

Registered Nurse, RN A

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

(Case 22HDC01879)

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Executive summary

1. This report relates to a registered nurse in a mental health service who contacted a former patient on social media. The report considers the importance of maintaining appropriate professional boundaries with patients, even after the professional relationship has ceased.

Findings

2. The Deputy Commissioner considered that the nurse inappropriately sent messages of a personal nature to the patient, who was vulnerable because of his age and his mental health. An inherent power imbalance exists between consumers and their healthcare providers, wherein the provider has access to intimate details about a consumer's health, but the consumer has no such knowledge about the provider.
3. The Deputy Commissioner found that the nurse failed to adhere to the Nursing Council of New Zealand Code of Conduct and Guidelines by failing to maintain professional and ethical boundaries with the consumer while or around the time the nurse was providing care. By initiating contact with the consumer outside of a professional setting, and sending messages of a personal nature, the nurse breached his professional and ethical obligations as a registered nurse, and, accordingly, breached Right 4(2) of the Code.

Recommendations

4. The Deputy Commissioner recommended that should the nurse remain employed by the nursing profession, he should undertake further training on identifying and maintaining professional boundaries, and that the Nursing Council of New Zealand consider the nurse's fitness to practise, and whether any reviews of conduct and/or competence are required. The Deputy Commissioner referred the Nurse to the Director of Proceedings.
5. The Deputy Commissioner recommended that the nurse's previous employer provide an update on an audit undertaken of the nurse's clients. The audit had been undertaken as a safety measure to ensure that professional boundaries were maintained and that access to appropriate additional support for patients could be facilitated if necessary.

Complaint and investigation

6. The Health and Disability Commissioner (HDC) received a complaint from Mr B about the services provided by Registered Nurse (RN) RN A. The following issue was identified for investigation:
 - *Whether RN A provided Mr B with an appropriate standard of care in 2019 and 2020.*
7. This report is the opinion of Deputy Commissioner Dr Vanessa Caldwell, and is made in accordance with the power delegated to her by the Commissioner.

8. The parties directly involved in the investigation were:

RN A	Provider/registered nurse
Mr B	Complainant

9. Further information was received from:

Mental health service	Group provider/mental health service
Nursing Council of New Zealand	

Information gathered during investigation

Introduction

10. This report discusses whether RN A maintained appropriate boundaries with his client, Mr B.

Mr B

11. On 5 August 2019, Mr B (in his teens at the time of events) was referred for a psychological assessment due to concerns about his low mood, ongoing thoughts of deliberate self-harm and suicidal ideation.
12. Given the concerns identified, Mr B was scheduled for an urgent assessment, which occurred on 8 August 2019. Following the assessment, Mr B was referred to the Child and Adolescent Mental Health Service (CAMHS) for ongoing support and intervention. CAMHS is one of several services operating under the umbrella of the mental health service. Mr B was a community-based client, meaning he was living at home with his parents throughout his care at the mental health service. Mr B's appointments occurred primarily at the premises of the mental health service, and on one occasion at his family home.

RN A

13. RN A began working for the mental health service as a registered nurse in 2016. RN A told HDC that this was his first job as a nurse following the completion of his nursing degree.
14. On 8 December 2020, the mental health service terminated RN A's contract as a result of a separate complaint about RN A.

Appointments with Mr B: August–November 2019

15. RN A provided mental health services to Mr B from 16 August 2019 to 25 November 2019 at the mental health service.

16. The mental health services RN A provided to Mr B included face-to-face intervention,¹ psychoeducation,² co-ordination of services including referral to a private psychologist, and ongoing risk assessment.
17. On 16 August 2019, Mr B was reviewed by RN A and another nurse at the Child and Adolescent Mental Health Service (CAMHS). Mr B had eight appointments with RN A in 2019, on 23 and 27 August, 2 and 20 September, 2, 11 and 29 October, and 25 November 2019.
18. The appointments on 23 and 27 August, 20 September, and 11 October 2019 occurred with either the second nurse or Mr B's mother present, but RN A also had one-on-one appointments with Mr B.
19. RN A was present at the psychiatric reviews of Mr B, which were completed by a psychiatrist at CAMHS, on 27 August, 2 and 29 October, and 5 November 2019.
20. On 5 December 2019, RN A wrote to Mr B and his general practitioner (GP) to advise that Mr B's file was being closed in the system. RN A also telephoned Mr B's mother and confirmed this.

April–December 2020

21. On 9 April 2020, Mr B's GP contacted CAMHS with concerns about Mr B's behaviour. RN A telephoned Mr B's mother to inform her of this discussion with the GP, and to advise her to contact the service for further support if required. Mr B's file was closed on 9 April 2020.
22. On 13 August 2020, Mr B's file was reopened following a further referral from the GP. On 3 September 2020, Mr B had an appointment with RN A, and RN A was present at the psychiatrist's clinical review of Mr B on 7 October 2020. Mr B's file was closed again on 9 December 2020.

Personal messages between RN A and Mr B

23. On 1 January 2020, RN A sent a text message to Mr B stating: "Happy New Year, hope you have a good one."
24. On 19 February 2020, RN A sent a message to Mr B on Facebook asking: "[H]ow you going." RN A told HDC that Mr B appeared on Facebook as a person he might know.
25. On 19 March 2020, Mr B sent RN A a text message asking if he had Instagram, in case he would like to "keep up with all the cool shit [Mr B was] doing". RN A replied saying: "[N]o, but I can get it I guess I[augh] o[ut] I[oud]. What cool shit [have] you been up to?" Mr B replied saying that he had started a sport and bought one of his dream cars. Mr B provided his Instagram handle³ to RN A.

¹ The face-to-face intervention focused on monitoring mood, risk, and deliberate self-harm.

² The psychoeducation mostly focused on coping skills to manage low mood and distressing thought patterns, and behavioural activation.

³ An Instagram handle is a unique link to a person's Instagram account.

26. In his complaint to HDC, Mr B stated that RN A began to message him on Instagram around the time of the first COVID-19 lockdown. Mr B was unable to provide screenshots of these messages as they had been deleted. Mr B recalled RN A commenting on his muscles as he “always noticed and liked [his] muscles”. Mr B also recalled that RN A asked him for a picture of his muscles.
27. On 19 March 2020, RN A sent Mr B a text message that said: “[I]f you want to catch up in person, I can always make an appointment to see you at school and not let work know I[augh] o[ut] I[loud].” RN A sent a further text message to Mr B on 19 March 2020, which said: “Yo [Mr B], [RN A] here, this is my personal phone number which is probably better than using my work phone now.” Mr B did not reply.
28. On 20 March 2020, RN A sent a further text message to Mr B asking: “What kind of dream car did you get?” On 23 March 2020, RN A sent a further text message, which said: “Hey, awesome getting one of your dream cars. Can’t wait to see what you do with it.” Mr B did not respond to either text message.
29. Further text messages were exchanged between August and November 2020. Primarily these relate to arranging appointments with RN A and the treating team. RN A told HDC that he does not remember sending any of these text messages to Mr B, and he is no longer on Instagram or Facebook. RN A acknowledged that he sent messages to Mr B via these social media platforms, and stated that he did this around the end of 2019 and stopped messaging him at the start of 2020.

Mental health service

30. The mental health service told HDC that from 2019 to 2020, the General Manager was responsible for overseeing the services provided to Mr B, and had day-to-day responsibility for management of the team to which RN A belonged, except during the first COVID-19 lockdown at the start of 2020, when RN A reported to the Executive Officer and the Practice Manager. The mental health service also advised that the psychiatrist was the Clinical Director and Responsible Clinician involved in Mr B’s care.
31. The mental health service told HDC that active steps have been taken to ensure that all professionals can access and are supported by supervision mechanisms, with opportunities for reflection, feedback, and development. The mental health service stated that RN A had fortnightly one-to-one supervision with the General Manager, and regular clinical case management meetings. There were also regular opportunities for team debriefs and supervision via peer review, as required.
32. The mental health service stated that concerns had been raised previously about RN A’s conduct and performance, specifically in relation to poor quality documentation, consistently leaving work early, unapproved absences from work, and disrespectful communication with senior staff.

33. The mental health service told HDC that RN A had completed the Duly Authorised Officer⁴ (DAO) training. In addition, the mental health service told HDC that RN A was supported to complete a postgraduate certificate in child and adolescent mental health. The mental health service said that RN A facilitated an in-service training session to a nursing group on ethics, and this presentation was based on work completed as part of RN A's training course.
34. The mental health service noted that there was no record in Mr B's file of RN A having contacted Mr B by text message using his work-allocated mobile telephone. The mental health service stated that it was distressed to learn of the concerns raised by Mr B.

RN A's response

35. RN A stated that apart from the texts and Facebook and Instagram messages, there was no other communication with Mr B in a personal capacity, including by telephone call or in person. RN A told HDC that he has had no further contact with Mr B since the termination of his contract by the mental health service.
36. RN A said that he has no recollection of having received any training or orientation on policies in relation to maintenance of professional boundaries, use of social media, best practice policies, and code of conduct, other than booklets to read in his personal time. RN A stated that conduct and performance reviews during his employment at the mental health service were irregular.
37. RN A told HDC that he intended to leave the nursing profession in November 2022.

Further information

38. Mr B told HDC that he felt that he "rushed his mental health care" because of this experience, and that he should have remained on medication for longer than he did. He said that he felt that this experience was detrimental to his mental health.

Responses to provisional opinion

Mr B

39. Mr B was given the opportunity to comment on the "information gathered" section of the provisional opinion, and advised that he had no further comments to make.

Mental health service

40. The mental health service was given the opportunity to respond to the relevant sections of the provisional opinion. The mental health service had no comments on the opinion.

RN A

41. RN A was given the opportunity to respond to the provisional opinion. RN A had no comments on the opinion.

⁴ DAOs are mental health practitioners appointed pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992. DAOs are often the first point of contact for members of the public seeking information or assistance when experiencing mental health difficulties.

Opinion: RN A — breach

Introduction

42. As a healthcare provider, RN A was required to provide services to Mr B that complied with professional, ethical, and other relevant standards. In particular, RN A was required to comply with the Nursing Council of New Zealand's Code of Conduct, and Guidelines on Professional Boundaries.
43. The maintenance of professional boundaries is an integral part of the provision of health services. I consider that RN A's conduct, specifically sending personal messages to Mr B, contravened professional boundaries and ethical standards.

Therapeutic relationship

44. There is no dispute that there was a healthcare provider–consumer relationship between RN A and Mr B. RN A provided and coordinated mental health services for Mr B from August 2019 to December 2020.
45. The NCNZ Code of Conduct (2012) (see Appendix A) outlines that nurses must maintain professional boundaries between themselves and health consumers.
46. As this Office has stated previously,⁵ an inherent power imbalance exists between a consumer and a healthcare provider. This arises from the nature of the relationship, and is more pronounced in contexts such as this, where the provider is privy to intimate details about a health consumer's life and their mental health. Trust is fundamental to the relationship, in ensuring that the consumer is assured that the provider is acting with the consumer's best interests in mind. It is critical that relationships between health professionals and their clients stay within the professional realm, to avoid any exploitation or abuse of power.
47. At the time of the events, RN A was aware that Mr B was vulnerable because of his age (in his teens at the time of events) and his position as a patient receiving mental health services. RN A had detailed knowledge of Mr B's personal health and wellbeing, which he had a duty to utilise professionally and for the benefit of Mr B, and was aware of the appropriate professional conduct he needed to uphold to ensure that the therapeutic relationship was of benefit for Mr B.

Inappropriate communication

48. In early 2020, while providing Mr B with mental health services, RN A initiated contact with Mr B via Facebook. Mr B told HDC that RN A also messaged him on Instagram. Although screenshots of all of these messages were not available, the content of the messages provided were personal in nature and not confined to discussions about Mr B's care. In a text message on 19 March 2020, RN A offered to have an appointment with Mr B at school,

⁵ Opinion 21HDC00086.

and not let his workplace know. RN A also sent Mr B his personal phone number and suggested he contact him on that, rather than his work phone.

49. The NCNZ Guidelines on Professional Boundaries (see Appendix B) state that nurses must avoid online relationships with current or former healthcare consumers. The Guidelines note that social media or electronic communication should not be used to build or pursue relationships with healthcare consumers. The Guidelines also outline the need for nurses to be aware that in all relationships with healthcare consumers, nurses have greater power because of their position as a health professional, their knowledge, their access to information about the consumer, and their role in supporting the consumer when the consumer is receiving care.
50. The NCNZ Guidelines on Professional Boundaries also state:

“Nurses must be aware of professional boundaries and ensure that communication via text⁶ is not misinterpreted by the health consumer or used to build or pursue personal relationships.”
51. Given the power imbalance owing to RN A’s knowledge of Mr B’s personal circumstances and mental health, it was inappropriate for RN A to initiate contact with Mr B through social media platforms. RN A should not have sent any messages that were personal in nature to a current or former patient.
52. RN A told HDC that he had irregular supervision, and he has no recollection of any training in relation to maintaining professional boundaries. In contrast, the mental health service told HDC that RN A had fortnightly meetings with his supervisor and open channels of dialogue to raise any issues. The mental health service also told HDC that its expectation was that registered health practitioners would have received training on boundaries as part of their professional training towards their chosen career. Therefore, I see no evidence of a lack of supervision and training. The standards of RN A’s profession outline clear guidelines on what is expected. RN A, as both the professional and adult in these circumstances, ought to have known better.

Documentation

53. The mental health service told HDC that there is no record in the clinical notes indicating that RN A communicated with Mr B via text message, or using his work-allocated cell-phone. This is in contrast to the messages provided by Mr B, which clearly indicate that RN A communicated with him by text message, using both his work-allocated and personal cell-phones.
54. Principle 4.8 of the NCNZ Code of Conduct (2012) states that nurses must keep clear and accurate records.

⁶ While this specifically refers to text message, I consider that online direct messaging, such as Facebook Messenger and Instagram messaging, serves the same communication connection, and therefore the same principles apply.

55. I am concerned that RN A clearly failed to follow the NCNZ Code of Conduct by omitting to keep accurate records and document the text message communication he had with Mr B when organising appointments and follow-ups.

Conclusion

56. In my opinion, RN A failed to adhere to the NCNZ Code of Conduct and the NCNZ Guidelines on Professional Boundaries by failing to maintain professional and ethical boundaries with Mr B while, or around the time, he was providing care for Mr B. RN A also failed to keep accurate records during this time.
57. Accordingly, by initiating contact with Mr B outside of a professional setting, and sending messages of a personal nature, my view is that RN A breached his professional and ethical obligations as a registered nurse, and, accordingly, breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.⁷
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Changes made

58. RN A told HDC that he has made changes to his practice by becoming familiar with the Code of Ethics and Privacy guidelines, and that he is seeking support for his own mental health. RN A said that his intention was to retire from the nursing profession in November 2022 for personal reasons.
59. The mental health service told HDC that since the events it has undertaken, or is undertaking, the following:
- A presentation from the Health and Disability Advocacy Service on the Code of Rights and role of the service.
 - Development of social media guidelines and a training programme.
 - Development of targeted guidelines for the use of mobile phones, laptops, and other communication devices in professional practice.
 - Development of guidelines for telehealth use.
 - Development of a work programme related to whānau experience.
60. On the recommendation of HDC, the mental health service undertook an audit and attempted to contact whānau who had been involved with RN A to ensure that no other young persons had had similar experiences or needed support. None of the whānau contacted raised further concerns.

⁷ Right 4(2) states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

Recommendations

- 61. I recommend that should RN A continue in the nursing profession, he undertake training on identifying and maintaining professional boundaries, and report back to HDC on the training within three months of the date of this report.
 - 62. I recommend that the Nursing Council of New Zealand consider RN A's fitness to practise, and whether any reviews of his competence and/or conduct are required in light of this report.
 - 63. I recommend that the mental health service provide HDC with an update on the progress in developing the guidelines and training programmes outlined in paragraph 59 above, within three months of the date of this report.
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Follow-up actions

- 64. RN A 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.
 - 65. A copy of this report will be sent to the mental health service.
 - 66. A copy of this report with details identifying the parties removed will be sent to the Nursing Council of New Zealand, and it will be advised of RN A's name.
 - 67. A copy of this report with details identifying the parties removed will be sent to Te Whatu Ora, the Health Quality & Safety Commission, and the Director of Mental Health, and will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
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Addendum

- 68. The Director of Proceedings decided not to issue proceedings.

Appendix A: Nursing Council of New Zealand Code of Conduct (2012)

“Principle 7.13: Maintain a professional boundary between yourself and the health consumer, and their partner and family, and other people nominated by the health consumer to be involved in their care.”

Appendix B: Nursing Council of New Zealand Guidelines: Professional Boundaries (2012)

“Nurses must be aware that in all their relationships with health consumers they have greater power because of their authority and influence as a health professional, their specialised knowledge, access to privileged information about the health consumer and their role in supporting health consumers ... The health consumer does not have access to the same degree of information about the nurse as the nurse does about the health consumer, thereby increasing the power imbalance.

It is the nurse’s responsibility ... to maintain the appropriate professional boundary of the relationship. The nurse has the responsibility of knowing what constitutes appropriate professional practice and to maintain his or her professional and personal boundaries. The health consumer is in an unfamiliar situation and may be unaware of the boundaries of a professional relationship. It is the responsibility of the nurse to assist health consumers to understand the appropriate professional relationship. There is a professional onus on nurses to maintain a relationship based on care plans and goals that are therapeutic in intent and outcome.

[Nurses must] maintain professional boundaries in the use of social media ... Do not use social media or electronic communication to build or pursue relationships with health consumers ... Nurses must be aware of professional boundaries and ensure that communication via text is not misinterpreted by the health consumer or used to build or pursue personal relationships.

[Nurses] have the potential to harm the health consumer by increasing their vulnerability or dependence in the relationship with the nurse and could be detrimental to their health outcomes by compromising the nurse’s objectivity and professional judgment.

Some warning signs that the boundaries of a professional relationship may be being crossed and that an inappropriate personal or sexual relationship is developing are ... texting or using forms of social media to communicate in a way that is not clinically focused ... the nurse participates in flirtatious communication, sexual innuendo or offensive language with a health consumer.”