Chiropractor, Mr C

A Chiropractic Clinic

A Report by the

Deputy Health and Disability Commissioner

(Case 07HDC17307)

Overview

In April 2007, Ms A attended a chiropractic clinic for treatment of her right elbow injury. Chiropractor Mr C decided to assess Ms A's spine and recommended that she undertake an intensive course of treatment to her spine over a six-month period requiring an initial payment of $3700. After receiving one treatment session to her spine under the agreement she signed, Ms A decided to withdraw from the agreement. However, Mr C demanded that she pay the amount in full.

My investigation focused on whether Mr C appropriately assessed and treated Ms A, whether he provided her with adequate information, and whether he coerced or financially exploited her. I have formed the view that while there was no coercion or financial exploitation of Ms A, Mr C breached her rights to receive accurate and adequate information and provide informed consent, and her right to receive services that complied with professional and ethical standards.

Complaint and investigation

On 28 September 2007, the Commissioner received a complaint from Ms A about the services provided by Mr C. The following issues were identified for investigation:

- *The appropriateness of the care and treatment provided to Ms A by chiropractor Mr C in April 2007.*
- *The adequacy of the information provided to Ms A by chiropractor Mr C in April 2007.*
- *Whether chiropractor Mr C coerced and/or financially exploited his patient, Ms A.*

An investigation was commenced on 5 December 2007. The investigation was delegated to Deputy Commissioner Rae Lamb. The parties directly involved in the investigation were:

Ms A	Consumer/complainant
Mrs B	Ms A's mother
Mr A	Ms A's partner
Mr C	Provider/chiropractor
The Clinic	A chiropractic clinic/Mr C's employer
Ms D	Former office manager/Chiropractic clinic
Ms E	Mr C's former personal assistant

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Independent expert advice was obtained from Mr Bayne McKellow, and is attached as **Appendix 1**.

Information gathered during investigation

Background

Mr C was a registered chiropractor, holding an annual practising certificate during the period giving rise to Ms A's complaint. Mr C advised HDC that he was employed by a chiropractic clinic (the Clinic). Through their lawyer, the Clinic advised that "Mr C was employed to provide treatment services of the business to patients, meeting and assessing them and treating them as required, including in that advice to patients assisting in part in the completion of patient records". He was also expected to assist the Clinic "in the promotion of the business of the company which subsequently resulted in various promotional material[s] issued by the business". In copies of court proceedings provided by the Clinic, Mr C is described as its chiropractor. I also note that in correspondence Mr C has been described as manager. Neither the Clinic nor Mr C has produced an employment agreement. No other chiropractors or providers of health services were employed by the Clinic.

In response to my provisional opinion, the Clinic advised that the company provided chiropractic and bio-mechanic correction. During the investigation Mr C was asked to explain what "bio-mechanic correction" involved. In response to my provisional opinion, I was advised by counsel for both Mr C and the Clinic that in "September 2007 the Clinic initiated [a programme which was] unique to the business, incorporating what the business identifies as 'bio mechanic correction' aspects in treatment of patients. This programme must be seen for what it is and cannot be categorised under one of your previous categories of practice."

The Clinic told HDC that the office manager, Ms D, was responsible for reception, booking appointments, maintaining patient records including patient cards, X-ray reports, and other clerical duties including processing of ACC claims. Ms E was Mr C's personal assistant. Her role was largely client liaison and involved ushering patients into and out of the treatment rooms, and recording notes dictated by the chiropractor.

Neither Ms E nor Ms D were required or expected to give advice to patients whether in chiropractic, bio-mechanic correction or documentation matters. They were not trained or qualified to answer patient questions on any aspects of the treatment provided by Mr C.

Wait list system

In April 2007, the Clinic had started a new system for treating patients as part of what appears to be a "wait list" practice. Wait list practices began to emerge in

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New Zealand in 2004. The business model is based on the principle that some consumers require long-term corrective care from a chiropractor and it can be more economical for those consumers to agree to a fixed-term treatment plan with reduced payments. For example, a consumer might pay $4000 for 12 months of treatment whereby the consumer will receive three adjustments each week. The more traditional business model is for consumers to receive symptomatic relief care on a pay-per-visit basis. The majority of chiropractic clinics continue to offer care on this basis.

In response to my provisional opinion, the Clinic and Mr C's solicitor advised that my interpretation of the wait list practice emerging in 2004 was "not a correct depiction of the business and carries with it inappropriate assumptions and prejudices". However, he did not elaborate.

Initial consultation — 11 April 2007

On 11 April 2007, Ms A consulted Mr C. She had a painful right elbow, which she thought she may have injured while lifting her two-year-old son on 22 November 2006. In the meantime the symptoms had at times abated, but would flare up again, particularly when she used a computer keyboard. She described it as being like "tennis elbow". She was quite sore around her tendons. Ms A went to Mr C because her mother and sister had consulted him, and she had the Clinic's business card which indicated that the Clinic specialised in repetitive strain injury. Because her sore elbow had continued for some months and seemed to be worse with keyboard use, Ms A thought that Mr C might be able to help her.

At the consultation Ms A completed a health questionnaire, which asked the question, "*What is your main symptoms/pain?*" followed by a series of answers with boxes to be ticked as applicable. Ms A recalls that she ticked the box marked "*Other*" and wrote "Tennis Elbow" underneath. Ms A states that Mr C examined her back, but did not assess her elbow.

Mr C has provided a copy of the questionnaire,[1] which, in addition to those entries, shows a tick in the box next to "*Neck/*Shoulder". The word "neck" is underlined. In response to my provisional opinion, his lawyer has said,

> "It is clear from a reading of the patient questionnaire that she noted as her main symptom 'neck and shoulder' with an emphasis under the word 'neck'. She also added at the end under 'other' 'tennis elbow'. Clearly in this the elbow was secondary."

However, Ms A does not believe that she ticked that box, or underlined the word "neck", because her neck was not troubling her.

Mr C also pointed to an ACC form which states:

[1] Appendix 2.

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"Holding toddler pulling pushchair out of care, child jerked forward and I twisted my back and elbow."

Mr C says that he examined Ms A's right elbow but did "not [find it] to be the main complaint nor was the elbow injury caused by [any] accident", and also assessed her spine. He stated that "it is not uncommon for the patient to observe a particular source of complaint which is identified by the practitioner differently". According to Mr C, "it is for the practitioner to assess correctly … the practitioner's observations as a whole". On examination, Mr C found "multiple levels of spinal problems". He said that Ms A had neck pain causing headaches and upper–mid back pain, with occasional low back pain. He also said that he undertook orthopaedic and neurological tests for disc injury, blocked carotid arteries, sensory alterations, motor nerve responses and ripped ligaments. The results were negative. He recorded in the notes:

> " Exam, sent for X-rays
>
> A, B.d B — 3xwk 4 wks 2xwk 4 wks 1xwk 14–18 months."

Mr C's clinical notes for 11 April 2007 also indicate that three possible treatment options were discussed with Ms A. Option A was a six-month "deep treatment" program (to restore key leverage points to the body by removing stress risers) with "guaranteed" results. It required a payment of $3700 prior to the commencement of treatment. It was "time-based" which means that the fee and refund were not determined by the number of appointments attended. According to Mr C, Option A is "based on a mathematically proven structural engineering model and treatment methods developed in the United States" and it has been proven in Court not to be chiropractic. Mr C did not provide any details of the mathematical model or treatment methods. Nor did he specify which Court he meant, or provide a reference for any judgment. Mr C advised that Option B was a correction and prevention program and Option D offered symptomatic relief. Option B was a "more thorough chiropractic correction of the spine" compared to Option D. Options B and D did not require payment prior to treatment. The notes record that Ms A selected Option B.

Mr C referred Ms A for spinal X-rays. Ms A commented that Mr C did not explain why an X-ray was required, but Mr C responded that "the discretion to order an X-ray is in the practitioner".

Ms A's X-ray report states:

> "**Cervical Spine AP & Lateral**
> All seven cervical vertebra and cervico-thoracic junction are in normal alignment. Minor disc degenerative changes are present at all levels including below C4–5. Vertebral bodies, posterior arches, neural spines and prevertebral soft tissues are otherwise unremarkable.

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> **Thoracic Spine AP & Lateral**
> There is a minor dextroconvex scoliosis centred at T–6. The vertebral bodies are otherwise unremarkable. Some disc degenerative changes are present in the mid and lower thoracic region evidenced by osteophytic lipping. Vertebral bodies, bony pedicles and neural spines are otherwise unremarkable.
>
> **Lumbosacral Spine**
> All five lumbar vertebrae are in normal alignment. Some disc degenerative changes are present at L3–4 and L4–5 levels evidence[d] by marginal speculation. Vertebral bodies maintain their heights. Bony pedicles, neural spines, both S.I. joints and the bony pelvis are unremarkable."

Second Consultation — 16 April 2007

On 16 April, Ms A consulted Mr C for the second time. Initially, Mr C showed Ms A and her mother a DVD, which Ms A felt was "promotional" rather than informative. Ms A said that the DVD began by stating that "the next 12 minutes will be the most important 12 minutes of your life". She described it as "almost like a religious conversion" DVD.

Mr C advised that he no longer has a copy of the DVD. However, Ms D informed me that this DVD was shown daily to clients during her tenure (from August 2006 until June 2008). Ms D also confirmed that the DVD begins as Ms A has described.

Mr C then looked at Ms A's X-rays on a screen and explained to her that the burs on her spine were very serious. Ms A expressed surprise at this and said that she had no pain or real loss of movement. She queried how much of the X-ray report indicated a normal amount of degeneration. She felt that the more she tried to suggest that the report did not seem that bad, the more Mr C seemed to move up the scale of how serious it was, and encouraged her to do something about it. He said that pain was no indicator.

Mr C provided Ms A with written information entitled "The Clinic is here for you",[2] which included information about "biomechanical correction and prevention". Mr C recorded that Ms A's "level of decreased spinal curvature and decreased stability" was "severe" at greater than 70%. He also underlined "extreme 100% loss of curve". Ms A said that Mr C underlined the next category to show what would occur if she didn't take any action. He documented that she was in the Phase 2 (late) stage of progressive spinal degeneration, which is characterised by significant disc narrowing and degeneration. Furthermore, Mr C said that Ms A was very close to being Phase 3, which is characterised by bone spurs fusing with malfunctioning joints and obstructed nerve openings causing permanent nerve irritation. Ms A said that Mr C did not explain any particular reason for her problems other than degeneration.

Mr C confirmed that he marked the "highest level" of degeneration he found on Ms A's spine on the written material. He commented:

[2] Appendix 3.

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> "I explained to her that she was suffering from decreased spinal curvatures and altered biomechanics of the spine and extremity. I then in some detail using diagrams explained what this diagnosis meant in terms of her pain, discomfort and treatment options. I then showed her the approximate percentage of decreased spinal curvatures."

Mr C told me that he had marked the "highest level" as his "way of stating the patient's level that he observed", and clarified that Ms A was "not in the highest level of degeneration of any person". However, Mr C interpreted the X-ray as indicating "significant concern". According to Mr C, "any degeneration is not normal but is common". Mr C also stated that "the X-ray report cannot be taken as the sole source of determination of the diagnosis".

Treatment options

Ms A says that Mr C then again outlined the treatment options. He suggested treatment Option A, involving three visits a week for six months with payment in full of $3700 prior to the commencement of treatment. She said that she declined Option A, partly because she had never been to a chiropractor and Mr C hadn't made it clear what was going to happen, and also she could not commit to a payment in advance. She believes that initially he recommended that she go three times a week under Option A.

Mr C confirmed that he provided Ms A with a copy of the agreement pertaining to treatment Option A on 16 April, with the "terms and conditions fully explained". However, Mr C stated that he offered Ms A all of the treatment options (A, B and D), "but did not recommend one option over the other". Mr C provided HDC with a copy of a document entitled "Health Investment Workshop".[3] It refers first to "Option d" which is sub-titled "chasing after symptoms". Option A is listed next. It is described as "the best structural correction available in New Zealand, and is only available at the 'the Clinic'. It is a completely specialized Biomechanic correction protocol."

At the bottom of the form there is a final sentence.

> "Note — Option A returns you to a much higher potential than is possible with any other approach."

According to Mr C, he told Ms A that "Options B and D were chiropractic protocols and Option A was not". He understood that Ms A initially elected Option B (a pay-as-you-go scheme). Mr C explained:

> "Option B involved correcting secondary biomechanic pathologies (fixations) and it involves chiropractic adjustments and specialised rehabilitation techniques."

[3] Appendix 4.

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Ms A does not recall whether she was told that B and D were chiropractic protocols. She had not consulted a chiropractor before and did not know what chiropractic was. There is nothing in the document entitled Health Investment Worksheet to indicate that Options B or D were chiropractic protocols.

Mr C made no entry in his records of the consultation on 16 April 2007, but there is an entry dated 18 April 2007, referred to below.

Ms A says that she doubted she could make a commitment to three times a week because of the travel with a small child and the financial outlay. She told Mr C that she would think about her options, and then she told the reception staff that she would not go ahead with the treatment. She recalls telling staff that she would not make any more appointments until she had decided what to do.

Telephone call 16 April

Ms A says that she may have rung the Clinic on 16 April to advise that she did not want to proceed with Option A. That evening around 7pm Mr C phoned Ms A at home. Mr C said that it was imperative that she start Option A as soon as possible. She declined, explaining that she could not do the treatment three times a week because of her son. She said that she might reconsider when her son started kindergarten. Mr C said that that would be too late and that she needed to start treatment immediately. He said that Option A could be done twice weekly, and advised her of a finance option at a rate of $71 weekly.

According to Ms A, Mr C provided an example of a woman whose condition was not as bad as Ms A's, but who had ended up in a wheelchair. He said that Ms A had "severe spinal degeneration" of around 70 percent and would similarly end up in a wheelchair if she did not do anything now. Ms A told Mr C that she did not think that was the case with her. She told him that she had no pain, went to yoga frequently, had always played sport, did heavy lifting and had never had loss of movement. She said that her yoga teacher had confirmed that she had the same range of movement as others in the class. She said that Mr C did not mention the wheelchair after that. However, after further discussion, Ms A agreed to attend Mr C again. She says that she did not agree to Option A specifically, but she did say that she would come in and have a consultation.

Ms A's partner, Mr A, recalls that Ms A told him that Mr C said that she might end up in a wheelchair. He cannot recall if he was present during the phone call, but he does remember being told it had been said.

Mr C disputes that he placed Ms A under any pressure to agree to treatment. He also denies that finance was discussed at any stage or that he had told Ms A that she would end up in a wheelchair. He recalls phoning Ms A at home on 18 April, after she missed a scheduled treatment session. Mr C provided a copy of his appointment diary, showing that Ms A had an appointment scheduled for 18 April. Ms A denies making

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an appointment for this date. Mr C recalls that Ms A wanted to attend only twice a week (because of the distance in driving to his clinic) under Option B. He stated:

> "I told her that a schedule of two times per week was not going to work on the Option 'B' treatment plan. I advised her she could seek treatment from someone closer or take Option 'D' — symptom care and either only attend on an as needed basis.
>
> [Ms A] told me she wanted to correct her spine more thoroughly than the Option 'D' would allow, so a compromise was offered with the Option 'A' protocol. This allowed her still to meet her goal while attending only two times per week."

On 18 April, Mr C recorded in his notes:

> 2.5 hr drive with 20 month old. wants to come 2x awk. Recommended Option A 2x a week 7x then 1x a week.

Final consultation — 20 April 2007

Ms A saw Mr C again on Friday 20 April. He produced a form for her to sign, and said that it was "just to say she was going to attend the treatment". It was an agreement for treatment under Option A,[4] which states that the patient will pay a fee of $3700 on the signing of the agreement, and "Must attend" when required for the prescribed course of treatment. Ms A had not been expecting to sign anything, and in retrospect wishes she had taken home the form to read it properly before signing it. Mr C subsequently stated that Ms A was "informed verbally of all the terms and conditions of the agreement". However, Ms A does not recall being informed of any particular consequences if she changed her mind about the treatment.

Ms A commented that she found Mr C's treatment at that consultation to be quite rough, particularly in relation to a neck manipulation. This led her to ask him about his qualifications, and he responded that she had to take a leap of faith and, if she wasn't prepared to do that, things wouldn't work out. She recalls that he said, "I could tell you and have all the qualifications in the world but in the end you have to believe that I am the person who can sort your back out."

Ms A also wanted to understand what "biomechanics" was. She said Mr C's response was that he couldn't explain biomechanics in three seconds as it was too technical. Ms A said she indicated that she had more than three seconds, but he was not prepared to give any more information on himself, saying his résumé was complicated.

Mr C informed me that his treatment involved starting the biomechanical corrective process to correct biomechanic pathologies.

Mr C recorded in his notes:

[4] Appendix 5.

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> " 4 BPs, posman release, lat man release
> C7 Ant, T1 Rib man, T4 ant, T7 Ant, L2 Ant
> L/sac base, Rt sac Apex, L/femur pos "

This was the last time Ms A saw Mr C for treatment.

Finance
Ms A stated that at the third appointment Mr C advised her to obtain the forms for finance from his reception, where she spoke to Ms D. Because Ms A did not have an income, Ms D advised her that she would need her partner's guarantee for finance. Ms A's mother was present in the waiting room, and she also recalls discussion around finance options. Ms A took the form home with her, and later produced it for HDC.

Mr C disputes that he provided Ms A with an option for finance. He believes that the treatment agreement with Ms A required her full payment of $3700. Mr C stated:

> "I understood that she would make payment after the consultation as this is what usually happens. It was not until after the consultation that I became aware that [Ms A] had not paid."

Ms A had not been charged for the first visit. A free consultation applied to first-time patients who were introduced to the Clinic by existing patients.[5] She paid $37 for the second consultation on 16 April. Ms A attempted to pay Mr C $37 for the third consultation, but Mr C refused to accept this amount. He subsequently claimed that Ms A owed him money and was behind in her payments "for treatment already received".

Withdrawal from treatment
Ms A stated that on Monday 23 April, she telephoned the Clinic and told reception staff that she would not be eligible for finance and did not want to continue with treatment. In response, Ms D said that that was fine, and it happens "all the time", and that she would cross Ms A's name off in the appointment book and there was no need for Ms A to go in. Ms A accompanied her mother to the Clinic, however, and ensured that her name was crossed off the appointment book. Mr C then phoned her that evening, and indicated that the "trustees" might not accept her decision not to proceed with treatment. Ms A stated that Mr C was quite aggressive and said that she could not just "walk away". After further discussion, Ms A gained the impression that Mr C had accepted her decision.

According to Mr C, the only occasion that he spoke to Ms A at home was on 18 April.

Comment from Ms D
Ms D stated that Ms A was one of the first clients using the new treatment schemes, and they were "ironing out the bugs". She recalled that after three treatments, Ms A had been unable to obtain her partner's support for finance and wanted to discontinue

[5] As noted above, Ms A had been referred to the practice by her mother.

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treatment. As such, Ms D advised Mr C that Ms A should be asked to pay for the three treatments she had received. However, Mr C told Ms D to return to the room and tell Ms A that she had to continue with her treatment.

Comment from Ms E

Mr C's personal assistant, Ms E, stated that Ms A was on a "pay as you go plan" and she always paid on time. Ms E expressed the view that the treatment plan under Option 'A' had not commenced so there was no reason for Ms A to pay the full amount. Ms E stated:

> "[Ms A] had told [Mr C] that she was interested in going on [the treatment plan] but had told [Mr C] on a few occasions that she was having trouble getting her husband to agree to it and had told [Mr C] that she was interested in going on it but at the present time she was happy to pay as she went until she had moved house … and when she had finished with that she would discuss it with her husband again and see if she could go on it a later date … I'm not 100% sure if she had already signed the paperwork or not. I know that [Ms A] felt pressurised by [Mr C] to go on it, and I felt he was being too pushy with her too."

Meeting on 27 April

On 27 April Ms A accompanied her mother to the Clinic. Mr C asked to see Ms A while she was there. Ms A informed me that Mr C insisted that she continue with treatment. Again, Ms A said that Mr C was "very aggressive" and "had a short fuse". Ms A said that Mr C spent a lot of time explaining to her how important it was that she continue with the treatment. Mr C also said that she was "not going to get away with this" and it would end up costing her more in legal fees than the cost of the treatment. Ms A felt that Mr C made a clear threat of legal action. He emphasised that it was in her interests to continue with treatment.

Letter to Ms A

Ms A then received a letter from the Clinic dated 27 April 2007 advising:

> "While we understand the support of marriage and family often change[s] with emotions, this however is not a provision in the terms of engagement. Your health requires attention. Please contact this Office immediately to schedule your treatment."

Mr C described this as a "reminder letter". He did not retain a copy of the letter. Nor did he retain a copy of the X-ray report, the ACC form completed by Ms A, or the written information he provided to Ms A about her condition. Ms D commented that the system for the storage of patient notes was poor, and they were "always losing" patient records. Mr C subsequently claimed that as an employee of the Clinic, he was reliant on the systems established by the Clinic, and was not personally responsible for how the systems operated or for "the documentation of the business".

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Subsequent events

On 16 May 2007, Mr C sent Ms A an invoice for $3700 stating, "Please pay within seven days to avoid matter being turned over to [a debt collector] for collection."

On 20 May 2007, Ms A responded to Mr C:

> "I feel you have exerted undue pressure on me to agree to treatment for a condition I do not believe I have, and have been oppressive, intimidatory and unprofessional in your subsequent attempts to force me to pay for treatment I neither want nor feel I need."

On 15 June 2007, Mr C's legal representative wrote to Ms A stating:

> "The agreement itself does not provide for any condition which would prevent the agreement from becoming binding upon signing as you appear to imply.
>
> It is expected that any need on your part to arrange finance to meet the costs under the agreement would be a matter for your action although the Clinic can offer access to [a finance company] through documentation available at the Clinic.
>
> Unfortunately because you have signed a binding agreement after being provided advice and options and having time for consideration it is not appropriate to suggest a month later that the agreement was somehow conditional otherwise completing circumstances that would able to you to renounce your obligations. In addition, you have also accepted treatment from [the Clinic], pursuant to that agreement."

Mr C subsequently issued proceedings in July 2007 to recover the full amount ($3700) he claimed that Ms A owed him. In Mr C's initial response to Ms A's complaint he advised:

> "Unfortunately we are a business, much as any professional practice these days and [Ms A] had received examination and treatment but no payment has been made by her. We are compelled in the circumstances to seek recovery of payment and this is currently under way now before the Disputes Tribunal."

Disputes Tribunal proceedings were discontinued after the commencement of this investigation. Mr C then requested that I discontinue my investigation as the dispute over Mr C's allegation that Ms A owed her money was resolved by Mr C withdrawing his claim. This request was declined.

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Discussion

Some issues require further explanation, and Mr C and Ms A have different recollections of some events. I have addressed these below. Mr C's solicitor has argued that there is no direct corroboration of matters raised in Ms A's complaint, and that I have "drawn on circumstantial matters raised by other witnesses, including disgruntled employees and family members". I do not agree with that assessment. There are many facts that are not in dispute. Where credibility is in issue, it is appropriate for me to consider circumstantial evidence and refer to prior consistent statements to assist in making a finding.[6] I have also been assisted by the independent opinion of an expert advisor.

Back or elbow

As noted above, Ms A disputes that she consulted Mr C about her back. Mr C has referred to the patient questionnaire and to the ACC form, in support of his claim that Ms A consulted him about her back.

Ms A denies that she underlined "neck" on the questionnaire and states that she has not been troubled with neck or shoulder pain. Ms A says that she had not had any symptoms in her neck and shoulder. She had twisted her back as she got her son out of the car, but there was no pain or loss of movement. She also did not experience any headaches or neck or back pain following the injury (or at any time). Her elbow, however, was acutely painful. She says that she sought Mr C's assistance for her painful elbow and made it clear to him at the time that pain had only ever been in her elbow.

Ms A acknowledges that she referred to her back in the ACC form, but explained that it was because she was told to by staff. She wrote, "holding toddler pulling pushchair out of car, child jerked forward and I twisted back and elbow".

Mr C's lawyer stated, "Clearly the mechanism of injury supports a back injury. The writing is consistent without alteration and there is no indication that supports a suggestion of persuasion on the patient to make reference to the back. The back was not added. The last reference was to the elbow."

Ms D said that reception staff often encouraged patients to mention specific injuries to ensure they received ACC cover as Mr C's fees were felt to be high. Clients would complete ACC forms at reception then Mr C would sign them off.

Mr C subsequently claimed that "ACC was not asked to pay for the full spine set of X-rays". Apparently, "the non-accident area of the low back was not submitted to be paid for by ACC as the low back code of sprain/strain was not included". Mr C also attributed any improper billing to error caused by Ms A and the radiology centre. ACC confirmed that an X-ray was paid for by ACC, but there was no ongoing claim for physiotherapy or chiropractic treatment.

[6] Section 35(2) of the Evidence Act 2006 states that the previous statement is admissible "to the extent that the statement is necessary to respond to a challenge to the witness's veracity or accuracy".

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My expert advisor has explained that under the ACC Claim Lodgement Framework protocols, where there was an injury to an "extremity" (that is an elbow, rather than the back) the chiropractor was obliged to refer the patient to a general practitioner for confirmation of diagnosis.

Diagnosis of a spinal injury did not require referral to a medical practitioner. I note that the X-ray report contained no reference at all to Ms A's elbow injury. I also note that Mr C did not recommend to Ms A that she lodge an ACC claim for treatment for her injury, whether it was back or elbow. Regardless of whether Ms A injured her elbow or her back, it seems that it would have been appropriate to advise her that ACC could cover at least part of her treatment.

On balance, I accept Ms A's version of events. If Ms A had consulted Mr C about her back, she would have ticked the box marked "Backache" on the Health Questionnaire.[7] Further, next to Tennis Elbow, she would have mentioned her back. Mr C had motivation to have "back" included on the ACC form because he could have ACC fund the X-rays without the need to refer Ms A to a doctor. Staff confirmed that it was common to include "back" in the ACC forms in order to get ACC cover for X-rays. Therefore I conclude that Ms A consulted Mr C about her elbow.

Ms A has also alleged that Mr C did not examine her elbow, and it surprised her. Mr C has said that he did examine her elbow and yet nothing in his clinical records, or his later action, supports that assertion. His attention has focussed entirely on her back, and I am satisfied on the balance of probabilities that Mr C did not examine Ms A's elbow.

X-rays

My expert advisor has said that on viewing the X-rays, he cannot find any clinically significant problems that are not already recorded on the X-ray report and that Mr C's suggestion that there were significant findings on Ms A's X-rays cannot be substantiated. He told me that there is no supporting evidence from the clinical notes or the X-ray report that Ms A has any arthritis or spinal pathology likely to place her health at risk or potentially confine her to a wheelchair.

In response, Mr C's solicitor has stated:

> "The expert misinterpreted the results of the x-ray report…The report confirms degeneration. It is possible that the expert who may well have observed this often in patients regarded this as normal. Any degeneration is not normal but is common. To the view of [Mr C] the condition needed treatment. The expert clearly did not understand the bio mechanic pathologies as practised by [Mr C]."

[7] See Appendix 2.

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Mr C has provided no independent opinion to support his view. Nor has he provided any explanation of the "bio mechanic pathologies" he practises. Accordingly, I prefer the opinion of my independent expert advisor.

Information given to Ms A about her spine

There is no dispute that Mr C considered that Ms A's X-rays were a cause for significant concern and that he discussed with her that the level of decreased spinal curvature and decreased stability was "severe" at greater than 70%. He also underlined "extreme 100% loss of curve", as his "way of stating the patient's level that he observed". However, Mr C does not accept that he told Ms A that if she did not get treatment, she would end up in a wheelchair. Ms A and her partner, Mr A, say that he did. As noted above, where credibility is in issue, I am entitled to consider statements made to others. I am persuaded that Mr C did make that representation to Ms A.

Balanced discussion of options — pressure

At the first appointment on 11 April 2007 there was some discussion of different options for treatment, and the notes record that Ms A had chosen Option B. However, from 16 April 2007 (after Ms A had indicated a preference for Option B) there is evidence that the discussion was not balanced.

Ms A has alleged that Mr C telephoned her at home and pressured her into signing the contract for Option A. According to Ms A, Mr C said that it was "imperative" that she commence treatment Option A, and the other treatment options he had to offer were inferior.

Mr C disputes pressuring Ms A into treatment Option A. He acknowledges that he telephoned Ms A at home during the evening and that he raised the benefits of the Option A treatment plan during that conversation, and that Ms A agreed to come back in to discuss it further. He states that he told Ms A that she should either go with Option D or attend another chiropractor closer to home. However, Ms A was not satisfied with those options as she was worried about her spinal degeneration.

Mr C's notes from his conversation with Ms A on 18 April record that he recommended Option A. The basis for offering a non-chiropractic option is unclear. Mr C states that he presented all of the options in a balanced way during that conversation but Ms A reports that he called her at home specifically to persuade her that Option B was inadequate and that she needed to take Option A.

I have no hesitation in concluding that Mr C did not present the options in a balanced way. This is evident from the written material provided to Ms A. On the Health Investment Worksheet, there is no explanation of Option D, and no discussion of the benefits. Below that is Option A, which is described as:

> "the best structural correction available in New Zealand, and is only available at '[the Clinic]'. It is a completely specialized Biomechanic correction protocol. Unique and effective, it corrects more than is possible with any other

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approach! This is the reason we can offer you a specific guarantee with this option."

There is a note at the bottom of the page which reads "Note — Option A returns you a much higher potential than is possible with any other approach."

The next question is whether or not Mr C put pressure on Ms A to agree to Option A. I note that Mr C says that he telephoned Ms A only once, but she says that he phoned twice. She has consulted notes made at the time and these confirmed the second call. I accept Ms A's account.

I am satisfied that Mr C did put pressure on Ms A to accept Option A. This is for the following reasons:

- At her appointment on 11 April 2007, she had originally opted for Option B, and yet following the telephone conversation, she had changed to Option A;
- Mr C had told her that he had significant concerns about the X-rays;
- Mr C did not consider it was feasible for Ms A to continue with receiving two sessions of treatment a week under treatment Option B, as this "was not going to work", and yet he then obtained Ms A's agreement to attend two times a week under an amended version of Option A. I cannot see any benefit for Ms A under this plan, but an upfront payment of $3700 clearly advantaged Mr C.
- There was no reason for Mr C to telephone Ms A at home merely because she had missed her appointment. He made two telephone calls, and his reason that it was follow-up on her missed appointment is unconvincing.

Wait list option
The Commissioner has received a number of complaints about wait list practices in the past. The Commissioner's general approach is that wait list practices are not necessarily inconsistent with the rights in the Code of Health and Disability Services Consumers' Rights (the Code) provided:

- Consumers receive adequate information about their condition and the options for treating it (under Right 6);
- The distinction between corrective care and relief care is made clear at the outset so that consumers know there is a choice (under Right 6);
- The risks, side effects, benefits and costs of each option should be explained (Right 6);
- Consumers have a reasonable period to consider the agreement before agreeing and can withdraw their consent to services at any time during the treatment period (Right 7(7));
- Any conduct is consistent with the Chiropractic Board's *Code of Ethics and Standards of Practice*. (Code of Ethics)

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The New Zealand Chiropractic Board *Code of Ethics and Standards of Practice* contains the following clause:

> " 3.1.13 Pre-payment schemes:
>
> Where a Chiropractor offers a pre-payment scheme then it shall be explained, to the patient, in advance. All treatment plans that have a contractual basis for pre-payment of care must comply with the following:
>
> (a) Allow the patient to cool off within seven days and, in that time, a patient can terminate the agreement and owe only the costs of the visits and services used at the Chiropractor's normal cost rates.
> (b) It is explained, to the patient, prior to commencement of treatment, whether the payment programme is time based or just visit number based.
> (c) Where the payment is for a number of visits, then the patient must be made aware of all implications, penalties or offers involved in repayment.
> (d) Where the pre-payment is for a number of visits then the patient must be made aware, prior to signing, that if they withdraw any repayment is based on the number of visits made and the number left at a cost per visit that the Chiropractor makes the patient aware of before signing.
> (e) Patients must be allowed to withdraw at any time.
> (f) The plan is based on true patient need and tailored to meet a particular patient's needs.
> (g) The programme should only reflect treatments or visits that are clinically necessary and appropriate.
> (h) The plans must have the flexibility to allow for change to the patient's condition.
> (i) A Chiropractor must not abandon a patient who does not wish to sign a contracted treatment plan or who does not wish to attend an educational session. If a patient seeks care and it cannot be provided for other genuine reasons, those reasons should be fully explained to the patient and the patient referred to another practitioner.
> (j) A Chiropractor must not leave a patient feeling pressurised or coerced into entering into a contracted treatment plan.
> (k) The patient should be informed that s/he has the right not to enter into the contract. In that event the Chiropractor should refer the patient to another Chiropractor who is able to assist the patient on a 'short-term consultation basis'."

In *Blackbourn v the Chiropractic Board*[8] the High Court upheld a finding of the Chiropractic Board that Mr Blackbourn's conduct amounted to professional misconduct. In that case, the Board found that Mr Blackbourn

[8] HC WGTN CIV-2005-485-2315.

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induced a patient through the offer of a discount to pay $3000 in the belief that 12 months of pre-determined treatment was necessary when such had not been clinically assessed or justified. The plan was "time-based" (that is for 12 months) as opposed to being based on a number of visits. Part of the charge included Mr Blackbourn's failure to have in place a reasonable system or policy for the refund of any part of a lump-sum upfront payment where all of the treatments were not given or required.[9]

Code of Health and Disability Services Consumers' Rights

The relevant Rights in the Code of Health and Disability Services Consumers' Rights are:

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

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

RIGHT 4
Right to Services of an Appropriate Standard

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

RIGHT 6
Right to be Fully Informed

(1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including —

(a) An explanation of his or her condition; and

…

(3) Every consumer has the right to honest and accurate answers to questions relating to services, including questions about —

(a) The identity and qualifications of the provider;

[9] The *Blackbourn* case is also discussed in a document issued in June 2007 by the New Zealand Chiropractic Board. See Appendix 6.

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Opinion: Breach — Mr C

Information about condition

Following his assessment on 11 April, and his review of her X-ray finding on 16 April 2007, Mr C provided Ms A with information about her condition and the options for treatment. The consultation began with a promotional video.

Despite the unremarkable findings noted in the radiology report, Mr C advised Ms A that she had a potentially serious spinal condition. He stated that the written information provided to Ms A indicated the approximate percentage of decreased spinal curvature. He explained that the information indicated the "highest level" of degeneration he could detect. Overall, Mr C assessed Ms A's decreased curvature *and* decreased stability as severe (70 percent). He also indicated that Ms A could potentially have 100 percent loss of curvature and stability (which one can only assume would cause serious incapacity). Indeed, Ms A stated that Mr C told her on 16 April that she would be in a wheelchair if she did not enter into treatment.

My expert chiropractor advisor, Mr Bayne McKellow, concluded that Mr C failed to provide adequate information about Ms A's presenting complaint about her elbow and failed to give her accurate information about the condition of her spine. He stated:

> "Initially presenting for a right elbow problem, she was confronted with incorrect information about her complaint, most of which appears to be clinically unsubstantiated. She was given the prospect that failure to comply would probably result in severe detriment for her future health.
>
> …
>
> [Mr C] overstates the findings found in the X-rays and the report from [radiology] should be considered to be an accurate assessment of [Ms A's] radiological examination."

In addition, the information suggests that Mr C did not provide an explanation of biomechanics and of his qualifications despite a specific request from Ms A.

Ms A relied on inaccurate and worrying information about the state of her spine when she decided to proceed with Option A. She was relying on Mr C, as her chiropractor, to make a competent assessment of her condition so that she could make an informed choice about her options for care. Mr McKellow has confirmed that Mr C's assessment of "severe degeneration" is not supported by the X-ray, or the report.

I am satisfied that Mr C artificially inflated the potential seriousness of Ms A's condition. In addition, he failed to provide adequate information about bio-mechanics or about his qualifications when asked, or about Ms A's elbow injury. In my view, Ms A did not receive accurate and appropriate information about either her elbow or her spine.

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Overall, I conclude that Mr C breached Rights 6(1)(a) and 6(3)(a) of the Code.

Ethical and professional standards

As noted earlier, clause 3.1.13 of the Chiropractic Board *Code of Ethics* sets out the requirements of a contract for pre-payment of care. I have also referred to the *Blackbourn* decision. Mr C's solicitor argued that because the Option A deep treatment programme is time based and not treatment based, the refund policy and conditions of the policy fully comply with the Code of Ethics.

I agree that the Code of Ethics does not specify the chiropractor's refund requirements where the treatment programme is time based. However, it does not follow that a chiropractor has no such ethical obligations in relation to time-based prepaid plans. In May 2005 Mr C's peers viewed that Mr Blackbourn's failure to have in place a reasonable system for refund was not acceptable,[10] and in September 2006 the High Court upheld that finding. Therefore, I consider that the agreement signed by Ms A did not comply with ethical standards.

I also note that Mr C did not consider it feasible for Ms A to continue with two sessions of treatment a week under treatment Option B, as this "was not going to work". He then obtained Ms A's agreement to attend twice a week under an amended version of Option A. It is not clear why two visits a week was regarded as sufficient under Option A, when this originally recommended three visits a week and there was no suggestion of a reduction in Mr C's fee despite a 33% reduction in the patient contact time required of him under the amended Option A.

Furthermore, Mr C did not allow Ms A a seven-day "cooling off period" as stipulated in paragraph (a) of clause 3.1.13. This is material because within three days she advised Mr C that she wished to terminate the agreement. Mr C then instructed the Clinic's lawyer to write to Ms A advising her that if she did not make payment, proceedings would be issued in the District Court, and in June 2007 a claim was filed.

I also find that Mr C placed undue pressure on Ms A, and this was a breach of paragraph (j) of clause 3.1.13. I consider it was inappropriate for Mr C to telephone Ms A at home and persuade her to adopt a pre-payment option.

There is no doubt that Mr C subsequently pressured Ms A to continue treatment. Mr C even sent a letter from his Office Manager stating that Ms A's husband's change of mind about supporting her treatment did not change her "commitment to this office for treatment under option A…". Further it stated,

> "While we understand the support of marriage and family often change with emotions, this however is not a provision in the terms of engagement.
>
> Your health requires attention. Please contact this office immediately to schedule your treatment."

[10] *In the matter of B* (a decision of the Chiropractic Board, hearing 19 and 20 May 2005).

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I consider the tone of this letter unbecoming a health practitioner.

Overall, it seems to me that Mr C was more interested in receiving payment, than the provision of healthcare. This was particularly evident in his decision to sue Ms A for services that he had not actually performed. This is quite different from a practitioner seeking to recover payment for services rendered.

Mr C's conduct as outlined leads me to the conclusion that he failed to provide Ms A with services that comply with professional and ethical standards and breached Right 4(2) of the Code.

Standard of care

Ms A was surprised that Mr C did not undertake an examination of her elbow, given that this was her presenting complaint.

Mr McKellow was highly critical of Mr C's assessment of Ms A. He believes that there was insufficient cause to warrant ordering an X-ray. Mr C's examination findings were insufficient to support the provisional diagnosis of cervical/thoracic spine strain, and inadequate to formulate a spinal treatment plan. Mr C's interpretation of Ms A's X-ray result was incorrect, and there is no evidence of any clinically significant problems. Mr McKellow stated:

> "[Ms A] presented for evaluation of a right elbow injury. [Mr C] failed to adequately examine her right elbow and responded by presenting her with a lengthy treatment program relating to her spine.
>
> An adequate explanation linking her presenting symptoms and his recommendations is not witnessed by any of the documentation provided with this case."

Mr McKellow has carefully reviewed Ms A's clinical records and has advised that Mr C did not carry out an adequate assessment of Ms A's elbow, her presenting complaint. Rather, Mr C ordered an X-ray to assess Ms A's spine, an investigation that Mr McKellow has advised was unnecessary. In particular, Mr C failed to comply with the "justification" principle contained in the Code of Safe Practice for the Use of X-Rays in Chiropractic Diagnosis.[11] According to that principle:

> "4.1 The *justification* of the use of x-rays for chiropractic diagnosis **shall** take into account the merits of other available ways of acquiring the required information, and the risks entailed in the administration of radiation….
>
> 4.2 An x-ray projection **shall not** be performed unless there are valid clinical indications for that patient. …"

[11] NRL C6 ISSN 0110-9316 at www.nrl.moh.govt.nz/regulatory/C6.

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Mr McKellow has reviewed the original X-ray and found no justification for Mr C's view that there was evidence of significant deterioration of Ms A's spine. This view was also not justified on the basis of the documented examination.

Mr C has therefore made a demonstrable error in interpreting the X-ray and the radiology report. This either means that he lacked the competence required of a chiropractor to interpret such investigations correctly or he deliberately exaggerated the results of the X-ray in an attempt to persuade Ms A to accept a more expensive treatment plan under Option A. I have already accepted Ms A's allegation that she was pressured into accepting Option A (discussed above). I am also of the view that Mr C deliberately overstated the results of the X-ray. Even on a layperson's reading, the radiology report records a normal healthy spine with limited degeneration.

It is of grave concern that Mr McKellow considers that there was no apparent clinical justification for either the X-ray or the recommended treatment. Mr C's assessment of Ms A on 11 and 16 April constitutes a significant departure from professional standards. Accordingly, Mr C breached Right 4(1) and 4(2) of the Code.

Documentation

Mr C did not retain a complete copy of Ms A's clinical records. In order to respond to the complaint, he had to ask this Office for a copy of the information he provided to Ms A, including the X-ray report, the ACC form and the letter he sent to Ms A with Ms D's signature. I note Ms D's comments that Mr C did not have a good system of storing patient records.

Mr McKellow found it difficult to assess the standard of care provided by Mr C based on his documentation. He considered that the documentation did not comply with the standard required by the Board's *Code of Ethics and Standards of Practice*. Mr McKellow stated:

> "They [the clinical notes] fail to document the necessity for chiropractic care. This is mainly due to the brevity of the entries within his documentation. It is [Mr C's] responsibility to provide adequate documentation that would enable a colleague to provide ongoing care.
>
> The clinical notes do not provide a clinically useful assessment of [Ms A's] presenting complaint, or provide sufficient information to determine the rationale behind his recommendations for treatment made to [Ms A]."

Mr C subsequently stated that his practice is "not to record every possible examination and to eliminate it but rather to record the positives as was done". He also stated that the absence of documentation on certain matters "does not mean that other possibilities were not considered or checked or eliminated".

In response to my provisional opinion, Mr C, through his counsel, claimed that Mr McKellow was incorrect when he stated that the notes should be capable of being read by another practitioner. He also claimed that because Ms D's role as Office Manager included ensuring the completion of appropriate patient records and ACC applications

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required from the patient, any criticism in respect of clerical matters would need to be directed to her. I find Mr C's lack of appreciation of the purpose of clinical records alarming. Any provider of health services should know that adequate documentation is not merely a "clerical matter", but is part and parcel of the provision of good care.

Evidence of this fundamental standard is found in many sources. For instance, Standard 4.6 of the Standards of Practice as found in the Chiropractic Board of New Zealand *Code of Ethics* fully sets out the documentation requirements of a chiropractor. These include:

- Retention of all records, including X-rays being kept for a minimum of 10 years;
- Records of consultations should include brief notes about the subjective comments made by the patient along with the chiropractor's observations, examination findings recorded, all procedures performed on the patient, date of next follow-up visit;
- Records must be capable of interpretation by colleagues.[12]

Furthermore, the introduction to the Standards New Zealand publication *Health Records* states:[13]

> "Health Records are a method by which providers and health and disability services communicate with each other. They are therefore an important factor in providing quality and continuity of care. The health record is also the primary document for recording care. An accurate health record is necessary to support informed and co-ordinated decision-making, evaluation of care provided, achievement of effective health outcomes and retrieval of data for management, audit and medico-legal reference."

I also note that the Health Practitioners Disciplinary Tribunal has found poor documentation to amount to professional misconduct on more than one occasion. In one case involving a medical practitioner, it said:[14]

> "Thorough note taking is the cornerstone of safe and effective medical practice. Poor note-taking provides a poor support for clinical practice for either [the practitioner] or any other person reviewing his notes and continuing or amending the treatment plan which has been prescribed."

In the appeal to the High Court against a decision of the New Zealand Chiropractic Board, His Honour Gendall J observed:[15]

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[12] See paragraph 4.6.3 of the *Code of Ethics* for further information.

[13] NZS 8253:2002.

[14] Med05/11D.

[15] *Blackbourne v The New Zealand Chiropractic Board* HC WGTN CIV-2005-485-2315, 7 September 2006, Gendall J, para 79.

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> "The keeping of proper records by a health professional as to treatments and diagnosis is well known to be a crucial part of that professional's responsibility. It is required not only for their own referral — particularly if a treatment programme is to span many months — but also for the benefit of a health professional who may take over the care and treatment of the patient. Inadequate or sparse notes — as was clearly the case here — reflect adversely upon the treatment and management of the patient by the health professional and may in some circumstances justify disciplinary action depending on all or other features that may be present."

Mr C's documentation of Ms A's care was poor and constituted a breach of Right 4(2). He also failed to adequately store her clinical records. This was part of his obligations as a health professional.

Opinion: No Breach — Mr C

Financial exploitation and coercion

Right 2 of the Code states that every consumer has the right to be free from exploitation, including financial exploitation and coercion. Exploitation is defined as "any abuse of a position of trust, breach of fiduciary duty, or exercise of undue influence".

I have considered very carefully whether or not Ms A's right to be free from financial exploitation was breached. For the reasons set out earlier, I have no doubt that Mr C placed pressure on Ms A to engage in the Option A treatment plan; that there is no evidence that Option A was clinically justified; and that Mr C was putting his own needs ahead of his patient's in asking for prepayment of $3700. However, because Ms A did not actually pay any money to Mr C for Option A, her right to be free from financial exploitation was not breached. Had she suffered such a loss, my conclusion would have been different.

While I have no doubt that Mr C applied pressure on Ms A, on balance I have decided that his conduct did not amount to "coercion", which in my view carries with it an element of force or threat.

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Opinion: Breach — The Clinic

Vicarious liability
During the period under investigation, Mr C was an employee of the Clinic. (I have concluded that Mr C was an employee of the Clinic based on his representation to that effect.) Under section 72 of the Health and Disability Commissioner Act 1994 ("the Act") an employer is liable for acts or omissions by an employee unless the employer proves that it took such steps as were reasonably practicable to prevent the employee from breaching the Code.

There is also no information to show that the Clinic exercised any authority over Mr C's conduct other than to support him in his endeavours to pursue Ms A for the money that Mr C perceived she owed. I note that Mr C apparently suggested to Ms A that he was inclined to be reasonable, but that the "trustees" of the Clinic would demand that she pay the amount owing in full. Indeed, the Clinic was a party to the engagement agreement with Ms A and apparently omitted to consider that a health service was being provided in the formulation of this agreement. I also note that the Clinic did not have adequate systems in place to ensure that patient records were filed appropriately and safely.

The Clinic failed to take reasonably practicable steps to prevent Mr C from breaching Rights 4 and 6 of the Code. Therefore, the Clinic is vicariously liable for Mr C's actions.

Other comments

The agreement
It is not my role to make any legal finding about the validity of the contract. However, Mr C's actual loss under the contract seems to have been relatively minimal given that only one treatment session was provided under the agreement. His blithe assertion that Ms A had received "examination and treatment but no payment has been made" is far from the truth.

Mr C's registration
I note with some concern that Mr McKellow was unable to ascertain the precise nature of Mr C's qualifications. I also note that Mr C is no longer registered as a chiropractor with the Board. In my view, he should be very careful not to undertake any activities restricted to registered chiropractors under the Health Practitioners Competence Assurance Act 2003.[16] Furthermore, he should clearly inform his clients that he is not a registered chiropractor and that he does not have any formal qualifications in

[16] As a non-registered chiropractor, Mr C is not allowed to refer patients for X-ray or to undertake cervical manipulation.

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biomechanics. He should be aware that as an unregistered practitioner he is still subject to the Code.

ACC

Mr McKellow considers that Mr C failed to comply with the requirements of ACC by not documenting Ms A's presenting right elbow injury. Although there has been a suggestion that reception staff encouraged Ms A to mention a back complaint to ensure ACC coverage for her X-rays, it was Mr C's responsibility to fill out the form correctly. I intend to draw this matter to the attention of ACC.

The Board's advice notice also notes that ACC covers care only for clearly defined injury based on clinical judgment, rather than corrective care beyond which the immediate injury has been managed. In addition, the *Code of Ethics* prohibits a chiropractor from having any additional form of contract with a patient covered under ACC. As Mr McKellow noted, the agreement signed by Ms A does not differentiate between injury and symptom management. This should be rectified.

Recommendations

I recommend that Mr C:

- Apologise to Ms A for his breaches of the Code
- Comprehensively review his clinical practice, including documentation and record keeping, and report back on changes made in light of the findings in this report
- Reflect on the inadequate and inaccurate information he provided to Ms A, and provide confirmation that he will provide his clients with more appropriate information in future
- Provide this Office with written confirmation of his training and qualifications in biomechanics.

I recommend that the Clinic:

- Review the terms of the engagement agreement to reflect professional standards, and provide details of steps taken to ensure that future clients are informed of their right to discontinue treatment.

The apology and other requested information should be sent to this office by **30 January 2009**.

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Follow-up actions

- Mr C will be referred to the Director of Proceedings in accordance with section 45(2)(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 New Zealand Chiropractic Board, the Ministry of Health, and ACC.
- A copy of this report, with details identifying the parties removed except the expert who advised on this case (Mr McKellow), will be sent to the New Zealand Chiropractors Association.
- A copy of this report, with details identifying the parties removed except the expert who advised on this case (Mr McKellow), will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addenda

The Director of Proceedings decided to lay a charge of professional misconduct before the Health Practitioners Disciplinary Tribunal. The matter was heard together with another case involving Mr C on 24 May 2010 and proceeded by way of an agreed summary of facts. In its decision dated 15 June 2010 the Tribunal upheld all particulars and found the chiropractor guilty of professional misconduct.

The Tribunal imposed the following penalty:

- 18 months suspension to be followed by 18 months supervision with regular reports being provided to the Board followed by a further 18 months of case load supervision.
- Conditions including that prior to recommencing practice he undertake training and demonstrate competency to the satisfaction of the Chiropractic Board in:
  - a. fundamental chiropractic assessments and examinations;
  - b. risks associated with the routine use of x-rays and the appropriate assessments needed prior to ordering them;
  - c. informed consent ethics and the provision of information to clients;
  - d. client-centred practice;
  - e. ethical business practice for chiropractors; and
  - f. ethics generally

- He is also to provide a mental health assessment to the Board
- Censure

No fine was imposed owing to the chiropractor's financial situation; however, costs of $5,000.00 ($3,000 for the Director, $2,000 for the Tribunal) were awarded.

Mr C was subsequently named by the Tribunal.

The Tribunal's full decision can be found at:
http://www.hpdt.org.nz/Default.aspx?tabid=266

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Appendix 1

Independent advice to Commissioner

The following expert advice was obtained from Mr Bayne McKellow:

> "I have been asked to provide an opinion to the Commissioner on case number 07/17307. I have read and agree to follow the Commissioner's Guidelines for Independent Advisors.
>
> I am a practising chiropractor in Greenmeadows, Hawkes Bay, registered in 1972 and hold a current annual practising certificate.
>
> I graduated from Palmer College of Chiropractic on March 31, 1972 with the degree of Doctor of Chiropractic and a Certificate in X-ray proficiency.
>
> I gained Chiropractic Claims Review and Independent Examination Certification in December 1999, from Texas Chiropractic College.
>
> I gained the International Chiropractic Sport Science Diploma (ICSSD) in December 2001 from the Federation Internationale de Chiropractique du Sport.
>
> Past president, New Zealand Chiropractors' Association 1983–4.
>
> Held office as a Councillor of the NZCA for the last 4 years — retired from NZCA council May 2008.
>
> My areas of responsibility over the last 4 years:
>
> - Chairman of the ACC subcommittee — including NZCA liaison with ACC
> - NZCA representative, Allied Health Sector Standard NZS8171
> - Committee Member — Chiropractic Audit Workbook NZS/8171.2
> - Chairman CPD and Competency subcommittee
>
> I belong to the Chiropractic & Osteopathic College of Australasia (COCA) and am a Certified Practising Member (CPM).
>
> Application for membership of the College of Chiropractors (UK) is currently before the Court of Electors.
>
> …
>
> [Background information has been deleted here for the purposes of brevity.]

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What professional standards apply?

[Mr C] was obliged to conform to the following standards and regulations while providing management of [Ms A's] elbow complaint.

CHIROPRACTIC BOARD

Chiropractic Board Code of Ethics and Standards of Practice

ACCIDENT COMPENSATION

Injury Prevention, Rehabilitation and Compensation Act 2001
Provider responsibilities and eligibility for treatment costs

http://www.acc.co.nz/for-providers/responsibilities-performance/WCM2_020205

http://www.acc.co.nz/for-providers/responsibilities-performance/WCMZ002226?ssSourceNodeId=3931&ssSourceSiteId=1494

http://www.acc.co.nz/for-providers/responsibilities-performance/WCM2_020208?ssSourceNodeId=3931&ssSourceSiteId=1494#health

Were those standards complied with?

No.

There is variance between the statements by [Ms A] and [Mr C]. I have taken this into consideration when determining my conclusions.

[Mr C] is required to adhere to the Chiropractic Board — Code of Ethics and Standards of Practice.

[Mr C] appears to have failed to adhere to the Code of Ethics. His documentation is not of the standard required by the Standards of Practice.

His clinical records:

Are inadequately documented, failing to meet the minimum requirements of clinical record keeping. They fail to document the necessity for chiropractic care. This is mainly due the brevity of the entries within his documentation. It is [Mr C's] responsibility to provide adequate documentation that would enable a colleague to provide ongoing care.

The clinical notes do not provide a clinically useful assessment of [Ms A's] presenting complaint, or provide sufficient information to determine the rationale behind his recommendations for treatment made to [Ms A].

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[Mr C] failed to conform to the Chiropractic Board: Code of Ethics

[Mr C's] departure from the Chiropractic Board — Code of Ethics is SIGNIFICANT

CHIROPRACTIC BOARD

Code of Ethics

- ❖ **2.0 Expectations of registered Chiropractors**
  - ➢ *2.4 All treatment programmes offered by a Chiropractor must be conducted in the best interests of the patient.*

[Ms A] presented for evaluation of a right elbow injury. [Mr C] failed to adequately examine her right elbow and responded by presenting her with a lengthy treatment program relating to her spine.

An adequate explanation linking her presenting symptoms and his recommendations is not witnessed by any of the documentation provided with this case.

The proposed $3700 program of care lacks clinical justification, is devoid of any expected outcomes and does not appear to address [Ms A's] presenting elbow complaint.

[Mr C's] documentation does not meet the criteria required to enable ongoing care of an appropriate standard.

The treatment program offered was not in [Ms A's] best interests.

Further comment about the standard of clinical examination is discussed later in this report under:

- ❖ <u>3.0 Chiropractor's Relationships</u>
  - ➢ *3.1.1 Chiropractors must comply with the Code of Health and Disability Services Consumers' Rights 1996.*
  - ➢ *3.1.3 The patient's informed consent should be obtained before the commencement of care. The process of obtaining informed consent should comply with the Code of Health and Disability Services Consumers' Rights, particularly Rights 5, 6 and 7 and should include both the risk assessment and, where appropriate, alternative treatments that may be available*

In her interview with [HDC staff] [Ms A] details her signing the 'contract'.[17]

[17] See Appendix 5.

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…

It is hard to envisage that [Ms A] was able to give an informed decision on any of [Mr C's] recommendations. Initially presenting for a right elbow problem, she was confronted with incorrect information about her complaint, most of which appears to be clinically unsubstantiated. She was given the prospect that failure to comply would probably result in severe detriment for her future health.

On reviewing the documentation provided, I am of the opinion, that [Ms A] was not given adequate or appropriate information to enable her to make an appropriate decision about her proposed treatment plan.

- ***3.1.5 A Chiropractor must act in accordance with the highest standards of professional integrity and impartiality. Chiropractors must not exploit professional relationships for personal gain or for imposing religious or political beliefs.***

[Ms A] was presented with an option by [Mr C] for treatment costing $3700. Although he presented her with other options on the Health Investment Worksheet, she was effectively directed towards Option 'A'.[18]

…

[Mr C] recommended his most expensive treatment option. There is a lack of evidence supporting his recommendation.

[Mr C's] recommendations lacked impartiality.

- ***3.1.6 A Chiropractor must not over-service a patient. It is the responsibility of the Chiropractor to treat the patient only while Chiropractic can be shown to be of benefit and clinically justified. Care that is not clinically justified constitutes over-servicing.***

[Mr C's] documentation fails to display medical necessity. His recommendation for prolonged care is not justified by either his clinical findings or x-ray examination.

I am of the opinion [Mr C] would be unable to support his recommendation for prolonged treatment.

- ***3.1.7 A Chiropractor must not overstate or exaggerate the seriousness of a patient's condition.***

[18] See Appendix 4.

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[Mr C] advised [Ms A] [See page 4, above] that she may be in a wheelchair if she did not proceed with care. The clinical evidence to support his prediction is not documented in [Ms A's] file, and notes of this discussion are absent from [Ms A's] file.

I have carefully reviewed [Ms A's] clinical examination findings and her x-rays. The clinical examination findings are unhelpful, and her x-ray does not present any evidence to support [Mr C's] prognosis.

[Mr C] overstates the findings found in the x-rays and the report from [radiology] should be considered to be an accurate assessment of [Ms A's] radiological examination.

There is no evidence in [Ms A's] records to substantiate [Mr C's] prediction of [Ms A] at risk of imminent incapacity.

Introducing an element of fear into recommendations exceeds the boundaries of acceptable professional conduct.

- ***3.1.8 A Chiropractor should give an evaluation, to the patient or a person who has care for the patient, of the patient's condition and expected progress based on the patient case history and assessment. Furthermore, the Chiropractor should only act on up-to-date information and not exaggerate the efficacy of his or her services or give specific guarantees regarding the results to be obtained from Chiropractic.***

[Mr C] provided [Ms A] with information from the Clinic [See Appendix 3].

[Mr C] provides Option 'A' — Fast 6 Month Flat Rate 'Deep Treatment Program' with Guaranteed Results

Option 'A' is the best structural correction available in New Zealand, and is only available at the 'the Clinic'. It is a completely specialised biomechanics correction protocol. Unique and effective, it corrects more than is possible with any other approach! This is the reason we can offer you a specific guarantee with this option.

Option 'B' (Correction and prevention) treating Secondary Biomechanic Pathology.

Option 'B' is our specialised integrated health care approach. It combines our unique multidisciplinary approach along with specialised knowledge found only at the Clinic to stop and prevent accelerated degeneration arthritis. This is a great option for those who want to take responsibility on following through with consistency.

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He notes further down on the page Option 'A' returns you a much higher potential than is possible with any other approach.

There is a lack of evidence to support [Mr C's] assertions that the efficacy of his services are 'unique', offer the 'best structural care in New Zealand' or that there is 'specialised knowledge found only at [the Clinic]'.

- ***3.1.9 A Chiropractor should not at any time misrepresent his or her professional qualification(s) to a patient.***

[Mr C] failed to clarify his professional qualifications to [Ms A] when she requested him to disclose them.

Comments such as.... 'She had to take a leap in faith and if she wasn't prepared to do that things wouldn't work out' … clearly do not address [Mr C's] qualifications.

'Credat Emptor' — let the buyer have trust, is the existing status within the health professions. Unable to select 'goods' under the 'caveat emptor' principle patients place their trust initially in the professional they consult.

There is a vast difference however between a patient initially having to exhibit trust, and being told to 'take a leap in faith or all will not work out'.

[Ms A] asked a reasonable question and should have received a straightforward reply.

[Mr C] holds himself out as offering 'Biomechanic Correction' or 'biomechanics'. The inference in his literature is that this approach is in some way superior.

I have sought information about [Mr C's] qualifications to determine if he does hold postgraduate or special qualifications in biomechanics but have been unable to confirm any speciality.

The Chiropractic Board website confirms that [Mr C] was registered as a Chiropractor on 18 May 1999.

[Mr C] gained registration in New Zealand under the Trans Tasman Mutual Recognition Act (TTMRA) with registration in Victoria, Australia granted [in] 1999.

[Mr C] is not listed as being EVT certified on the Chiropractic Board website.

His degree granting institution is not listed on the chiropractic board website when accessed on 22 May 2008.

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Practitioner's Name	[Mr C]
Work Address Held	[…]
Qualifications	Australian Registration, Victoria, Australia.[1999]
Date of Registration	[…] 1999
Status	Inactive, not practising
Scope of Practice	Chiropractor
Conditions on Scope of Practice	

I searched the following technique organisations websites to determine if [Mr C] is certified as proficient or holds special status within those techniques. These are not exclusively 'biomechanical'.

Academy of Upper Cervical Chiropractic Organizations (AUCCO)

Activator Methods

Active Release Technique

Advanced Biostructural Correction

Advanced Muscle Palpation

Alphabiotics

Atlas Orthogonal Technique (AOT)

Bio Cranial Therapy

Bio-Geometric Integration

Blair Technique

Cerebrospinal Fluid Technique (CSFT)

Chirodontics

Chiropractic Biophysics

Cox Flexion-Distraction

Directional Non-Force Technique (D.N.F.T.)

Gonstead Clinical Studies Society

Homeokinetics:

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Kinesiology Net

Matrix Repatterning™

McTimoney Chiropractic

Morter HealthSystem

Motion Palpation

National Upper Cervical Chiropractic Association (NUCCA)

Nerve Signal Interference (NSI) Removal

Network Chiropractic

Neural Integration Technique

Neural Organization Technique

Orthospinology

Pettibon Technique

Pierce-Stillwagon Technique

Sacro Occipital Research Society International (SORSI)

Sacro Occiptital Technique Organization (SOTO), USA

Society of Chiropractic Orthospinology

Thompson Mrop-Table Technique

[Mr C] is not listed on any of these websites as a certified or referral chiropractor on their referral directories.

I am unaware of [Mr C] holding any postgraduate qualification that would distinguish him from his colleagues as holding specialist skills.

I have not been able to determine his undergraduate qualifications, and have not had confirmation from the Chiropractic Board about his undergraduate qualifications.

I am unable to comment further about [Mr C's] qualifications.

- ***3.1.13 Pre-payment schemes:***

Where a Chiropractor offers a pre-payment scheme then it shall be explained, to the patient, in advance. All treatment plans that have a contractual basis for pre-payment of care must comply with the following:

a. Allow the patient to 'cool off' within seven days and, in that time, a patient can terminate the agreement and owe only the

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> *costs of the visits and services used at the Chiropractor's normal cost rates*

[Ms A] signed an engagement agreement for the [programme] on Friday, 20th April 2007. She notified [Mr C's] office on the Monday 23rd April, indicating she did not wish to proceed.

[Ms A] was entitled to cancel the contract that she had signed the previous Friday. Under the Chiropractic Board — Code of Ethics — Prepayment Schemes, chiropractors are instructed that patients are allowed a minimum of seven days to consider any contractual arrangements.

The Code of Ethics is very clear about [Ms A's] financial obligations — she was only obliged to pay for her initial consultation fee, and any resultant office visits until the time she decided to terminate treatment.

During the period that [Mr C] pursued [Ms A] to pay $3,700, the chiropractic board issued an advice notice (June 2007) outlining the decisions of a High Court case involving prepayment plans.

It was [Ms A's] prerogative to terminate care. She was not obliged to disclose reasons for doing so.

> *d. Where the pre-payment is for a number of visits then the patient must be made aware, prior to signing, that if they withdraw any repayment is based on the number of visits made and the number left at a cost per visit that the Chiropractor makes the patient aware of before signing.*

[Mr C] indicated to [Ms A] that she could attend for two, not three treatments per week if that was convenient. He is silent about the true associated costs and whether his contract was time or office visit based.

> *e. Patients must be allowed to withdraw at any time.*

[Ms A] was not told she could withdraw from her contract. [Ms A] had to be proactive to terminate her care.

[Mr C], when initiating proceedings to collect on the 'debt' should have been aware of the Chiropractic Board's position on contracts.

He should also have been in receipt of the June 2007 advice notice.

> *f. The plan is based on true patient need and tailored to meet a particular patient's needs.*

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[Mr C] failed to meet the minimum standards of documentation for [Ms A's] clinical examination.

His interpretation of the x-rays, despite the assistance of a clear and concise radiological report requires explanation.

Medical necessity for his proposed treatment plan was not established.

By changing the proposed treatment programme to two office visits/week, it is suggestive that the treatment plan he offered was dose dependant but he offered no alteration of fee for the reduced number of office visits. The impression gained is that he wanted a set fee and the programme was not tailored to [Ms A's] "needs". I use the word "needs" with caution. [Ms A's] presenting clinical needs were not addressed by this contractual treatment plan.

[Mr C's] proposed treatment plan was medically unnecessary and not based on true patient need.

> *g. The programme should only reflect treatments or visits that are clinically necessary and appropriate.*

This is discussed under Standards of Practice.

> *j. A Chiropractor must not leave a patient feeling pressurised or coerced into entering a contracted treatment plan*

Irrespective of how [Mr C] portrays his intentions, [Ms A] reports that she felt pressured. When she decided to withdraw from treatment she states that she felt threatened and intimidated.

[Mr C] had a duty of care to [Ms A]. When she missed an appointment it was reasonable to call and confirm if rescheduling is desired. To proceed beyond that and engage in a process of persuasion, is unusual and is difficult to consider as acceptable professional behaviour.

> *k. The patient should be informed that s/he has the right not to enter into the contract. In that event the Chiropractor should refer the patient to another Chiropractor who is able to assist the patient on a 'short-term consultation basis'*

[Ms A] was not advised she had a right not to enter into a contract. From the documentation provided, [Mr C] appears to have been persistent in advising her that it was imperative she sign Option 'A'.

[Ms A] does not appear to have been truly afforded another option such as plan 'D'.

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It was [Mr C's] professional responsibility, to offer [Ms A] competent care for her elbow injury, or to refer her to another chiropractor if he was unwilling or unable to provide the necessary injury management.

[Mr C] failed to observe the requirements expected by the Chiropractic Board from chiropractors who offer pre-payment programmes

3.3.5 A Chiropractor must not advertise or make a statement that in any way

- *a. Is false, misleading or deceptive*
- *b. Is designed to mislead or deceive*
- *c. Creates an unjustified expectation of beneficial treatment*
- *d. Promotes the unnecessary or inappropriate use of his or her services*
- *e. Claim that s/he has a unique prominence in the practice of Chiropractic*
- *f. Is likely to bring the profession into disrepute. An advert or statement may be considered to bring the profession into disrepute if it:*
  - *is disparaging of any profession or professional; or*
  - *contains material of a rude, offensive or undignified nature.*

I have reviewed the in-office material [Mr C] gave [Ms A] [See appendix 4]. I do not have access to the video information she was shown:

1. The Clinic is Here for You
2. Phases of Progressive Spinal Degeneration
3. Nerve function
4. The Nature of Health
5. Health Investment Worksheet

[1] The Clinic is here for you.

This 'literature' appears designed to persuade a patient or prospective patient to accept the long term options offered by the Health Investment Worksheet. Many statements in this publication would be difficult to substantiate.

[2] Phases of Progressive Spinal Degeneration.

This information sheet portrays 5 x-rays of the cervical spine, outlining three 'phases' of degeneration.

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The descriptors may not necessarily be accurate in all cases presenting to a chiropractor's office and would need clarification on a case by case basis.

[3] Nerve function

This sheet has the appearance of a remake of a chart that has been in circulation within the chiropractic profession for many years.

First public comment on its educational suitability was in the report of the Commission of Inquiry into Chiropractic (1979)

Overall, the [report of the] Commission was a positive document for chiropractic, but did identify specific areas of concern. One of these was CHIROPRACTIC PAMPHLETS. Comments about the 'Nerve Chart' made by the Commission are still pertinent today. (Comments of the Commission)

22. Attached to the letter was what was described as a 'Chart of the Nerve System (Your Health Source)'. There is a diagram of the spine, with each vertebra labelled. Various disorders are identified on the chart as being related to 'pressure on, or interference with' nerves associated with the labelled vertebrae. Hence the reader is able to see from the chart that attention to vertebra 8D will have some connection with his leukaemia or hiccoughs, whereas attention to vertebra 3C may relate to his acne or pimples. Attention to vertebra 1L may relate to his hernia. At the foot of the chart the reader is told that:

> Only the commonest conditions and diseases are listed above. It is suggested that you consult your Chiropractor in regard to anything not found on the chart.

23. We must add that according to the evidence of some chiropractors who appeared as witnesses no modern chiropractor could possibly take such a chart seriously. That does not surprise us. We doubt whether many members of the public would take it seriously, but the danger to credulous people needs no emphasis.

The spine chart used by [Mr C] is sourced from Back Talk Systems.[19]

The Nature of Health

There is no evidence supporting documentation to support that the chart, as used, conveys an accurate prognosis or even current status of [Ms A's] health. Quality of Life measurement is subjective and bears little relationship to [Ms A's] presenting symptoms.

[19] https://www.backtalksystems.com/index.html.

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The long term care proposed by [Mr C] was essentially passive with a strong propensity for creating practitioner dependency.

Passive treatment protocols are usually reserved for short term care.

Health Investment Worksheet

This worksheet offers 'choices' for treatment in [Mr C's] office.

It offers specific guarantee which is not detailed further, and does not appear to conform with the Chiropractic Board Code of Ethics. Code of Ethics (3.1.8)

Choice appears directed toward the expensive Option 'A'.

The impression of the information provided to [Ms A] by [Mr C] is that it is promotional, designed to direct choice toward the expensive Option 'A', contains some statements that would be difficult to substantiate, and fails to assist in providing adequate information about her presenting complaint.

- ***3.6 Relationship with Third Party Payers***

  A Chiropractor is legally required to be fair and honest when reporting to and claiming from third party payers. Such reports and claims should be a true and accurate record taken from the patient's records and accounts as filed in the Chiropractor's office. It should be noted that a Chiropractor who has a contract with the Accident Compensation Corporation is prohibited, by that Corporation, from having any form of additional contract with a patient.

This is discussed under the Accident Compensation section of this report.

[Mr C] failed to conform to the Chiropractic Board: Standards of Practice

[Mr C's] departure from the Chiropractic Board — Standards of Practice is SIGNIFICANT

The documentation, as recorded, that evidences the clinical assessment/ examinations, fails to meet the standard required of a chiropractor.

There is insufficient documented information to warrant ordering x-ray examination.

Standards of Practice

[1] The documentation that evidences case history and clinical assessment/examination fails to meet the standard required of a chiropractor

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[Mr C] in his reply to the Commissioner notes '*I performed an extensive examination of Miss [A's] right elbow, spine, shoulders, ankles, knees and wrists*'.

He goes on to note that he found taut and tender fibres at multiple levels in the spine. He also notes multiple spinal problems throughout the cervical thoracic and lumbar spine as well as multiple musculoskeletal dysfunctions.

He states '*I also carried out orthopaedic and neurological tests for disc injury, blocked carotid arteries, sensory alterations, motor nerve responses and torn or ripped ligaments. The results were negative*'.

[Mr C] failed to document his clinical findings in a manner that would enable a colleague to review the findings and conclusions he reported to the Commissioner.

There is an absence of adequate documentation confirming examination of the extremities other than brief notations. These notations are not elaborated and as they stand, I can not attach any clinical significance to them.

I am of the impression that [Mr C] would have difficulty substantiating the thoroughness of the examination he reports he conducted (in his reply to the Deputy Commissioner) if he were to rely on his recorded entries in [Ms A's] file.

Specifically, [Mr C] has not recorded diagnoses other than sprain cervical and thoracic spine. His case history record and recorded clinical examination findings are insufficient to establish these conclusions as a provisional diagnosis.

An adequate case history, orthopaedic examination, range of motion and local examination findings relating to [Ms A's] right elbow are absent from the documents [Mr C] has provided the Deputy Commissioner.

The clinical examination, in the format recorded, also lacks the necessary specificity to enable formulation of an appropriate treatment plan.

The Code of Ethics requires that any programme should only reflect treatments or visits that are clinically necessary and appropriate. The diagnoses of cervical and thoracic sprain as recorded on the ACC45 form are unable to be substantiated by the documentation provided. There is no useful information relating to [Ms A's] right elbow.

From the information provided by [Mr C], I am unable to substantiate the treatment plan proposed for [Ms A], (whether Option 'A' or Option 'B').

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I have also viewed the appointment schedule [Mr C] provided for Wednesday 18th April, Monday 23rd April, and Monday 16th April. (HDC file — pages 36–38)

These confirm [Ms A's] scheduled appointments.

There are multiple appointments scheduled over brief periods of time.

On some of the scheduled times it would be challenging, if not impossible, to comply with the recommendations of the Chiropractic Board — Standards of Practice — 4.6.3

4.6.3 *In addition to the initial case history and examination information, a Chiropractor should keep a record of patients' progress. Records must be capable of being interpreted by the Chiropractor's colleagues, and should include:*

1. *Date of each consultation;*
2. *Brief notes about the subjective comments made by the patient or guardian, along with the Chiropractor's observations*
3. *Examination findings recorded*
4. *Informed choice/consent obtained*
5. *All procedures performed on the patient*
6. *Significant concerns the Chiropractor may have about the findings or the patient's progress*
7. *advice given to the patient*
8. *patient non-compliance with the Chiropractor's instruction*
9. *date of the next follow-up visit*

[2] There is insufficient documented information to justify ordering an X-ray examination

Clinical evidence of injury to [Ms A's] cervical and thoracic spine has not been established by [Mr C's] examination findings.

While [Ms A] may have suffered cervical or thoracic spine injury on 22nd November 2006, it was not symptomatically expressive when she presented to [Mr C] and was not considered by [Ms A] to be of significance.

Her reported injury to her right elbow has not been documented on the ACC45 form by [Mr C].

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Evidence to support the ordering of full spine x-rays is absent from the documented consultation and initial examination. These x-rays were inappropriately ordered.

[Mr C] has failed to demonstrate justification — one of the three components essential to a Radiation Quality Assurance Plan and part of the NRL C6 requirement for Chiropractic X-rays.

On viewing the X-rays, I cannot find any clinically significant problems that are not already recorded on the X-ray report from [radiology].

In my opinion, [Mr C's] suggestion that there were significant findings on [Ms A's] X-rays, cannot be substantiated.

There is no supporting evidence from the clinical notes or X-ray report that [Ms A] has any arthritis or spinal pathology likely to place her health at risk, or potentially confine her to a wheel chair. This has been discussed in the Code of Ethic 3.1.7 section.

It is unacceptable that [Mr C] ordered full spine x-ray examination that was not evidenced by the clinical findings or case history in [Ms A's] file.

This radiological examination was ordered under ACC without the necessary documentation to support it was necessary or appropriate.

[Mr C] failed to adequately manage [Ms A's] injury claim under the requirements of the Accident Compensation Corporation:

[Mr C], as a registered Treatment Provider with Accident Compensation was obliged to provide services giving consideration to the below 'Eligibility for treatment costs' criteria.

Eligibility for treatment costs

http://www.acc.co.nz/for-providers/responsibilities-performance/index.htm

ACC can only pay you for treatment costs related to personal injury covered by the ACC scheme. The treatment you provide must also:

- be for the purpose of restoring the claimant's health to the maximum extent practicable
- be necessary and appropriate
- match the quality required
- be given the appropriate number of times
- normally be provided by your type of treatment provider

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- be provided after ACC has agreed to the treatment (unless it's acute treatment, public health acute services, or your contract states you don't need prior approval).

[Ms A] states in her letter [see above] that she *originally visited [Mr C] on Wednesday 11th April 2007 to assess and if necessary treat a suspected 'tennis' elbow. He did not examine my elbow, instead recommended that I pay to have full spinal x-rays and return for a further consultation ....*

[Mr C] states in his reply to the Deputy Commissioner [See page 2, above].

On April 11, 2007 I consulted with [Ms A]. Prior to the consultation [Ms A] completed a confidential health questionnaire and an ACC form … .

There is variance between [Ms A's] recall of the initial office visit and [Mr C's] recollection of the consultation.

[Mr C] maintains that [Ms A] also presented complaining of cervical and lumbar pain.

Until 4 February 2008 chiropractors were unable to lodge claims for extremity (referred to as EVT) injuries with Accident Compensation. They were, however, able to treat EVT injuries.

Under the ACC Claim Lodgement Framework protocols that existed at April 2007, when [Ms A] consulted with [Mr C], a chiropractor was required to refer a patient to a qualified treatment provider to confirm a diagnosis for extremity injury if it was to be registered under ACC.

[Ms A] states that her presenting complaint was right elbow pain. [Mr C's] clinical notes are insufficient to determine a provisional diagnosis for this injury (whether the injury was a sprain or an occupational overuse type injury).

If the injury had been a sprain, [Mr C] was obliged, under the ACC Claim Lodgement Protocols, to refer [Ms A] to her general practitioner or another treatment provider qualified to diagnose extremity injuries to confirm the diagnosis.

If the injury presenting was a tennis elbow or similar overuse syndrome, [Mr C] was still obliged to seek confirmation of the diagnosis. However, Accident Compensation has specific protocols relating to overuse syndromes, and acceptance of a claim would be delayed until further evidence that it related to an accident had been confirmed.

[Mr C] did not register [Ms A's] right elbow complaint with ACC.

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The only avenue available for [Mr C] to directly write [Ms A] under New Zealand's injury management scheme, without referral, was to diagnose a spinal injury. This would then also provide access for x-ray investigations to be paid by ACC.

I asked [HDC to] clarify when [Ms A] received her injury. Her injury is confirmed as occurring on 22nd November 2006. [Ms A] reiterates that she did not present with any spinal complaint and that her right elbow was not examined. Furthermore she was asked to complete an ACC form from reception to get an X-ray, after her consultation. ...... *[Mr C] then told her to obtain an ACC form from reception to get an x-ray. She filled this out with assistance from receptionist [Ms D] (Office Manager). [Ms D] told her to add that she had twisted her back as well, to ensure that she received ACC cover for the x-ray. She never mentioned any back injury but was told to put it down.*

In considering the above it is important to remember that [Mr C] was required to sign the ACC45 form confirming that he had personally examined [Ms A] and that in his opinion the condition was the result of an accident. If the information completed by [Ms A] was incorrect or mentioned injury that he had not examined, he was obliged to re-examine before submitting the claim on behalf of [Ms A].

If [Ms A] was instructed to complete an ACC form after her initial consultation on 11 April 2007, it supports her declaration of presenting for right elbow pain.

While [Ms A] may consider she was covered under the ACC scheme for her right elbow, she would have been unable to interpret the injury coding on the ACC form. As completed, ACC45 Form FX12356 did not record [Ms A's] right elbow injury. The only injuries recorded are for cervical (S570.) and thoracic (S571.) sprain. [Mr C] provides no reason for his failure to document her presenting injury.

There has been no claim financially made against the injuries recorded under ACC45 FX12356 for chiropractic services.

There will have been a claim made by [radiology] for full spine x-rays ordered by [Mr C].

I have discussed in the previous section — Standards of Practice, the appropriateness of [Mr C] ordering full spine X-rays.

Relationship with third Party payers

The contract presented to [Ms A] requested $3700 (plus ACC payments).

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A difficulty that arises with this type of contract is that it fails to differentiate between injury management and management of long term contractual non injury conditions that are not eligible to receive subsidy from ACC.

Effectively, ACC payments could become a subsidy to the contract, or in the case proffered by [Mr C], an additional payment the treatment provider receives. Patients would not readily differentiate between injury and non injury management if the financial costs were bundled. There is the likelihood that claims could be made for the maximum allowable rather that for what was necessary and appropriate.

There is necessity for any injury claim treatment to be separated from any longer term treatment protocol.

The Chiropractic Board Code of Ethics — 3.6 — Relationship with Third Party Payers may address this issue:

A Chiropractor is legally required to be fair and honest when reporting to and claiming from third party payers. Such reports and claims should be a true and accurate record taken from the patient's records and accounts as filed in the Chiropractor's office. It should be noted that a Chiropractor who has a contract with the Accident Compensation Corporation is prohibited, by that Corporation, from having any form of additional contract with a patient.

Clarification about whether a registered treatment provider is contracted to ACC may be helpful. If a treatment provider was considered to be contracted to ACC, it would assist in stopping possible merging of injury claims with long term non-injury management contracts.

I have also been asked to comment on the following, if not addressed previously in this report.

1) Was there acceptable clinical justification for the proposed treatment plan?

   No. this has been answered earlier in the report under Standards of Practice.

   Departure from Standard — Unacceptable

2) Did [Mr C] provide [Ms A] with adequate and appropriate information about her condition, the treatment options, and the associated costs (and about his qualifications)?

   No. This is discussed in the following sections:

   Adequate and appropriate information about her condition

   Departure from Standard — Marked departure

   Treatment options

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Departure from Standard — Marked departure

Associated costs

Departure from Standard — Marked departure

Qualifications

Departures from Standard — Unable to determine

3) Did [Mr C] provide appropriate care and treatment to [Ms A]?

   No. [Ms A] presented for management of her right elbow. [Mr C] failed to document his examination of her elbow. [Ms A] did not present for treatment of her spine.

   Departure from Standard — Significant departure

4) Should [Mr C] have requested payment after [Ms A] elected not to proceed further?

   No.

   Departure from Standard — Extreme departure

5) Did [Mr C] appropriately document his care?

   No.

   Departure from Standard — Significantly inadequate departure"

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Appendix 2

Patient Questionnaire

CONFIDENTIAL HEALTH
QUESTIONNAIRE

Your Name
Address
Phone
Date of Birth
Number of Children
Occupation
Referred by
Consultation date

What is your main symptoms/pain?
Please tick as applicable

- [ ] Backache
- [ ] Spinal curvature
- [x] [illegible]
- [ ] Headaches
- [ ] Neuralgia/Numbness
- [x] Other include [illegible] medical problem
- [ ] Asthma/Hay Fever/Sinus
- [ ] Allergies
- [ ] Tumours
- [ ] Weightloss
- [ ] Bowel/Bladder

Name of Medical Practitioner

SURGERY? Yes [ ] No [x]
If yes, please give kind and date

ARE YOU TAKING ANY MEDICATION?
Yes [ ] No [x]
If so, what

WHAT PREVIOUS TREATMENT HAVE YOU RECEIVED?

HOW LONG HAS IT BEEN SINCE YOU HAVE HAD:
Complete physical exam
Heart exam
Blood Pressure check
Chiropractic x-rays

Signed

Physical Exam – X-RAY REPORT

- [ ] Compression
- [ ] Soto Hall
- [ ] Adams
- [ ] Dermatomes
- [ ] Others
and
Comments
- [x] Valsalva
- [ ] SLR/WLR
- [ ] Reflexes
- [ ] Myotomes

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Appendix 3

Welcome, this very important letter will help you to understand what we are about, how your body works, what has happened to it, and what can be done to fix it.

Mission: is here with a very special purpose. We are here to improve the Health, Vitality and Longevity for as many people as possible.

We provide truthful, integrity based information on the most effective treatment course for an individual's health problems.

The Nature of Health: Your body is designed to live in great health by the very nature of the way it was designed. You see, the nervous system controls every cell of your body; it's how you and your body communicate. Nerve impulses flow from the brain, down the spinal cord, out of the spine to every tissue, organ, muscle and skin area of your body. Impulses sent back to the brain confirm that the body is working as it should.

This is how life is maintained, with thousands of these **"Vital"** feedback cycles and corrections happening every second. This is called "homeostasis" **(Homeostasis = Life).** Amazing isn't it how the body is designed to adapt and self correct to live in excellent health and have a great quality of life.

This great design has a weak link. The information the nervous system carries must get through without interference. The nerves are very sensitive and need protection from injury. So we have a skull and spinal column that provide armor like protection. After the nerves leave the spinal column they are protected by muscle and soft tissue. So what is the weak link, you ask, that could keep the majority of the population from living at their potential of Health, Vibrancy and Longevity?

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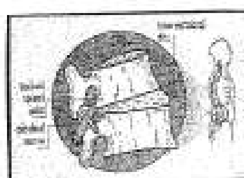
Life Causes Injuries to your body:



Many things can cause the moving bones of the spine to lose their normal motion or position. This can irritate the sensitive nerve roots that branch off the spinal cord to provide life to the organs and tissues of your body. This changes the communication between the brain and the body affecting "Homeostasis". This can be from a primary biomechanic pathology or a secondary biomechanic pathology.

What Happens & Why Our Bodies Deteriorate:
Most of the time when the spinal joints lock or lose their normal motion you don't feel the alteration in biomechanics and often have no pain from it. If you do feel anything, it may just be a little ache that goes away after a couple of days. This is because the nervous system fatigues with decreasing function level.

The most common reason people don't live at their potential for Health, Vitality and Longevity is because; it is easy to inaccurately think that when there is no pain that there is no problem. This mind set leads to a health care approach called Symptom care.
Unfortunately, most health care (i.e.- medication, physio, chiropractic, osteopathic, massage and acupuncture) is symptom care. **And Symptom care does not stop, nor does it prevent spinal degeneration.** This early deterioration from a symptom care mind set is the reason multiple health problems are common as we age.
(Often chiropractors and osteopaths will incorrectly tell you that the care they do is the same thing as biomechanic correction. This is **incorrect**, the care they do is usually working against the biomechanics. This is because chiropractors treating subluxations and osteopaths treating osteopathic lesions are not treating the primary biomechanic pathology, they are treating the compensations of altered biomechanics (the symptoms). This is evident through chiropractic and osteopathic patients presenting with 80-90 % of their spine not working properly after following their advice for correction and maintenance, this is even if symptom relief was gained through their efforts.)

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<u>Where You are in this Process:</u>
This degeneration process **you** have going on in <u>your body</u> is developing from altered biomechanics and it is a type of arthritis called osteoarthritis. Spinal Osteoarthritis and degeneration is: The thinning of the disc, the nerve opening becoming smaller, and sharp bony spurs grow into the opening, choking off and shutting down the nerves. **(See chart for the stage of development you are currently at.)**

Osteoarthritis in the spine slowly shuts down the "Vital" flow of information between the brain and the body, decreasing homeostasis. This is why correction and prevention is based on your condition and not on how you are feeling. To succeed in stopping and preventing early deterioration you must be consistent with your correction and prevention and stop chasing after the whims of how you feel. <u>With this shift in thinking you can regain your potential and feel your best.</u>

96% of all arthritis is osteoarthritis. <u>Billions of people in the world suffer needlessly</u> as this **preventable** arthritis slowly shuts down their body and life.
Even though the person most often doesn't feel osteoarthritis developing, the end result (if left unchecked) is the same: aches and pains get worse as the years go by, stiff muscles and joints stop activities people love, energy and vitality decrease, increasing health problems commonly develop, chronic tiredness and just feeling worn out can become an everyday part of life. It can create numbness and tingling in arms, legs, hands or feet. Weakness and balance problems can cause loss of mobility and independence, creating a burden for children and grandchildren. And even in the early stages it can create Organ and tissue dysfunction that can lead to an increasing dependence on drugs and medications.

<u>Why some people develop Arthritis sooner than others & How much force it takes to damage your spine:</u> The spinal curvatures determine the stability of your spine and thus how much force it takes in everyday living for your spinal joints to lose their normal motion or position. Engineers use 30-60-90 degree triangles in their designs because it is the strongest and most structurally sound for supporting weight. They copied this design from nature where it is repeated almost everywhere. It has been mathematically proven our spines are designed to be in is this configuration.

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The further away our spines are from this design, the easier our spines become damaged. Instead of taking larger forces to cause injuries to the spinal joints, everyday activities like sitting, standing and walking can lock the joints if our spinal curvatures are decreased. The joints locking are usually compensations for altered biomechanics. These fixations allow us to raise our body against gravity, compensating for the loss of leverage caused from altered biomechanics.

Your level of decreased spinal curvatures and decreased stability is circled:
Not at all, Significant up to 35%, Serious 35-70%, Severe >70%,

Extreme 100% loss of curve, Reversed.

What does all of this mean?
It means you have a choice to make. Do you continue in the symptom mind set **or** do you regain your proper biomechanics and live at your potential? It's a big decision that affects how you approach health care throughout your life. With symptom care you will always be behind the problem seeking quick temporary relief with people that tell you what you want to hear. Namely, they will reinforce the incorrect thinking that when there is no pain there is no problem. **With symptom care you will always be behind the problem and you will have to carry your body through life instead of it carrying you.** As the damage worsens, symptom care will become less effective until surgery becomes your only option. While surgery has it place, it is a last resort with consequences that even surgeons like to avoid. Surgery becomes the best option when there are no other choices. The worse the damage is, the fewer choices you have. Like symptom care, surgery does not stop the deterioration process and it often becomes the first of many surgeries as your body continues to deteriorate.

REGAINING YOUR POTENTIAL: *(If you have waited too long you may not be offered biomechanic correction and prevention, because not everyone starts with us in time.)* **If [name removed] has offered you the much better choice of Biomechanic Correction and Prevention, you have a great opportunity now that may not be available to you later.**

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Stopping the pain through healing and recovery:
Spinal Health treatment is usually painless and the healing starts immediately. Our first goal is to get you out of pain as soon as possible. We then go on to correct your biomechanics, if you chose to pursue that option.

Living At Your Best = Biomechanic Correction and Prevention: This is where you regain and maintain your highest potential possible, and go through life not knowing the health problems you otherwise would have had. Biomechanic Correction and prevention will stabilize your spine to the strongest and most stable configuration possible. Preventative health care is the best approach for Health, Vitality and Longevity. With Biomechanic Correction and prevention **your body carries you easier through proper mechanical leverage, everyday you rise with life**. Correction and prevention is the only way to stop and prevent your body from wearing out early with osteoarthritis.

A Word on Cost: Studies show that preventative healthcare is not only the best form of health care; it is also the least expensive by a 10 to 1 ratio. For every dollar you spend on correction and prevention saves you 10. In other words, the studies show that it will cost you 10 times more on crisis care through the years if you continue to follow a symptom care approach. Correction and prevention is an investment that saves you money by being the most cost effective.

Living longer, going through life knowing less health problems, keeping the ability to move, live and play, as well as maintaining independence much longer in your life are the extra benefits that are so great, they are immeasurable.

The bottom line is this: **Altered biomechanics cause arthritis. Arthritis shuts down your life early. It decreases your quality of life, health and vitality. Thus, preventing osteoarthritis ensures the nervous system and resultant homeostasis are maintained at a higher function level. You can benefit greatly from regaining your quality of life, and maintaining a higher function level. The highest possible quality of life results - increasing health, vitality and longevity.**

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Phases Of Progressive Spinal Degeneration

Healthy Spine

- Normal Curves
- Even disc spaces of normal width
- Smooth Bones
- Range of movement is full and pain free

Phase 1

- Loss of normal curves
- Distorted posture
- Disc, Joint and Muscle damage
- Lack of normal joint movement
- Response to Spinal Health care is very good

Phase 2 (EARLY)

Phase 2 (LATE) ×

- Significant disc narrowing and degeneration
- Nerve irritation and calcium deposition
- Bone deformation
- Marked reduction in movement of affected spinal joints
- Significant improvement is possible with appropriate Spinal Health Care

Phase 3

- Bone Spurs attempt to fuse malfunctioning joints
- Obstructed nerve openings cause permanent nerve irritation
- Permanent scar tissue is present
- Spinal Health care may slow or stop further degeneration and provide symptomatic relief

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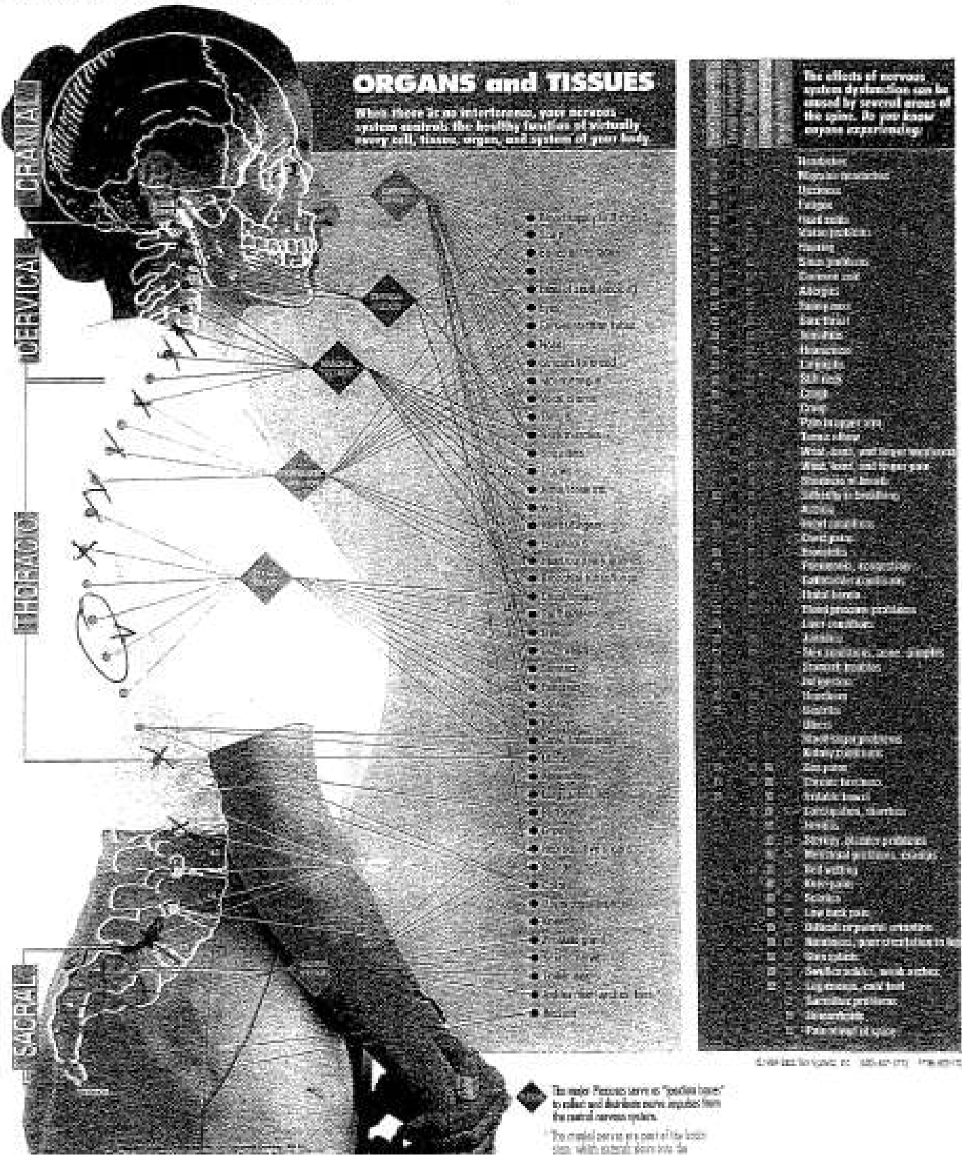

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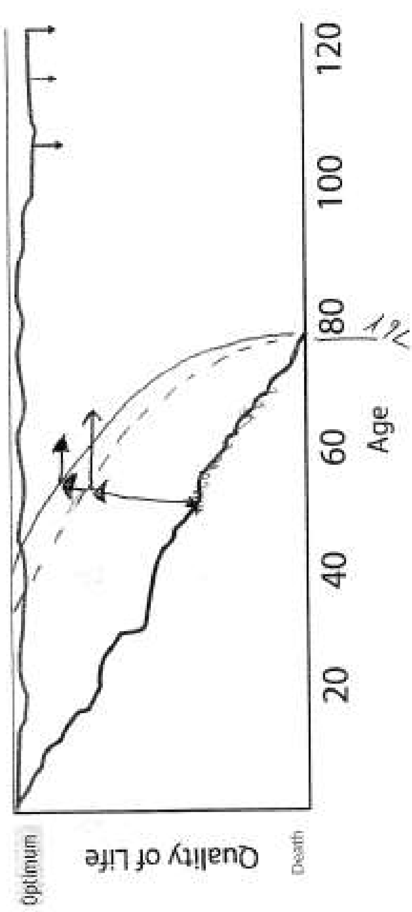
The Nature of Health



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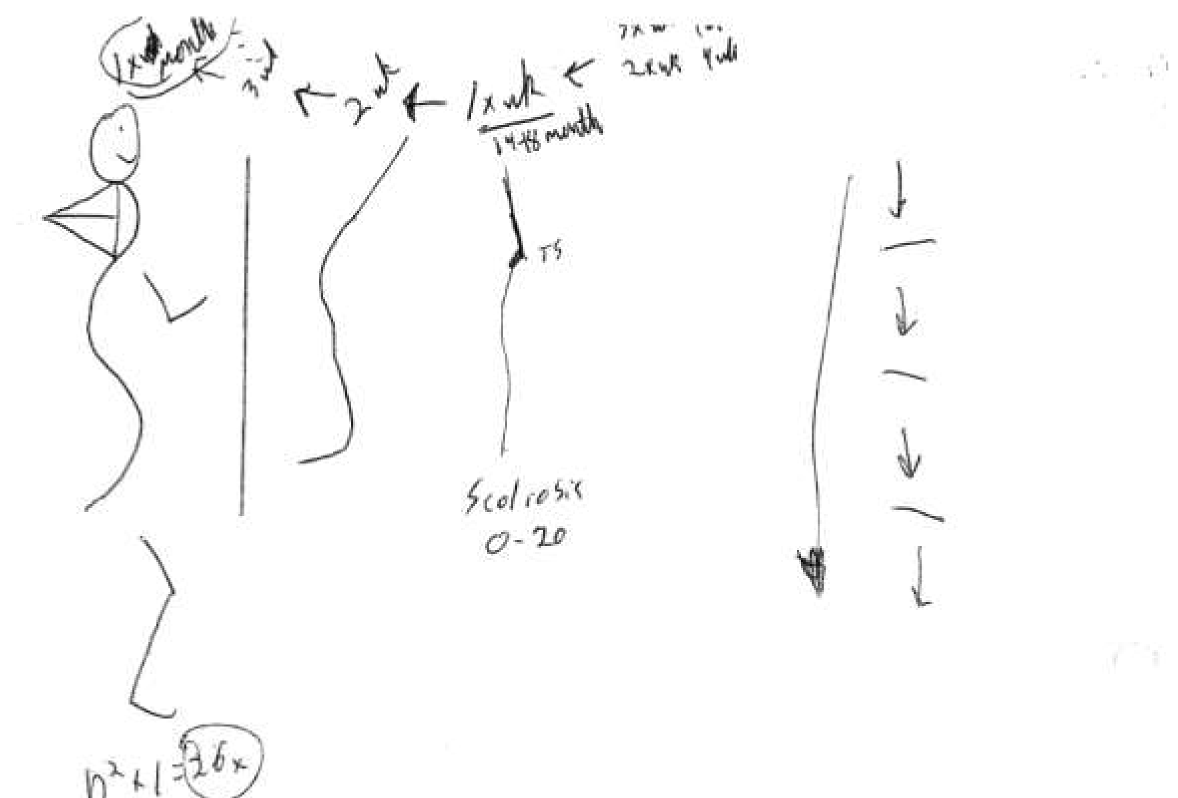

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Appendix 4

<u>HEALTH INVESTMENT WORKSHEET</u>
3 different treatment protocol options to support your goals.

( ) option d (chasing after symptoms) Treatment until feeing better and then spread out treatments based on patients symptoms. (Payment due at time of service)

Option d: Normal Treatment charge is $56 per treatment, minus ACC payments if any.

<u>( ) OPTION A - Fast 6 Month Flat Rate "Deep Treatment Program" with Guaranteed Results,</u>
..eating both the Primary and Secondary Biomechanic Pathologies.

Option A is the best structural correction available in New Zealand, and is only available at the It is a completely specialized Biomechanic correction protocol. Unique and effective, it corrects more than is possible with any other approach! This is the reason we can offer you a specific guarantee with this option.

"Deep Treatment Program" fee = $3700 payable upon commencement. (Interest FREE Finance Available)

Option B (Correction and prevention) treating Secondary Biomechanic Pathologies only.

Option B is our specialized integrated health care approach. It combines <u>our</u> unique multidisplinary approach along with specialized knowledge found only at the "Spinal Health Foundation" <u>to stop and prevent accelerated Degeneration / Arthritis.</u> This is a great option for those who want to take responsibility on following through with consistency.

3 visits per week for [illegible] weeks
2 visits per week for [illegible] weeks
1 visits per week for [illegible] months +
Then if nothing to fix at 1x per week work into longer interval of prevention. The prevention level frequency is based on the condition, not on symptoms.
(Option B: Normal Treatment charge is $56 per treatment, minus ACC payments if any.)

Note - Option A returns you to a much higher potential than is possible with any other approach.

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Appendix 5

Agreement for Treatment

ENGAGEMENT AGREEMENT for the
DEEP TREATMENT PROGRAM

SCHEDULE ONE

Patient Surname:

First Names:

Home Address:

Home telephone:

Work telephone:

Cellphone:

e-mail:

AGREEMENT

This is an Agreement between and the Patient named in Schedule One.

THE PATIENT:

CONFIRMS that he/she wishes to engage to undertake the course of treatment prescribed for the Patient under the DEEP TREATMENT PROGRAM ("the program") and agrees to be bound to the Terms and Conditions of the Program as attached.

UNDERTAKES to provide the course of treatment for the Patient pursuant to the Program.

GUARANTEES that if the Patient follows through with the Program the Patient will have an improvement for the better in his/her structural stability/posture demonstrated by before and after patient profile photographic or x ray evidence.

PATIENT ONE-TIME FEE $3,700.00 to be paid on the signing of this Agreement. (plus ACC payments)

The Patient *acknowledges* receipt of a copy of this Agreement and the Terms and Conditions.

SIGNED BY THE PATIENT:.... ....

Date:..................................

SIGNED FOR ....

Date:....20-4-07...

N

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DEEP TREATMENT PROGRAM
TERMS AND CONDITIONS OF ENGAGEMENT

Set out below are the terms and conditions under which this I accepts your instructions as a patient in the Program.

1.

1.1 Will provide over a period of six months a series of treatments for the Patient at intervals recommended by to achieve the guaranteed results.

1.2 In the event that the guaranteed results are not achieved will refund the Patient Fee in full to the Patient (excluding ACC payments received)

2. THE PATIENT.

2.1 Will pay the Patient Fee on signing this Agreement

2.2 Must attend at the Clinic when required by for the prescribed course of treatment.

2.3 Agrees to follow the recommendations of as to changing habits and rehabilitation.

3. POSSIBLE ADDITIONAL EXPENSES

3.1 Additional items may or may not be needed to support the treatment of the Patient, including orthopaedic supports, orthotics, cervical pillow, exercise materials, laboratory tests, x rays, and/or analysis, and nutritional support. These possible expenses are not included in the Patient Fee.

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Appendix 6

New Zealand Chiropractic Board

To: **Registered Chiropractors**

From: **Chiropractic Board**

Date **June 2007**

Subject **Advice notice**

Introduction
A decision of the High Court dated 27 July 2006 in the matter of D Blackbourn vs. The Chiropractic Board has significance for all practicing chiropractors. The full decision of the High Court can be found of the Chiropractic Board's website www.chiropracticboard.org.nz (complaints/hearings).

The Board received a series of complaints from a patient of the defendant. In summary, these complaints can be outlined as follows:

1. The patient was required to pay an up-front lump sum payment of $3000.00 for twelve months chiropractic care where a predetermined treatment programme of that nature was not warranted generally and or in terms of the patient's presentation.
2. A reasonable system or policy for refund was not in place in circumstances where all of the treatment was not given or required.
3. A refund did not occur in a timely manner.
4. Informed consent regarding options for chiropractic care and payment was not given adequately.
5. There was a failure to keep adequate notes; in particular the recording of subjective and objective findings and there was a failure to follow-up courses of action and recommendations.
6. The patient was required to claim ACC payments directly rather than the chiropractor making the claim on the patient's behalf
7. The patient was not advised that they would be required to make ACC claims directly.

As a result of these complaints, a Board disciplinary hearing was held and Dr D. Blackbourn was found guilty of professional misconduct and ordered to pay a fine and a share of costs. A finding of 'professional misconduct' is a significant deviation from accepted behaviour.

The decision of the Board was appealed. The High Court found in favour of the Board and awarded further costs.

It is noteworthy that courts in Victoria and South Australia have made similar decisions in similar cases. The significance of this is that precedents have now been set for what can be considered reasonable practice behaviour of chiropractors in these matters.

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Implications for chiropractors

Chiropractors who find themselves subject to investigation by external agencies should be aware that in future their actions may be considered with reference to these findings.

While there is no particular practice methodology required of New Zealand chiropractors, they are expected to exercise a reasonable standard of care based on sound clinical standards and ethical procedures.

Based on the findings of the High Court these standards have been clarified as including:

1. A requirement that practitioners who recommend a patient pay an up-front lump sum payment for a predetermined length of care demonstrate acceptable clinical justification for this. This includes the type of care provided, any x-rays or subsequent x-rays taken and methods for gauging patient progress. The patient's clinical records must clearly outline the reasoning behind the decisions made. There must be clear evidence of decision-making applied to each individual patient. A 'one-size-fits-all' approach to patient management is unacceptable.

2. A requirement for a clearly outlined refund policy to accommodate an interruption to the initial recommendation. Patients must be made fully aware of this prior to accepting a programme of care. At no stage will the patient be liable to pay more than the initial amount. Any refund must be made promptly upon request and shall not include administrative or bank charges.

3. The requirement for a clear process of informed consent. This should cover options regarding fees and chiropractic care. Patients must be advised that it is not usual practice for chiropractors to recommend extended periods (eg. twelve months) of care with pre-payment so that the patient can reasonably choose an alternative provider. It is not sufficient to offer the patient payment options for an extended programme without indicating that there are other options for care. For example acute care only. The practitioner must be able to clearly demonstrate that the patient has been made fully aware of these matters in a manner that is easily understood.

4. The requirement for chiropractors to maintain adequate patient records as set out in the Board's *Standards of Practice and Code of Ethics* a copy of which is available on the Board's website. These must be adhered to under all circumstances. There is no distinction between 'acute' care, 'wellness' care, 'maintenance' care, 'corrective' care or any other type of care. Every patient interaction must conform to the published standards.

The Board advises practitioners to 'bulk bill' ACC for all fees and request a co-payment from the patient where applicable. Please note that ACC covers care only for a clearly defined injury based upon the clinical judgement of the practitioner. ACC does not cover 'corrective' care or care beyond where the immediacy of the injury has been managed. Treatment Profile recommendations for injury code visit numbers are not automatic. For example, a patient suffering from a lower back sprain (s572.) treatment profile recommended 16 visits does not mean that all patients with this injury are automatically entitled to 16 visits. Clinical judgement must be utilised to discern the appropriate care for each patient.

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Practitioners who choose to practice outside this advice and the regulations within the Standards of Practice and Code of Ethics, Scope of Practice and relevant legislation will find it very difficult to withstand the scrutiny of a competence review or Professional Conduct Committee.

Julian White
Chairman

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