

**Counsellor, Mr B**  
**A Medical Centre**

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

**(Case 14HDC00627)**



Health and Disability Commissioner  
*Te Toihau Hauora, Hauātanga*



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## Executive summary

1. This decision concerns the personal relationship between a counsellor, Mr B, and Ms A, a former patient.
2. In 2003, Ms A was studying at a tertiary institute. In February 2003, Ms A's general practitioner (GP) referred her to Mr B for counselling.
3. Ms A saw Mr B in his capacity as her counsellor in 2003, 2004, and 2005. In 2006 Ms A saw Mr B for counselling twice in January, and in May. In 2006 the Medical Centre was Mr B's employer.
4. Mr B and Ms A began a personal relationship in June 2006, at the latest within one month after having ceased their professional relationship. In June 2006, Ms A transferred to another practice for counselling. Both Mr B and Ms A confirm that their relationship was sexual.
5. In February 2012, Ms A's and Mr B's personal relationship ended.
6. On 3 March 2014, Ms A complained to the Medical Centre about Mr B's relationship with her. On 12 March 2014, following an internal investigation by the Medical Centre, Mr B resigned from his employment. The Medical Centre was not aware of Mr B's relationship with Ms A, prior to receiving her complaint.

## Findings

### *Mr B*

7. Mr B acted unprofessionally and unethically by failing to maintain appropriate boundaries and engaging in a personal relationship with Ms A. Mr B failed to comply with professional and ethical standards and, accordingly, he breached Right 4(2) of the Code.<sup>1</sup>

### *The Medical Centre*

8. The Medical Centre is not vicariously liable for Mr B's breach of the Code.
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## Complaint and investigation

9. The Commissioner received a complaint from Ms A about the services provided by counsellor Mr B. The following issues were identified for investigation:
  - *Whether Mr B provided an appropriate standard of care to Ms A.*
  - *The appropriateness of Mr B's relationship with Ms A.*
  - *Whether the Medical Centre provided an appropriate standard of care to Ms A.*

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<sup>1</sup> Right 4(2) of the Code states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

10. An investigation was commenced on 12 September 2014. This report is the opinion of Deputy Commissioner Ms Theo Baker, and is made in accordance with the power delegated to her by the Commissioner.

11. The parties directly involved in the investigation were:

Ms A	Consumer/Complainant
Mr B	Counsellor/Provider
Medical Centre	Provider

Also mentioned in this report:

Mr C	Counsellor
Ms D	Practice and nurse manager

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## Information gathered during investigation

### Background

12. This decision concerns the personal relationship between counsellor Mr B and Ms A. Ms A saw Mr B in his capacity as her counsellor on several occasions between 2003 and 2006. Ms A's last counselling appointment with Mr B was on 5 May 2006. Mr B and Ms A commenced a personal relationship in June 2006. The personal relationship ended in February 2012.

### Counselling with Mr B 2003–2005

13. In 2003, Ms A was studying at a tertiary institute. In February 2003, Ms A's general practitioner (GP) referred her for counselling. Ms A saw Mr B in his capacity as a counsellor. At that time, Mr B was a member of the New Zealand Association of Counsellors (NZAC).<sup>2</sup>
14. Ms A's GP recorded that Ms A saw Mr B in his capacity as her counsellor through 2003 and 2005. On 14 October 2004, Ms A's clinical notes from her GP state: "Seeing counsellor [...]."
15. There are no records of Ms A attending counselling with Mr B between December 2004 and September 2005. Between September and December 2005 Ms A saw Mr B in his capacity as her counsellor once or twice a month.<sup>3</sup> Mr B told HDC that in late 2005, one of Ms A's counselling sessions took place on campus. Mr B said that during that consultation Ms A showed him her work.

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<sup>2</sup> At the time of these events, another medical centre held the contract for services for counselling to the tertiary institute, and was Mr B's employer.

<sup>3</sup> Due to the length of time since these events, the Medical Centre was not able to provide any clinical notes regarding Mr B's consultations with Ms A. The Medical Centre did, however, provide a list of Ms A's appointments with Mr B, as recorded in their electronic booking system, which he subsequently forwarded to HDC.

### **Counselling with Mr B 2006**

16. In early February 2006, having completed her degree, Ms A returned for further study.

#### *The Medical Centre*

17. In 2006, the Medical Centre held the contract to provide health and counselling services for students and staff at the tertiary institute.<sup>4</sup> At that time, the Medical Centre was Mr B's employer.<sup>5</sup>
18. Mr B's employment agreement included an expectation that he undergo monthly supervision with another counsellor, which was funded by the Medical Centre. Mr B met with his supervisor, Mr C, on a monthly basis.
19. Mr B's employment agreement with the Medical Centre also stated that Mr B was required at all times to hold a valid NZAC certificate.

#### *Counselling sessions*

20. According to the Medical Centre's record of appointments regarding Ms A, she saw Mr B for counselling twice in January 2006. Ms A's GP records indicate that, in March 2006, Ms A was again referred to Mr B for counselling. According to the record of appointments, Ms A saw Mr B for counselling again in May 2006.
21. Mr B advised HDC: "The professional relationship with [Ms A] ended [at the end of] January 2006. In May 2006 Ms A made [an] appointment to get access to [the library] once more. I subsequently saw her [three days later]" regarding her getting access to the library. However, Ms A does not recall contacting Mr B regarding access to the library.
22. It is recorded in Ms A's GP clinical notes that in June 2006 Ms A transferred to another practice for counselling.

### **Personal relationship**

23. There are differing accounts between the parties as to when the personal relationship between Ms A and Mr B began.

#### *Ms A's account of when the personal relationship began*

24. According to Ms A, during her first counselling session with Mr B in January 2006, he asked to accompany her to her graduation at the end of March, which she agreed to. Ms A told HDC that she began dating Mr B after she had attended two to three counselling sessions that year.
25. Ms A told HDC that while she was a patient of Mr B's in 2006, he called her at home on the telephone repeatedly, asking to be invited to her home to see her work. After a

<sup>4</sup> The Medical Centre took over the contract for services on 1 January 2006.

<sup>5</sup> The Medical Centre does not have any policies with regard to a counsellor's relationships with patients. The Medical Centre told HDC that it considered that the staff handbook provided to new employees conveyed their expectations adequately. However, based on the information provided to HDC, the Medical Centre did not provide Mr B with a copy of the staff handbook until 2007.

number of requests, she invited Mr B to her house to see her work. Ms A stated that she gave Mr B some of her work because she “felt [she] needed to be kind”.

26. Ms A told HDC that on a few occasions she cancelled an appointment for counselling, and Mr B emailed her or wrote to her asking where she was and stated that he missed her. Ms A does not have any copies of those emails or letters.
27. Ms A told HDC that, after her counselling relationship with Mr B ceased, he invited her to dinner at a restaurant, which she accepted. Ms A stated that their personal relationship began from there.

*Mr B’s account of when the personal relationship began*

28. Mr B told HDC:

“During the first few years that I worked at [the tertiary institute] I attended a number of student graduations as part of the associated staff. Therefore it is quite likely I mentioned to [Ms A] that I might be attending the 2006 graduation. I cannot recall ‘arranging to accompany her’ to the graduation. As it turned out I did not attend that year’s graduation.”

29. With regard to Ms A’s statement that he contacted her and told her he missed her, Mr B stated:

“It was my standard practice to contact clients when they missed or cancelled an appointment, in order to check if they wished to continue ... It is possible that I contacted [Ms A] on 1 or 2 occasions after a missed or cancelled appointment. It would not be unusual for me to use an expression like: ‘I am sorry to have missed seeing you for your appointment’ or something similar. It is possible, I now see, that the meaning of such a phrase could have been misinterpreted.”

30. Mr B told HDC that the counselling relationship ceased in January 2006, and that he saw Ms A for another appointment in May 2006. He stated that shortly afterwards, Ms A invited him to dinner at her place. He said that the relationship started to develop into a closer, personal one from there.

*Nature of the personal relationship*

31. In June 2006, Mr B began leaving his possessions, such as a change of clothes and a toothbrush, at Ms A’s home. The parties accept that Mr B stayed at Ms A’s house from Friday night until Sunday afternoon every week. Mr B said that normally he also stayed at Ms A’s house on Tuesday nights, and that they had the same routine each week. Ms A and Mr B spent their time together having dinner and a few drinks. Mr B said that Ms A’s children and often another family member also joined them for dinner.
32. Ms A told HDC that she and Mr B had sexual intercourse most nights that he stayed at her house.
33. Ms A told HDC that while she was in a personal relationship with Mr B he told her not to tell anyone that she was a previous client of his. Ms A also said that they did



not go out in public together. However, in her initial complaint to HDC, Ms A acknowledged that once a month she and Mr B attended dinner parties with his friends.

34. Mr B confirmed that once a month he and Ms A attended dinner parties with his friends. Mr B further told HDC:

“I am confident that I didn’t tell her not to tell anyone that she was a client of mine.

I did initiate a discussion about the change in nature of our relationship with her and whether she felt comfortable with this and she assured me that she did.

Telling her to keep the changed nature of the relationship secret would not have made any sense, as a large number of people were aware of this.

...

It is not true that we did not go out together in public. In fact we were mixing with other people quite frequently [for example] very early on in our personal relationship we attended a ‘street party’ in her neighbourhood where we met 2 other couples that we kept in contact with for several years. We also went out to restaurants and to the movies, to the [market] and went shopping regularly.”

35. With regard to the intimate nature of his relationship with Ms A, Mr B told HDC:

“I do not deny that [Ms A] and I had intimate contact but ... I clearly state that the intimate part of our relationship had never been the major focus and we had long periods without sexual contact.”

36. In 2007, Ms A met Mr B’s children and, at the end of 2008, Mr B and Ms A took an overseas trip together. On the trip, Ms A introduced Mr B to her family, and he introduced her to his mother and some of his friends. Mr B paid for Ms A’s air ticket.
37. In February 2012, Ms A and Mr B’s personal relationship ended.

### **Complaint lodged**

#### *NZAC*

38. In October 2013, Ms A lodged a complaint with the NZAC regarding Mr B’s relationship with her. NZAC commenced an investigation into Ms A’s complaint.
39. On 18 October 2013, Mr B informed his supervisor, Mr C, about the complaint made against him, and that he had had a personal relationship with Ms A. Mr C told HDC that this was the first time that he became aware of Mr B’s relationship with Ms A.<sup>6</sup>
40. In his response to Ms A’s complaint to NZAC, Mr B advised the NZAC:

<sup>6</sup> In the course of this investigation, HDC did not explore the content of Mr B’s supervision sessions, except to establish that his supervisor was unaware of his relationship with Ms A.

“I do not dispute the fact that I had a relationship with [Ms A] ... after the counselling work had been concluded.

...

I deeply regret [the failures] of my professional behaviour occurring and I am prepared to do what I can to redress any harm done by this.”

#### *The Medical Centre*

41. On 3 March 2014, Ms A made a complaint to the Medical Centre about Mr B’s relationship with her. Prior to receiving this complaint, the Medical Centre was not aware of a personal relationship between Mr B and Ms A.
42. On 4 March 2014, the Medical Centre’s practice and nurse manager, Ms D, met with Mr B regarding Ms A’s complaint. Mr B confirmed that he had a personal relationship with Ms A after the counselling relationship had concluded, although he disputed some of the dates and facts in Ms A’s letter of complaint. Mr B told Ms D that, while he was prepared to face the consequences of having had a relationship with a former client, he hoped that this was not the way his career would end.
43. Mr B told Ms D that he continued to attend monthly supervision sessions with Mr C, as required under his employment contract with the Medical Centre, as well as attending additional counselling sessions that he was paying for himself.
44. On 10 March 2014, Ms D met with Mr B again and informed him that he was required to attend a disciplinary meeting with the Medical Centre on 12 March 2014.
45. At the disciplinary meeting on 12 March 2014, Mr B resigned from the Medical Centre.
46. The Medical Centre came to an arrangement with Mr B that he would continue to work for a further one-month period, in order to ensure safe handover of his existing patients to a new counsellor. It is recorded in the minutes of the meeting that Mr B gave permission for his supervisor to “immediately report to the [Medical Centre], any issues or risks that he becomes aware of that may compromise, or have the potential to compromise, patient safety and care” during the final month of his employment.
47. On 16 April 2014, Mr B ceased employment with the Medical Centre.

#### **Withdrawal from NZAC**

48. Shortly after he ceased employment with the Medical Centre, Mr B withdrew his membership from NZAC. Mr B told HDC that he does not intend to recommence his career as a counsellor or pursue any work associated with the profession.
49. Following Mr B’s withdrawal from the NZAC, the NZAC suspended its investigation pending any future application for membership by Mr B,<sup>7</sup> and subsequently referred Ms A’s complaint to HDC.

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<sup>7</sup> Ms A supported the complaint being referred to HDC.

### **Subsequent events**

#### *The Medical Centre*

50. The Medical Centre told HDC that, as a result of Mr B's relationship with Ms A, it has reviewed the employment agreements it uses for clinical staff, and its staff handbook.

#### Employment agreements

51. The Medical Centre has now amended its employment agreements to include the following clauses:

“1.2 I understand by accepting this agreement I abide by any codes of ethics, guidelines and scope of practice as set out, and amended from time to time, by the professional body (as covered under the Health Practitioners Competence Assurance Act 2003) or any institute that provides the framework for my professional area of practice e.g, the Medical Council of NZ, Nursing Council NZ or the NZ Association of Counsellors.

...

2.1 If you, as an Employee of the Company or any other Company or organisation for whom you work in a professional capacity:

2.1.1 receive or become aware of a patient complaint regarding your practice or conduct,

...

2.3 you must disclose to the company the substance of any such complaints, investigations and/or disciplinary action as soon as is practicable once you become aware of it, regardless of whether it relates to your practice or conduct while working for the company or not. Failure to do so may result in disciplinary action.”

52. The Medical Centre told HDC that it will ensure that annual performance reviews for the Counsellor position are completed, and there will be specific focus on the management of appropriate counsellor–patient relationships.

#### Staff handbook

53. The Medical Centre advised that clause 1.2 of the employment agreement (above) relating to the employee's relevant professional/regulatory authority will also be added to a staff handbook that is provided to all new employees. The staff handbook is currently being updated.

#### *Mr B*

54. In response to this investigation, Mr B told HDC that he had a relationship with Ms A after the professional relationship had ended. He stated: “I concede this was a breach of ethical standards which I do deeply regret.” Mr B also stated that he had “no bad intentions”, and “did not mean to take advantage or exploit ... [Ms A]”. Mr B also stated:

“I can clearly see the misjudgements that I have made ... I should have consulted my supervisor before even considering entering into a personal relationship with a former client and I should have considered the likely outcomes for all concerned.

For these mistakes I am truly sorry.”

### **Response to provisional opinion**

55. The parties were given an opportunity to respond to the relevant sections of the provisional opinion. These responses have been incorporated into the opinion where relevant. Further responses are outlined below:

*Mr B*

56. Mr B told HDC:

“I do acknowledge there was some conflicting information given by [Ms A] and myself regarding some factual details concerning the relationship and I wish to confirm that to the best of my recollection I stand by my accounts of the events in question.”

57. Mr B also stated:

“I do agree that I have been in breach of professional and ethical standards and I wish to reiterate my deep regret for this.”

*Ms A*

58. In response to the “information gathered” section of the provisional opinion, Ms A told HDC that she did not agree with some of the information as stated by Mr B. In particular, Ms A said that she had not asked Mr B to come to her house, but that he had wanted to.

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## **Opinion: Mr B**

### **Introduction**

59. Under Right 4(2) of the Code of Health and Disability Services Consumers’ Rights (the Code), Ms A had the right to have services provided that complied with professional and ethical standards. I consider that Mr B’s conduct was unprofessional and unethical.

### **Factual findings**

#### *Professional relationship*

60. Mr B advised HDC that the professional relationship with Ms A ended in January 2006, but that he saw her in May 2006 regarding her getting access to the library.
61. However, Ms A does not recall contacting Mr B regarding access to the library. Records of Ms A’s appointments from the Medical Centre show that Ms A saw Mr B

for the last time in May 2006. I find it more likely than not that that appointment was for the purposes of counselling.

62. In June 2006, Ms A transferred to another practice for counselling.
63. It is not clear exactly when the professional counselling relationship between Ms A and Mr B ended. However, I am satisfied, with reference to the GP records, that the professional relationship ended some time between May and the beginning of June 2006.

#### *Personal relationship*

64. There are differing accounts between the parties as to exactly when the personal relationship between Ms A and Mr B began. Ms A has asserted that Mr B began to blur professional boundaries prior to the end of the professional relationship, in that he arranged to accompany her to her graduation in March 2006, called her at home repeatedly and asked to be invited to her home to see her work. However, while Mr B did not state whether he contacted Ms A at her home repeatedly, he said that it was “possible” that he contacted Ms A “after a missed or cancelled appointment”. He stated: “It would not be unusual for me to use an expression like ‘I am sorry to have missed seeing you for your appointment ...’” There is insufficient evidence to make a finding that a blurring of boundaries occurred. I am inclined to accept that Ms A may have misinterpreted statements made by Mr B.
65. Regardless, both parties agree that a relationship began after their professional counselling relationship ceased, and that the relationship was sexual. Likewise, both parties agree that Mr B began to leave his possessions at Ms A’s home in June 2006, and that Mr B spent periods of time at Ms A’s house every week, and that they met each other’s friends and family.
66. In my view, the evidence supports a finding that Mr B and Ms A commenced a personal relationship at the latest within one month after the professional relationship ended. In February 2012, Ms A and Mr B’s personal relationship ended.

#### **Professional and ethical standards — Breach**

67. The NZAC Code of Ethics that applied at the time of these events<sup>8</sup> states that counsellors should not engage in sexual or romantic activities with their patients, and that counsellors assume responsibility for setting and monitoring boundaries with their patients. While the NZAC Code of Ethics did not specifically prohibit relationships with previous patients, it stated: “Counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after the counselling has ended.”

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<sup>8</sup> The NZAC Code of Ethics (2002). This Code was updated in 2012. The NZAC Code of Ethics (2002) states: “5.11 Multiple Relationships a) Counsellors assume full responsibility for setting and monitoring the boundaries between a counselling relationship with a client and any other kind of relationship with that client and for making such boundaries as clear as possible to the client. 5.13 Sexual and other Inappropriate Relationships with Clients a) Counsellors shall not engage in sexual or romantic activities with their clients. b) Counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after the counselling has ended ...”

68. Mr B was bound by the standards of his profession and the obligations set out in the Code. Right 4(2) of the Code provides that every consumer has the right to have services provided that comply with professional and ethical standards. I note that in *Director of Proceedings v Mogridge*<sup>9</sup> the Human Rights Review Tribunal (HRRT) stated:

“Clearly it is unethical for a provider of health services acting in that capacity to exploit those who consume their services for sexual advantage. Nor do we regard it as necessary to go beyond the Code to conclude that it is unethical ...”

69. In my view, Mr B acted unprofessionally and unethically when he commenced a personal relationship with Ms A less than one month after the professional relationship ended. Ms A told HDC that while she was in a personal relationship with Mr B he told her not to tell anyone that she was a previous client of his. Ms A also said that they did not go out in public together. However, both Ms A and Mr B told HDC that once a month she and Mr B attended dinner parties with his friends. Whether or not Mr B told Ms A not to tell anyone that she was a previous client, is relevant to whether he knew that being in a personal relationship with her was unethical.
70. Given the passage of time since Mr B and Ms A’s personal relationship began, and given that both Mr B and Ms A accept that they spent time together with his friends, I am unable to make a finding that Mr B told Ms A not to tell anyone that she was a previous client of his.
71. However, Mr B failed to maintain appropriate boundaries with Ms A. The importance of appropriate boundaries, particularly by counsellors, has been noted previously by this Office:<sup>10</sup>

“The maintenance of professional boundaries is an integral part of counselling, a process that involves an intense therapeutic relationship where the client confides fears, feelings, emotional responses and vulnerabilities. The importance of maintaining professional boundaries in the counsellor–client relationship cannot be overemphasised ...”

72. Mr B accepts that he breached ethical standards in having a personal relationship with Ms A. Mr B told HDC: “I did initiate a discussion [with Ms A] about the change in nature of our relationship with her and whether she felt comfortable with this and she assured me that she did.”
73. In my view, it is always the responsibility of the professional to maintain appropriate boundaries in patient relationships. Despite Mr B’s own vulnerabilities, he had a responsibility to manage his own personal circumstances as well as maintaining professional boundaries with Ms A. I acknowledge Mr B’s statement to the NZAC:

“I deeply regret [the failures] of my professional behaviour occurring and I am prepared to do what I can to redress any harm done by this.”

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<sup>9</sup> [2007] NZHRRT 27 (21 December 2007) at 102.

<sup>10</sup> See Opinion 03HDC06499 (11 February 2004), p11.

74. Mr B acted unprofessionally and unethically by failing to maintain appropriate boundaries and engaging in a personal relationship with Ms A. Mr B failed to comply with ethical standards and, accordingly, breached Right 4(2) of the Code.

### **Exploitation — No breach**

75. A consumer's right not to be exploited, as set out in Right 2 of the Code,<sup>11</sup> is fundamental to the counselling relationship. Right 2 provides protection to vulnerable consumers in circumstances where providers seek to take advantage of them, to their own ends. I have considered whether exploitation occurred in this case and, in my view, while Mr B had a fiduciary duty to Ms A, I do not consider that there is sufficient evidence to make a finding that he exploited her.
76. "Exploitation" is defined in clause 4 of the Code as including "any abuse of a position of trust, breach of fiduciary duty, or exercise of undue influence".
77. The counsellor–client relationship is fiduciary in nature, and Mr B therefore had a duty in respect of Ms A, as her counsellor. As stated in a previous opinion of this Office:<sup>12</sup>

"The relationship between a client and counsellor is often described in terms of there being a fiduciary relationship. It is framed in this manner, as the client puts his or her trust in the counsellor. This results in an inherent power imbalance between the counsellor and the client, as the client entrusts the counsellor with his or her fears, vulnerabilities and emotions."

78. I note that the NZAC Code of Ethics that applied at the time of these events states that counsellors "shall not exploit the potential for intimacy made possible in the counselling relationship, even after the counselling has ended".
79. One of the reasons that it is unethical for a counsellor to enter into a relationship with a former client (rather than existing clients) is because of the potential for exploitation of those vulnerabilities and the knowledge gained from a relationship of trust. There is a risk that a counsellor could "prey" on clients, ending a therapeutic relationship simply in order to pursue his or her own ends.
80. When Ms A was referred to Mr B for counselling by her GP she was emotionally vulnerable and requiring support. Ms A saw Mr B in his capacity as a counsellor. In my view, there was a power imbalance in the therapeutic relationship that had not ceased to exist at the time that the personal relationship commenced.
81. I have had to consider whether Mr B exploited that power imbalance. I have considered each of the parties' descriptions of the relationship, and, while there is no doubt in my mind that the relationship was unethical and unprofessional, and there was a risk of exploitation, I have decided, on balance, that there is insufficient evidence to support a finding of exploitation.

<sup>11</sup> Right 2 of the Code states: "Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation."

<sup>12</sup> See Opinion 09HDC01937 (1 April 2011), available at [www.hdc.org.nz](http://www.hdc.org.nz).

### **Referral to Director of Proceedings**

82. This Office takes complaints of this nature very seriously. However, while Mr B's actions reflect a serious breach of trust in the client–counsellor relationship, I have decided not to refer Mr B to the Director of Proceedings. In making this decision I have considered the following:
- That the NZAC is aware of the complaint against Mr B and has undertaken its own process in this regard.
  - The amount of time that has passed since any professional or personal relationship between Mr B and Ms A.
  - That Mr B has now retired from counselling, having not practised since 2013, and has no intention to return to practice.
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### **Opinion: Medical Centre**

#### **Vicarious liability — No breach**

83. The Medical Centre was Mr B's employer from 1 January 2006. The professional relationship between Mr B and Ms A ended some time between May and the beginning of June 2006, and Mr B and Ms A began a personal relationship in June 2006, at the latest within a month of the professional relationship ending. The personal relationship ended in February 2012.
84. Under section 72(2) of the Health and Disability Commissioner Act 1994 (the Act), employers are responsible for ensuring that their employees comply with the Code. Pursuant to section 72(5) of the Act, it is a defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent acts or omissions leading to an employee's breach of the Code.
85. The Medical Centre did not have any policies regarding appropriate relationships with patients or former patients. However, the Medical Centre told HDC that while Mr B was its employee, he underwent monthly supervision sessions with his supervisor, Mr C.
86. Furthermore, health professionals are bound to comply with professional and ethical standards.<sup>13</sup> As a member of the NZAC, Mr B was bound to comply with the professional and ethical standards of that body (as set out above).
87. It was reasonable for the Medical Centre to expect Mr B to comply with his professional and ethical obligations with regard to professional boundaries. I also accept that the Medical Centre was unaware of the personal relationship between Mr B and Ms A.
88. For completeness, I note that I have not been provided with any evidence that the Medical Centre was on notice of Mr B having previously failed to adhere to

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<sup>13</sup> Medical practitioners are bound by their own professional codes of ethics.



appropriate professional boundaries. Accordingly, in my view, the Medical Centre is not vicariously liable for Mr B's actions in this respect, and I find that the Medical Centre did not breach the Code.

89. I also note that, when put on notice of Ms A's complaint against Mr B, the Medical Centre immediately undertook an internal investigation into the complaint, resulting in Mr B's resignation. The Medical Centre ensured that Mr B's clients were not left without care during Mr B's final month's employment, while ensuring that Mr B's supervisor was given the authority to disclose any concerns to the Medical Centre during that time. I consider that this was appropriate in the circumstances.
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### **Recommendation**

90. I recommend that Mr B provide an undertaking to this Office that in the event that he recommences practice as a counsellor, he register immediately with the New Zealand Association of Counsellors.
91. I have not made a recommendation that Mr B provide an apology to Ms A for his breach of the Code. Ms A has advised HDC that she does not wish to receive an apology from Mr B.
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### **Follow-up actions**

92. • A copy of this report with details identifying the parties removed will be sent to the New Zealand Association of Counsellors and the relevant district health board, and they will be advised of Mr B's name.
- A copy of this report with details identifying the parties removed will be placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.