Registered Nurse, Mr A

A District Health Board

A Report by the

Deputy Health and Disability Commissioner

(Care 07HDC19540)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Overview

On 20 July 2007, a mental health service client, Ms B, aged 27, disclosed to her Care Manager, Ms C, that she had had a sexual relationship with her previous Care Manager, registered nurse Mr A.

Mr A was working for a District Health Board's mental health service when he was assigned as Ms B's Care Manager in January 2006 while she was living at her parents' home. Ms B alleges that shortly after her discharge from hospital in September 2006, following an overdose, she and Mr A became sexually involved. This relationship continued after she moved to another area in November 2006 and transferred to another District Health Board's mental health service. It finished towards the end of 2006.

At the conclusion of this investigation, Mr A acknowledged that he had had an "unprofessional" relationship with Ms B while she was under his professional care. He has previously declined to comment on the allegation.

Complaint and investigation

On 9 November 2007, the Nursing Council of New Zealand (the Nursing Council) sent the Health and Disability Commissioner (HDC) a complaint from a District Health Board's (DHB2) Director of Nursing and Midwifery, Ms I, regarding registered nurse Mr A. The following issues were identified for investigation:

- *Whether registered nurse Mr A provided services to Ms B in accordance with professional and ethical standards in 2006/2007.*

- *The appropriateness of the care provided by District Health Board 1 to Ms B in 2006/2007.*

The investigation commenced on 13 December 2007. The parties involved were:

Mr A	Provider/registered nurse
Ms B	Consumer/complainant
Ms C	Registered nurse/Care Manager
Ms D	DHB2 Clinical Coordinator, Community Mental Health
Ms E	Consultant clinical psychologist, DHB2
Ms F	Ms B's friend
Ms G	DHB1 Acting Service Manager Mental Health Service
Mr H	DHB1 Employee Relations Manager
Ms I	DHB2 Director of Nursing

Ms J	Clinical Director Mental Health Service Directorate
Mr K	DHB1 Director of Nursing

This investigation was delegated to Deputy Health and Disability Commissioner Rae Lamb.

Code of Health and Disability Services Consumers' Rights

The relevant sections of the Code of Health and Disability Services Consumers' Rights are attached as **Appendix 1**.

Information gathered

Mr A
Mr A registered with the Nursing Council on 18 December 1997 when he graduated with a Bachelor of Nursing. On 7 March 2005, Mr A was employed by a District Health Board (DHB1) community mental health service. He was assigned as Care Manager for Ms B on 30 January 2006.

Ms B
Ms B has a history of an eating disorder, self-harming behaviour, and attempting suicide by overdose. She has been a client of the DHB1 mental health service and an eating disorder service since December 2002, with treatment for anxiety, emotional distress and poor sleep patterns. In January 2005, the two services formulated a management plan for Ms B.

Care management — DHB1
On 31 January 2006, Mr A telephoned Ms B to introduce himself as her new Care Manager. At this time Ms B, aged 27, was still receiving treatment from DHB1 and the eating disorder service, and she lived with her parents.

On 10 February 2006, Mr A recorded his first visit to Ms B at her home. He noted that he discussed with Ms B and her mother several ideas for a care plan for managing Ms B's eating disorder and to keep her safe. Ms B's food intake was a problem at that time and she was underweight.

On 6 April Mr A visited Ms B at home. Ms B told him that she had recently been diagnosed with epilepsy, "following an episode which required hospitalisation". At this time, Ms B's parents were planning a trip overseas. Ms B was concerned that she would not be able to have regular contact with her parents while they were travelling

and told Mr A that she was worried that she would slip into her old self-harming habits as a result. She had been trying to work past these feelings, but was concerned that if she did self-harm while her parents were away, it could go unnoticed for some time.

On 18 April 2006, Mr A noted that Ms B's parents would be away for three weeks. Ms B recalls that "no one was sure" she should be left alone, so it was arranged that she should have Mr A's work mobile number. Ms B stated that they sent each other text messages every day. At one stage Mr A told her that his work telephone "had died, the battery had run down or similar" and gave her his personal mobile phone number. Ms B said, "It all started from there" and they kept texting each other every day even when they "didn't need to".

Mr A recorded the plan to monitor Ms B during her parents' absence. He noted that Ms B was to contact him daily by 3pm and if he did not hear from her by that time, he would make a home visit.

Throughout May 2006, Mr A recorded that he had regular contact with Ms B, that she continued to engage in superficial self-harming and, apart from daily contacts via text, she was to contact him if she had any safety concerns.

Personal relationship

Ms B recalls that her relationship with Mr A was "pretty flirty" from their first meetings in January and February 2006.

From 31 May 2006, they started meeting at a café at a local shopping centre. Mr A recorded the meetings and that they discussed her self-harming and the stressors that were causing this behaviour. For example, on 18 July, Mr A noted:

> "Meet for coffee as planned. ([Ms B]) presented bright in mood, affect reactive. … Denied any suicidal thoughts. No change in presentation —
> plan: i) p/call to psychiatrist by CPN [community psychiatric nurse]
> ii) H/V next week
> iii) CPN to weight ([Ms B]) next week."

Ms B recalls that on one occasion, Mr A talked about his own depression and anxiety issues. Ms B recalls Mr A saying that he had "fought his own battle with anorexia". He had overcome this problem by body-building and commented that she too should try this. Many of their meetings at the shopping centre would be Mr A's last appointment for the day. They would have coffee and then Mr A would walk Ms B home. On one occasion during this time, he kissed her. Mr A told Ms B that he could be fired for kissing her.

The frequency of the text messaging between Ms B and Mr A increased. Ms B recalls that during the months of July and August 2006, they were sending each other text messages up to 500 times a month.

Mr A confirmed that he sent Ms B text messages during this time. However, he disagrees that it was as many as 500 per month. He stated, "It was no where near as much."

Ms B recalls Mr A telling her that DHB1 management had reprimanded him for sending too many personal text messages from his work cellphone. He gave her his personal mobile number and said that he would need to use this phone to contact her, and that she should not feel guilty because he had been reprimanded. DHB1 has no record of Mr A being formally reprimanded about his use of the DHB mobile phone, but acknowledged that there may have been a verbal reprimand.

Self-harming

During July 2006, Mr A recorded that Ms B repeatedly expressed thoughts about suicide. Ms B stated that her birthday is in July, and it is always a "triggering time" for her depression and anorexia. Although her mood dropped at this time, she felt it was an achievement to have made it through July without being admitted to hospital.

On Wednesday 9 August Ms B told her clinical psychologist that she had considered suicide the previous weekend. Ms B's low mood and suicidal thinking continued throughout August and September 2006. On 11 September, Ms B was reviewed by a psychiatric registrar. His plan to ensure her safety included the instruction that she was to send Mr A a daily text message, "including weekends, and if not done [Mr A] will ring CAT [crisis] Team".

On 14 September, Mr A recorded that he discussed with a community psychiatric nurse that he had concerns about Ms B becoming more dependent. Mr A noted that he would discuss this issue further with senior staff and arrange for Ms B to have more specialised supervision.

The following day, Mr A received a message from Ms B to advise that her mind had "snapped and she was sorry". Mr A telephoned her back. Ms B told him that she had overdosed, but would not say what she had taken. Mr A contacted Ms B's parents and the crisis team, and Ms B was admitted to Hospital 1 that day for treatment.

Ms B disputed this entry in her clinical records. She stated:

> "The day that I took this overdose I had had an appointment with [Mr A]. It was the last one of the day and we went for coffee. I remember this very clearly as in a very casual manner he was asking about my previous relationships with men etc. A topic I'm never overly comfortable discussing as, I am fiercely private and it brings up a lot of personal insecurities, and shame."

Ms B was discharged from hospital on 17 September. Mr A met with her the next day, 18 September, and noted that she was "voicing anger and frustration" that her suicide attempt did not succeed.

Sexual relationship

Ms B stated that she cannot give an exact time or date when the relationship between her and Mr A became sexual. He sent her a text message saying that she would be a "really cool chick to hang out with, if I wasn't your nurse". She said that from that time she was aware of his interest in her and decided that she needed to be, or appear to be, well enough so that he was no longer her nurse. Ms B stated, "I followed his lead with the texting, still quite [a]ware of the power difference and they were very quickly sexual in nature."

Ms B recalls that, before she was admitted to hospital in September, she deleted all the text messages Mr A had sent her because she was worried her parents might find them. She recalls that they had sexual intercourse for the first time, at her parents' home, shortly after her discharge from hospital on 17 September 2006.

Ms B's friend, Ms F, recalls a conversation at a wedding on 30 September 2006 when Ms B said that she and Mr A were an "item". Ms F said she did not believe Ms B, but not long after that conversation when they were "out for drinks" one evening, Ms B received a text message from Mr A. Ms B told Ms F that Mr A's message was "very friendly". She also told Ms F that Mr A had "taken some photos". Ms F did not see this text or the pictures, but she told Ms B that it was inappropriate for her Care Manager to be sending her text messages at 8.30pm.

Ms B later told Ms F that she and Mr A had sexual relations whenever they were left alone in her parents' house. Mr A recorded his appointments with Ms B in the clinical records, which occurred approximately once a fortnight. The majority of the appointments were marked "H/V" — home visit. Ms B said that when Mr A visited, her parents would leave the house so that she could discuss her issues with Mr A in private.

Ms B stated that her appointments with Mr A occurred more frequently than once a fortnight. She said that while she was living with her mother she was meeting Mr A for coffee two or three times a week.

On 2 November 2006, Mr A recorded meeting with Ms B. They discussed her plans for the next six months, which included starting a part-time course at the beginning of 2007, and that she intended, at the end of November, moving out of her parents' home into a flat in another area. Mr A noted that her mood had improved "greatly since last session". Ms B would contact him when she was able to confirm her new address. Mr A recorded that he would pay Ms B a home visit in two weeks' time and would refer her to the new District Health Board (DHB2) mental health service when he had her new address.

On 21 November, Mr A visited Ms B at her flat. He recorded that she was having some difficulty adjusting to her new environment, but was "excited". He noted that Ms B was to be referred to the DHB2 community mental health service, and that he would discharge her from his caseload as soon as she was accepted by this service.

Ms B stated that Mr A continued to have regular "liaisons" with her after she shifted to her flat. Intimacy, which included sexual intercourse, would occur up to three times a week. Mr A would generally visit her between 8.30am and 5pm. Her family knew of her friendship with Mr A, but did not know that she was sexually involved with him.

Ms B said that Mr A would often point out that it was "his career that was on the line" because of their relationship. She said that as a result, she could not approach her sister or friends for advice. Ms B stated, "I was torn without preparation or support that I was now being used by my nurse, who claimed to be in love with me. I definitely was with him."

Prior to Christmas 2006, Ms B became aware that Mr A was involved with other women and that her older sister's friend was his current partner. Ms B stated that this was "truly devastating and humiliating and a huge set-back" in regard to her health and well-being. She said that for a long time she believed that if she was so badly treated by her nurse, someone she had trusted, then she "really must [be] worthless".

Ms B said that while Mr A did not physically threaten her, she sometimes felt he was verbally abusive. At times the nature of their conversations and the text messages Mr A sent her were "negative". She felt emotionally intimidated and dominated by him. She said there were times when he was "intense" and others when he rejected her. This made her feel bad and angry with herself.

Mr A subsequently advised that his relationship with Ms B finished towards the end of 2006.

Transfer to DHB2

On 4 December, Ms B (accompanied by Mr A) met her new Care Manager, Ms C, at the community mental health service. Ms C noted her plan to see Ms B again in one week. Ms C recorded that she and Mr A would manage Ms B in a "shared handover" over the Christmas/New Year period. DHB2 would fully take over Ms B's care at the beginning of 2007.

On 29 December 2006, Ms B was admitted to Hospital 1 following a paracetamol overdose. The crisis team noted that Ms B stated that she took the overdose because she was finding flatting stressful because she did not want her flatmates to know she had a psychiatric history, and her parents were due to go on holiday on 3 January. On 31 December, she was discharged back to her parents' home.

On 8 January 2007, Ms C noted that she received a call from Ms B to cancel the appointment scheduled that day because Mr A was meeting her for the last time. Ms B told Ms C that she had been admitted to hospital the previous week with an overdose, and that she had been cutting herself, "possibly due to multiple stressors/changes occurring".

Ms C saw Ms B regularly for the management of her stress, self-harming, eating disorder and weight management. Ms B was also being treated by a private psychiatrist.

In May 2007, Ms C drafted a crisis management plan for Ms B which was signed off by her medical practitioner, her family, Ms B herself, and her psychiatrist. Ms C stated that during this time she had difficulty in engaging Ms B. There appeared to be a "block". Ms C talked to Ms B about this. Ms B told Ms C that she had had problems with previous people involved in her care and that as a result she lacked trust.

Continuation of relationship

Mr A continued to communicate with Ms B by text message from his personal mobile phone after he ceased to be her Care Manager. On 12 March 2007, he sent Ms B a mobile phone picture of male genitalia. Ms B kept this picture and these later text messages as she believed that she might need these later as evidence. A transcript of some texts from May to the end of July 2007 is on Ms B's clinical file. It shows that the texts largely discussed how Ms B was feeling, their "friendship", and meeting for coffee. For instance, at 7.43pm on 22 June 2007 Ms B sent Mr A the following text message:

> "Say or think what u like, im now numb 2 the situation but just trying to be honest re us doing coffee I am feeling rather torn, I can't shake the feelings/thoughts that our friendship was a sham, u said if I felt certain things then I didn't know u. I did feel those things, so I closed that chapter So im not that sure what to do — I don't feel I know u or that u really know me, im unsure that I want any friends anymore, let any1 know, lie or hurt me."

Mr A responded at 7.44pm:

> "That is up to you and you can believe what you want about me. If you don't want to meet up for coffee that is up to you."

At 8.30pm Mr A said:

> "I have said how I felt and how I want to be there 4 you. Have said everything I can so take care and look after yourself I will leave you alone as will be better 4 you."

Disclosure

On 20 August 2007, Ms C met Ms B at the community mental health service for a routine appointment. Ms C noted that most of the session focussed on "challenging thoughts/core beliefs", but during the discussions, Ms B disclosed that she had had a sexual relationship with Mr A. Ms B told Ms C that the relationship finished in February 2007, but she felt that "any weight gain would encourage this again, and also feels immense guilt/blame/shame".

Ms C advised Ms B that disclosure of the full nature of the complaint would be required if the investigation process was to proceed.

On 26 November 2007, Ms B made a formal statement to DHB1 Employee Relations Manager Mr H, in the presence of Ms C and DHB2 consultant clinical psychologist Ms E.

On 3 December, Mr H met Ms B again with DHB1 Mental Health Service Acting Manager Ms G and Ms E. The purpose of the meeting was to update Ms B on the investigation. Ms B showed Mr H and Ms G the mobile phone picture that Mr A had sent her on 12 March 2007, which she had decided to keep as evidence. Mr H recorded that "it was an explicit picture of male genitalia aroused".

Related issues

Actions taken
On 20 August, Ms C informed the DHB2 Clinical Co-ordinator Community Mental Health Services, Ms D, that Ms B had disclosed a sexual relationship with her DHB1 Care Manager, Mr A.

Ms D completed an Incident Accident Hazard Review form. She listed the key actions and/or recommendations as:

> "• Policies and procedures currently in place to deal with situation — Nursing Council Standards, DHB policies and procedures.
>
> • Discussed with [the] Nurse Leader DHB2, [the] Clinical Director DHB2 and sent letter outlining complaint to [Ms I], Director of Nursing
>
> • Client was supported throughout."

The Clinical Director of DHB2 Mental Health Clinical Directorate, Ms J, subsequently advised that on 20 August Ms I telephoned the DHB1 Director of Nursing, Mr K, to advise him of this allegation. Ms I made this disclosure with a view to enabling DHB1 to assess any potential risk Mr A might pose to patient safety. DHB1's General Counsel advised that the Director of Nursing asked for details to be forwarded as soon as possible, so that they could take action.

On 24 August, Ms C and Ms E met with Ms B to outline a process for supporting her in light of the disclosure. Ms C noted that Ms B was having difficulty dealing with her emotions and had been cutting herself. Ms B was worried that the relationship was "out in the open" and that no one, including her family, would believe her.

On 29 August, Ms D drafted a letter to the Nursing Council advising that a client of DHB1's mental health service had alleged that she had been in an intimate relationship with her registered nurse Care Manager, Mr A. On 13 September, Ms I signed the letter of complaint and forwarded it to the Nursing Council.

Ms I advised that she emailed a copy of this letter to Mr K, and he followed this up with a telephone call. Mr K was concerned about what action to take regarding Ms B's allegations, as he was about to go on leave. There is no record of actions taken about this matter by Mr K or by the Acting Director of Nursing while Mr K was on leave overseas.

DHB1's General Counsel said that there is no record of DHB1 receiving a copy of Ms I's letter to the Nursing Council. Until they had those details they had no basis to commence an investigation. In contrast, Ms J said that DHB2 gave DHB1 sufficient information to commence an investigation if they considered it appropriate.

Mr A had successfully applied for a position with one of DHB2's specialist mental health services on 4 July 2007, but had yet to take up the position. On 29 September the psychologist from the service, after discussions with the DHB2 Legal Advisor, contacted Mr A. She invited him to attend a meeting with her and the DHB2 Acting Clinical Leader Specialty Services to discuss the allegations made by Ms B. He advised that he had changed his mind about accepting the position. He was asked to confirm his decision in writing.

On 9 November the Nursing Council notified HDC. Four days later (13 November) the DHB1 Quality Manager and DHB2 Quality Improvement Officer were advised by HDC that the complaint had been received.

On 20 November, DHB1's Mr H, and the Service Manager of DHB1's Mental Health Services met with Mr A to discuss the allegation that he had been in a sexual relationship with Ms B. Mr H advised Mr A that this "constitutes serious misconduct" and that he was not "currently required to work" during the investigation process, which could result in disciplinary action and dismissal. Mr H wrote to Mr A later that day to confirm the discussion.

On 26 November, Ms D met with Ms C, Mr H and Ms G, to discuss the management of Ms B's disclosure. Ms D expressed concern "about the breakdown in the investigation process". Ms D pointed out that she had made her complaint on 28 August and at that time had been informed that the Nursing Council would be notified. Ms D said she was aware that DHB2 management had attempted to arrange a meeting with Mr A, who was, at that time, applying for another position.

On 26 November, Mr A emailed Mr H to advise him that he had handed in his notice and did not intend to renew his nursing registration. He stated that this would "save the DHB of going through the process of an investigation. … I will have no further comment to make on this issue."

Mr H informed Mr A that, regardless of his decision to resign and not to renew his registration, DHB1 had a responsibility to proceed with an investigation. Mr H advised Mr A that if he decided not to attend a meeting with DHB1 management, they would be forced to reach a decision based on the evidence they had gathered, and without his input.

On 27 November Mr H wrote to Mr A advising him that DHB1 had accepted his resignation. Mr H stated, "It is important that we conclude our investigation by interviewing you. The interview will provide you with an opportunity to hear the allegations raised in regard to your alleged behaviour and to formally respond to those allegations."

Mr H advised Mr A that he was to attend a meeting at 9.30am on 29 November 2007. Mr A declined to attend any meeting or make any statement about Ms B's allegations, and he had no further contact with Mr H or any other members of DHB1 management.

Mr A
Although Mr A resigned from DHB1 on 26 November 2007, his employment formally ceased on 7 December 2007.

On 11 January 2008, Mr A advised HDC that he did not intend to renew his practising certificate, which was due to expire on 31 March.

Mr A advised HDC that he is aware of the professional standards and responsibilities for registered nurses regarding patients.[1] He also advised that he had "not been provided with any information in relation to the outcome of the internal review or investigation in relation to this matter".

Nursing Council 2008
On 19 June, the Nursing Council confirmed that Mr A had not renewed his practising certificate.

On 18 September 2008, the Nursing Council advised that the Council does not notify an employer of a complaint unless the employer is the person notifying the Council about a nurse at the time a complaint is received.

Relevant policy
DHB1 had a Code of Conduct policy in place in 2006/2007 which set out employee responsibilities in the areas of integrity, conduct and performance, and identified instances of behaviour deemed to be in breach of the Code of Conduct. The document listed examples of misconduct and serious misconduct, which included:

"• Using the DHB1 email, cell phones or other equipment to transmit offensive, insulting or harassing messages to other employees or people outside the workplace. …
• Racial, sexual or other improper harassment of any employee, patient or visitor to DHB1 (verbal or other, including the use of email, electronic equipment and systems, and texting)."

[1] The relevant professional standards are attached as Appendix 2.

Responses to provisional opinion

Most of the comments from the parties have been reflected through amendments to the main text. The remaining comments are summarised below.

Mr A
Mr A stated:

> "I acknowledge that I entered into an unprofessional relationship with the [complainant]. It is something that I am deeply ashamed of and I am truly sorry for the stress that I have caused the [complainant], her family, my former employer and my work colleagues. …
>
> While I make no excuses for my behaviour, I would like to acknowledge that before, during and after the relationship I have struggled with my own mental health problems and believe that this may have contributed to the relationship progressing as far as it did. … It is because of my own mental health issues that I decided that a career in the nursing profession was no longer appropriate. As previously stated, I have no intention of returning to the nursing profession."

District Health Board 2
Ms J, Clinical Director Mental Health Service Directorate, responded to the provisional opinion for DHB2. Ms J stated that when DHB2 Director of Nursing Ms I advised the DHB1 Director of Nursing, Mr K, about Ms B's disclosure on 20 August 2007, this was an unproven allegation. Ms J stated:

> "As the person complained about was not a [DHB2] employee, [DHB2] was not in a position to investigate the complaint and, therefore, could not decide on the validity of the issues as told to us by the client. We did, however, give [DHB1] sufficient information to conduct an investigation in the event if they considered this appropriate."

Ms J also commented that DHB2 supported Ms B in making her complaint to the Nursing Council. She asked that, in light of this new information, the comments made regarding the apparent lack of communication between DHB1 and DHB2 in the "Other Comment" section of the report be reviewed.

DHB1
Counsel for DHB1 advised that as a result of another unrelated complaint, DHB1 and DHB2 have implemented a memorandum of understanding regarding joint reviews when care occurs at both DHBs.

Opinion: Breach — Mr A

Under Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), Ms B had the right to have services provided that complied with professional and ethical standards. She also had the right to be free from discrimination, coercion, harassment, and sexual, financial, or other exploitation (Right 2 of the Code).

Professional relationship
Mr A was already an experienced registered nurse when he commenced employment with DHB1 Community Mental Health Service on 7 March 2005. Soon after being assigned as Ms B's Care Manager, he recorded his first contacts with her on 31 January and 10 February. Throughout 2006, Mr A kept clinical records of his professional contacts with Ms B to counsel her and plan the management of her issues until her care was transferred to the DHB2 mental health service on 8 January 2007.

It is clear from the records that Mr A had a professional relationship with Ms B and that she was a vulnerable young woman.

As a registered nurse, Mr A was required to observe the boundaries of a professional relationship with Ms B. Her vulnerability made it even more imperative. As the Commissioner stated in Opinion 04HDC05983:

> "When [a health care provider] has a professional relationship with a client, especially a client with mental health needs, he or she must take extreme care to establish and maintain the boundaries of that relationship. A breach of professional boundaries is a breach of trust and can result in physical and/or emotional harm to the client."

The importance of maintaining professional boundaries in such situations is clearly set out in nursing ethical standards, and it has been recognised in other HDC cases. In a recent report,[2] registered psychiatric nurse Ms Clarissa Broderick provided expert advice and made the following general comments about professional boundaries:

> "Implicit in Mental Health Nursing is the need to appreciate the boundaries of the nurse client relationship … It is usual for nurses to 'like' their clients within the context of the professional relationship. However the nurse has the responsibility to recognise the significant power imbalance that exists within the therapeutic relationship. The dynamics of a relationship that involve disclosure on the client's part, and empathy and understanding from the nurse, can arouse strong emotions for the client and feelings of dependence. To take advantage of these emotions, to form a 'friendship', intentionally or not, is unethical and exploitative …

[2] Opinion 06HDC06218, 26 January 2007, page 18.

> Nurses know it is not acceptable to accept invitations to meet socially with clients or ex-clients, nor is it acceptable to exchange phone numbers. It is a breach of the Nursing Council's Code of Conduct, and a significant departure from what would be considered acceptable."

Inappropriate/sexual relationship

Ms B has a history of anxiety, eating disorder, emotional distress, and poor sleep patterns. Her mental health issues occasionally result in suicide attempts and other self-harming behaviour. Ms B's mental health has been managed by the DHB1 and DHB2 mental health services and the eating disorder service.

Ms B stated that her relationship with Mr A became personal within the first six months of 2006**.** Mr A and Ms B initially began to exchange text messages in April 2006, when there was concern for Ms B's safety when her parents went on holiday for three weeks and she was alone at home. However, the text messaging continued when the initial reason no longer applied, and greatly increased in frequency in July and August 2006.

Ms B was unable to give an exact date when her relationship with Mr A became sexual. She recalls that they had sexual intercourse for the first time, at her parents' home, shortly after her discharge from hospital on 17 September 2006. They continued to have sexual relations when they were left alone in her parents' house.

On about 30 September 2006, Ms B told a friend that she and Mr A were an "item". In October, this friend witnessed Ms B receive a "very friendly" text message at 8.30pm from Mr A.

In November 2006, Ms B moved to a flat. Mr A visited her frequently at her flat, usually during the day, and they had sexual intercourse. The relationship ended in late 2006, but Mr A and Ms B continued to communicate by text messages.

Mr A told his former employers and HDC that he had no comment to make about the allegations made against him by Ms B. However, Ms B's complaint is supported by the following information:

- Although text messages were an agreed part of Mr A's plan to monitor Ms B's well-being, the messages were unnecessarily frequent and occasionally inappropriately timed and worded. Furthermore, the text messages continued long after the therapeutic relationship ceased and when Mr A had no professional reason for maintaining contact.

- In September 2006, Ms B disclosed to Ms F that she was sexually involved with Mr A.

- On 12 March 2007, Mr A sent Ms B a mobile phone picture of male genitals (which was subsequently seen by Mr H and Ms G).

- On 20 August 2007, Ms B disclosed to Ms C, her DHB2 Care Manager, that she had had a sexual relationship with Mr A.

- Ms B's account of the relationship has been consistent.

In light of this, I believed Ms B's complaint that there was a sexual relationship. After reading my provisional opinion, Mr A acknowledged that he had entered into an "unprofessional" relationship with her. He stated that he was ashamed of it. He also indicated that his own mental health problems may have contributed to the relationship "progressing as far as it did".

Mr A has confirmed that he is aware of the professional standards for nurses. He has also subsequently admitted that his relationship with Ms B was "unprofessional". At the time of these events, he must have known that his relationship with Ms B breached those standards, including the code of conduct that prohibits a registered nurse from entering into a sexual or intimate relationship with a client. This prohibition is essential for the maintenance of public trust in the profession and is deeply embedded in nursing ethics and professional guidelines.

In this case, the inequality of the relationship was accentuated by the fact that Ms B was vulnerable emotionally and placed her trust in Mr A to assist her to overcome the stress factors in her life that led her to self-harm. It is irrelevant that the sexual relationship was consensual and that Ms B complained only after she realised that Mr A was involved with other women. It is the responsibility of the registered nurse to maintain professional boundaries and ethical standards. Mr A abused the trust of his patient and abrogated his responsibilities.

Furthermore, while I acknowledge that Mr A has himself been unwell, his continued silence and refusal to discuss Ms B's "allegations" until September 2008 is inexcusable and shows little concern for Ms B's welfare.

Mr A had a sexual relationship with Ms B while he was her Care Manager, between August and December 2006, and it is clear that an inappropriate relationship continued for a number of months both before and after he ceased to have responsibility for her care. In my opinion, Mr A breached Rights 2 and 4(2) of the Code.

Opinion: No breach — District Health Board 1

Direct or vicarious liability
DHB1 had an obligation to provide Ms B with appropriate and safe care. As Mr A's employer at the time of these events, DHB1 is vicariously liable for Mr A's breaches of the Code unless it can show that it took reasonable steps to prevent those breaches from occurring.

In 2006, DHB1 (the Board) had a Code of Conduct that specified the Board's expectations regarding patient/staff relationships. The document listed among the examples of misconduct and serious misconduct, "racial, sexual or other improper harassment of any employee, patient or visitor to DHB1 (verbal or other, including the use of email, electronic equipment and systems, and texting)".

In my view, Mr A was aware of his responsibilities and obligations.

I am satisfied that DHB1 provided a clear expectation of acceptable staff behaviour. I also note that it responded promptly and appropriately once it was advised of this complaint by HDC. In my opinion, DHB1 did not breach the Code and is not vicariously liable for Mr A's breaches of the Code.

Other comment

Some doubt remains about whether DHB1 was in a position to act earlier on the concerns about Mr A. There are conflicting accounts about the information DHB2 provided to DHB1. The two DHBs do not appear to have a clear paper trail of when and how Ms B's allegations were communicated between the two DHB's nursing management. This makes it impossible to be sure about whether DHB1 had sufficient information to act sooner on the concerns.

I am concerned by this. Whatever the reason, it appears that there was a six-week delay before the allegations were appropriately addressed by Mr A's employer. Although Ms B was no longer in the care of DHB1, and her relationship with Mr A had long ceased, Mr A continued to be employed in an autonomous position by DHB1.

I have been advised that recently DHB1 and DHB2 have developed a memorandum of understanding to ensure that when care issues arise that involve both DHBs, they will conduct a joint review. I have asked DHB1 to review this memorandum of understanding to ensure that it also addresses the issue highlighted here.

Follow-up actions

I intend to take the following action:

- Refer Mr A 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.

- Send a copy of this report to the Nursing Council, with a recommendation that it consider Mr A's conduct should he seek to renew his practising certificate and return to nursing.

- Send an anonymised copy of this report to DHBNZ, the New Zealand Nurses Organisation, and the New Zealand College of Mental Health Nurses, and place it on the Commissioner's website, www.hdc.org.nz, for educational purposes.

Addendum

The Director of Proceedings considered the matter and laid a charge before the Health Practitioners Disciplinary Tribunal. The Tribunal made a finding of professional misconduct. Penalties included cancellation of registration, censure, a fine of $500, and $5,000 costs. Prior to re-registration he must undergo a medical and psychiatric examination to establish that he is mentally and physically fit to practice. Following re-registration he must undertake post-graduate studies in ethics and boundaries, work for a period under supervision. The nurse was given full name suppression.

The Director decided to issue proceedings before the Human Rights Review Tribunal, but was able to settle the matter by negotiated agreement.

Link to HPDT decision:

http://www.hpdt.org.nz/portals/0/nur08112ddecdp070(anon).pdf

Appendix 1 — Code of Health and Disability Services Consumers' Rights

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

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

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

Appendix 2 — Relevant professional standards

The Nursing Council's "Code of Conduct for Nurses and Midwives", printed August 2005.

> "Principle Two
>
> The nurse or midwife:
>
> Criteria
>
> 2.1 is guided by a recognized professional code of ethics applied to nursing and midwifery;
>
> Conduct in Question
>
> Some examples of behaviour which could be considered as a basis for a finding of professional misconduct or imposing a penalty are listed below:
>
> …
>
> - Entering into a sexual or inappropriate intimate relationship with a client or ex-client."

The Nursing Council's Competencies for the Registered Nurse scope of practice (September 2004):

> "1.6 Practises nursing in a manner that respects the boundaries of a professional relationship with the client. …
>
> 7.0 Ethical accountability:
>
> The applicant practises nursing in accord with values and moral principles which promote client interest and acknowledge the client's individuality, abilities, culture and choice."

Mental health performance criteria

> "The applicant:
>
> …
>
> - Recognises ethical dilemmas and problems arising in a mental health nursing context.
>
> …
>
> - Consults with experienced mental health nurses when confronted with an ethical dilemma.
> - Practises within recognised codes of ethics and codes of conduct."