



Commissioner Initiated Investigation finds GP and clinic breached Code for actions during COVID-19 pandemic

21HDC03172

Health and Disability Commissioner Morag McDowell today released a report from a Commissioner Initiated Investigation into care delivered by a GP (Dr A) and a clinic during the COVID-19 pandemic.

Dr A consulted with patients in-person while unvaccinated between 15 November and 15 December 2021. During this time, Dr A was legally required to be vaccinated under the COVID-19 Public Health Response (Vaccinations) Order 2021.

Dr A and the clinic claimed they believed Dr A could continue seeing patients in-person while waiting for a response to their application for Temporary Significant Service Disruption Exemption (TSSDE) from Manatū Hauora/Ministry of Health. This application requested vaccination exemption for Dr A, who did not choose to be vaccinated because of a religious and spiritual objection.

The application for TSSDE was declined on December 2. On December 9 the clinic and Dr A also received a reminder from Manatū Hauora/Ministry of Health stating their application had been denied and noting that it was critical for staff to be vaccinated. However, Dr A continued to see patients in-person until December 15. The clinic stated that they initially intended to re-submit an amended application and then, after 9 December, were unable to re-schedule all the patients.

In addition, Dr A issued 282 medical certificates to patients indicating that, on the basis of their medical conditions, it would be inappropriate or unsuitable for those patients to be vaccinated with the COVID-19 vaccine. In many of those cases there were no medical conditions (as claimed on the certificates). Also there was no documented evidence that Dr A provided any evidence-based information about the vaccine to assist patients make informed decisions about it.

Ms McDowell found Dr A breached Right 4(2) of the Code, which gives consumers the right to services that comply with legal, professional, ethical and other relevant standards. In this case, in addition to the clear legal requirement to be vaccinated if conducting in-person consultations, Medical Council standards and guidance on Covid-19 vaccination and medical certification were not complied with.

“I consider that for consumers who were issued medical certificates by Dr A or seen in person by Dr A at this time, this Right was not upheld,” she said. “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.”

“While I acknowledge that in some circumstances, a medical certificate advising against the COVID-19 vaccination may be appropriate, it is clear ... that Dr A provided

medical certificates that stated that the vaccination was unsuitable/inappropriate based on medical conditions, where there were no medical conditions,” Ms McDowell said.

“While I find no evidence that Dr A provided misrepresentative or incorrect advice, I consider that Dr A did not adhere to the Medical Council of New Zealand 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.”

Ms McDowell also found the clinic breached Right 4(2) for allowing the GP to see patients against the Order. “This 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,” she said.

Since these events, Dr A has deregistered from the Medical Council of New Zealand and no longer works or resides in New Zealand. Ms McDowell recommended that should Dr A return to practise in New Zealand the Medical Council of New Zealand consider undertaking a review of Dr A’s competence.

About Commissioner Initiated Investigations

The Health and Disability Commissioner has the power to undertake an investigation into any issue that affects consumer’s rights in the absence of a complaint. Under the Health and Disability Commissioner Act 1994 the Commissioner may investigate an action under their own initiative if the action is, or appears to be, in breach of the Code. There have been 28 Commissioner Initiated Investigations (CII) from 19 October 2012 – 19 October 2023. Of the 19 that have been completed: 9 resulted in breach findings, and 4 resulted in breach findings with referral to the Director of Proceedings.

20 November 2023

Editor’s notes

The full report of this case will be available on HDC’s [website](#). Names have been removed from the report to protect privacy of the individuals involved in this case.

The Commissioner will usually name providers and public hospitals found in breach of the Code, unless it would not be in the public interest, or would unfairly compromise the privacy interests of an individual provider or a consumer.

More information for the media, including HDC’s naming policy and why we don’t comment on complaints, can be found on our website [here](#).

HDC promotes and protects the rights of people using health and disability services as set out in the [Code of Health and Disability Services Consumers' Rights](#) (the Code).

In 2021/22 HDC made 402 recommendations for quality improvement and providers complied with 98% of those recommendation.

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