted about the “chemistry”, “connection” and the consequences of such attraction. “He kissed me again and touched me intimately.” Much later, consensual sexual intercourse occurred in his consultation rooms.

Dr B, through his barrister, advised me that “nothing physical happened ... until the consultation in July. I am uncertain of the exact dates but during the consultation we kissed and there was some intimate touching.”

In his statement to the Medical Council Dr B stated:

“In early 1999 I began attending a 30 week course through our Church which had brought up a lot of emotional issues for me in relation to my upbringing in [the same country]. At the time my wife and I were also suffering marital difficulties. When I met Ms A we bonded quickly and during the consultations would discuss many issues and share experiences of our childhood in [the same country]. It was a time of sharing of past painful memories and experiences for both of us. Nothing physical happened during these consultations until the consultation in July. I am uncertain of the exact dates but during the consultation we kissed and there was some intimate touching. This was very brief. A telephone call that came into my office ended the intimacy shortly after it began.”

Dr B advised that some days after their physical contact in July 1999, Ms A telephoned him to say this should not have happened. In his statement to the Medical Council he continued:

“... I agreed with her wholeheartedly that what had transpired between us was wrong and that I had breached her trust in my position as her physician and I apologised. I recall that we discussed her transferring her notes to another practitioner and the records show [Ms A] transferred from our practice to [Dr D] in Her notes were sent across on 11 August.”

A note in Ms A’s records confirms that her notes were printed out on 11 August 1999.

Disclosure of relationship

On 29 July 1999, Ms A disclosed the nature of her relationship with Dr B to her counsellor, Ms C. Ms C reported that “she [Ms A] experienced the [incidents] as serious violation of her trust in a situation where she thought she was safe”. Shortly after this Ms A ceased contact with Dr B and returned to Dr D for her medical care. Her medical records show that her first consultation back with Dr D was on 12 November 1999. On this date, Dr D recorded:

“Returned from [Dr B], several incidents there violated her trust, she has d/w [discussed with] medical council but couldn’t face the process involved in pursuing the matter. Been treated for depression since May on Prozac, has had this several years ago. Has very abusive background, physical and emotional abuse ...”

Dr D's record continues with details of Ms A's traumatic background, including a history of sexual abuse.

Further contacts between Ms A and Dr B

In his statement to the Medical Council, Dr B advised that he made visits to Ms A's home on approximately four occasions, "at her invitation and at [his] own invitation". They also met at other locations and spoke on the telephone. Dr B advised me that these contacts occurred both while he was still seeing Ms A at his practice, and also after transfer of her medical notes. Dr B stated that there was no physical contact on any of these occasions, but there was discussion about beginning an affair. He said he told Ms A that it should not happen.

Dr B also advised the Medical Council that on 10 January 2000, Ms A contacted him again, requesting that he complete an immigration medical certificate for her. Dr B stated:

"There was no advised reason for me to do the Immigration Medical, however [Ms A] specifically asked to see me ... On one occasion [Ms A] and I had full sexual intercourse. I believe it was at the consultation of 10 January 2000. I am sure it was after she transferred to [Dr D]."

There is no note of this consultation in Dr B's records, but a note shows that a blood test was taken on this date.

Dr B advised me:

"Some time following this incident [Ms C], counsellor, ... contacted me to say that she was aware of what had occurred between [Ms A], her patient and I. She advised she had thought of reporting me to the Medical Council but would not provided that I sought counselling treatment myself, which I agreed to do. I asked her who I should see and she recommended [Mr E]. She did not say whether [Ms A] knew she was contacting me but I presume she was aware of it."

Dr B commenced counselling sessions with psychotherapist Mr E and had 13 sessions during the period 18 May 2000 to 24 July 2001. Dr B, through his barrister, provided a copy of a report by Mr E, who concluded:

"Initially [Dr B] struggled to accept the problem but as we worked he became more focussed and progress was made. He gained a much clearer awareness of his vulnerabilities and was better equipped so as to ensure safe practice. He knows he let himself, his family and his patient down and deeply regrets this. He is motivated to ensure this never happens again."

On 6 November 2000 Ms A contacted Dr B again, requesting her immigration medicals to be redone. Again, there was no note of the consultation or immigration certificate, but the records show a blood test was completed on this date. Dr B advised me that this was an amicable meeting on a friendship basis.

On 26 May 2001, Ms A transferred her records from Dr D to Dr F, who worked at the same practice as Dr B. Dr F recorded:

“Hx [history] Transferring back as other doctors changing [sic] too much. Immigrated from [overseas] 3 years ago. Previous sexual abuse and posttraumatic stress. Counselling [Ms C] ...”

Dr F’s record goes on to record further details of past and present stressors. She prescribed Prozac in a reduced dose because of the side effects Ms A had previously experienced while on the drug.

The next entry in Ms A’s medical records is dated 10 July 2001, noting that an insurance medical form had been completed. Dr B advised me that he completed the form, but did not see Ms A at this time. A copy of the form is on Ms A’s medical file.

Dr B’s initials were recorded alongside further consultations with Ms A on 14 September 2001 and 27 March 2002. His initials were also recorded in relation to a vaginal swab taken on 2 April 2002, a test result on 5 April 2002, and a repeat prescription for Premarin on 25 June 2002. Dr B advised me that the last time he saw Ms A was at the consultation on “22 March 2002” [in fact it was 27 March 2002]. This was an emergency consultation for a dental abscess. He denied that he saw Ms A at any other consultations and stated that a nurse took the swab, and on the other occasions Ms A was seen only by a nurse, although he would have signed the prescription.

Subsequent events

Ms A commenced civil proceedings against Dr B, which were subsequently settled.

In a statement to the Medical Council dated 10 February 2003 Dr B made full disclosure of his relationship with Ms A. He advised the Council:

“... I have realised that [the situation] is out of hand and that it is right for me to provide full information to the Medical Council to take such action as it thinks fit.”

Dr B also participated in counselling sessions and apologised to Ms A. He retired from general practice in December 2003.

On 1 May 2003 Ms A, through her solicitors, forwarded a complaint to my Office. Ms A has subsequently informed me that she does not wish any further action to be taken on her behalf.

Code of Health and Disability Services Consumers' Rights

The following Right in the Code of Health and Disability Services Consumers' Rights is applicable to this complaint:

RIGHT 4

Right to Services of an Appropriate Standard

- 2) *Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*
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Other relevant standards

Statement on Sexual Abuse in the Doctor/Patient Relationship (Medical Council of New Zealand, 1994)

“Sexual behaviour in a professional context is abusive. Sexual behaviour comprises any words or actions designed or intended to arouse or gratify sexual needs.

...

The Council will not tolerate sexual activity with a current patient by a doctor.”

Opinion: Breach – Dr B

In my opinion, Dr B breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code).

Ms A, as a patient of Dr B, had the right to the services of a medical practitioner that met appropriate professional and ethical standards. The ethical standard expected of a medical practitioner is set out in the Medical Council's 1994 'Statement on Sexual Abuse in the Doctor/Patient Relationship'. The Medical Council reaffirmed its position in December 2002, stating, “The Medical Council policy is clear: the Council will not tolerate sexual activity with a current patient by a doctor.”¹

Was Ms A a 'current patient' at the time of these events?

The evidence shows that Ms A was Dr B's patient at the time their relationship first became intimate. Ms A first consulted Dr B on 16 March 1999 and continued to consult him on a

¹ MAH Baird, President, Medical Council, “Sexual Boundaries”, *New Zealand Doctor*, 18 December 2002.

regular basis until July 1999. On 11 August 1999 her records were transferred to Dr D. Notwithstanding this, according to Dr B's own version of events, he and Ms A continued to meet "at her invitation and at [his] own invitation". In addition, by his own admission, it was during a consultation in January 2000, that sexual intercourse took place. Subsequently, Dr B continued to treat Ms A (on urgent occasions when Dr F, her new doctor, was not available).

Accordingly, in my view, notwithstanding the transfer of Ms A's medical records during the period 11 August 1999 to 26 May 2001, Dr B continued to be in a doctor/patient relationship with Ms A. It is clear that Dr B and Ms A had a brief, consensual, intimate relationship while Ms A was Dr B's patient. Furthermore, notwithstanding that Ms A's medical records were transferred on 11 August 1999, it was in the context of a doctor/patient consultation, in Dr B's rooms, that sexual intercourse took place. I am satisfied that Ms A remained Dr B's "current patient" for the duration of their relationship.

Sexual relationship with a patient

The ethical issues arising in a sexual relationship between a doctor and a patient were identified by Professor Grant Gillett in *Director of Proceedings v The Medical Practitioners Disciplinary Tribunal and Wiles*.²

They include:

- the power imbalance inherent in every doctor/patient relationship;
- the potential abuse of medical information;
- the idealisation of the doctor by the patient as a caring, listening individual, thus giving the doctor an advantage over other potential romantic partners;
- abuse of the clinical setting in the interest of the doctor rather than the patient;
- the doctor's personal involvement clouding his or her professional judgement and preventing him or her from providing optimal care for the patient.

In this case, Ms A had a complicated and significant history of post-traumatic stress disorder, which was known to Dr B. He was treating Ms A for depression, and was aware that she had a history of sexual abuse. For these reasons, Ms A was particularly vulnerable and there was a considerable power imbalance between her and Dr B. While it is common ground that the relationship was consensual, in my view, given Ms A's history, Dr B's actions in initiating and continuing the relationship with Ms A are of particular concern. Dr B was aware that Ms A was concurrently receiving counselling for her problems, which included sexual abuse, while he was treating her. Dr B's breach of Ms A's trust in these circumstances was unethical. In addition, an aggravating feature in this case is the ongoing nature of the relationship, notwithstanding the apparent insight by both parties that the relationship was inappropriate and "should not happen".

It is clear that each element of Ms A's complaint has been established by Dr B's admission to the Medical Council. I find it particularly disturbing that Dr B entered into discussions

² Appendix 2, MA 69/01 District Court Wellington, Judge Lee, 24 January 2002, pp 7-8.

about “having an affair” and continued the relationship, despite his advice that he agreed with Ms A that “it should not happen” after their intimate contact began. Although Dr B arranged for the transfer of Ms A’s medical notes, there is no evidence that he took steps to terminate the relationship, as he continued to visit Ms A “at her invitation and at [his] own invitation” before and after transfer of the notes. By his own admission, Dr B and Ms A proceeded to have sexual intercourse. It appears that the relationship was terminated only because of Ms A’s recognition of the inappropriateness of the relationship and her decision to end it.

In conclusion, Dr B had an obligation to provide services to Ms A that met professional and ethical standards. In having a sexual relationship with Ms A while she was a current patient, knowing that Ms A was particularly vulnerable, Dr B fell significantly below the standards expected of a medical practitioner and breached Right 4(2) of the Code.

Actions

- This matter will be referred to the Director of Proceedings in accordance with section 45(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
 - A copy of this report will be sent to the Medical Council of New Zealand.
 - A copy of this report, with details identifying all persons except Dr B removed, will be sent to the Royal New Zealand College of General Practitioners.
 - Following completion of the Director of Proceedings’ processes a copy of this report, with all identifying details removed, will be sent to the Royal New Zealand College of General Practitioners and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
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Addendum

The Director of Proceedings considered this matter and decided not to issue proceedings before the Medical Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal.