

Medical Officer in General Practice, Dr A

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

(Case 07HDC11761)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Dr A	Provider/Medical officer in general practice
Ms B	Consumer
Mr C	Community health trust chair and chief executive officer
Ms G	Health centre receptionist
Mrs D	Second health centre receptionist
Mrs E	Nurse leader, the Trust
Mrs F	Trust clinical nurse
The Health Centre	A health centre

Complaint

On 3 July 2007 the Commissioner received a complaint from a community health trust Chair and CEO Mr C about the services provided by medical practitioner Dr A to Ms B. The following issues were identified for investigation:

- *The appropriateness of Dr A's relationship with Ms B between September 2004 and March 2007*
- *The appropriateness of the services provided by Dr A to Ms B between September 2004 and March 2007*

An investigation was commenced on 16 July 2007.

Information reviewed

Information was received from:

Ms B
Dr A
Mr C
Mrs D
Trust Clinical Director
Trust Nurse Leader
Trust Clinical Nurse
Former Health Centre receptionist's mother

Ms B's clinical records were obtained and reviewed, as well as a 2007 desk-top calendar she kept in the nurse's room at the medical clinic. The management of a motel also provided information.

History of contact between parties

Ms B

Ms B immigrated to New Zealand and completed her nursing training in 2004. While she was waiting for the results of her nursing examinations in 2004, she applied for a temporary work permit. Ms B applied for New Zealand residency and was referred to Dr A for the required immigration medical check.

Dr A

Dr A is an overseas-trained doctor and is registered in New Zealand within a general scope of practice. He commenced practice in August 1995, and was first contracted to a community health trust (the Trust) in February 2005. During the events under investigation, he worked as the sole medical practitioner at the Trust's health centre.

2004 — initial contact

Dr A first met Ms B on 14 September 2004 when she was referred to the clinic for an immigration health check.

The immigration health check included a chest X-ray. Dr A recorded that he reviewed Ms B's X-ray on 14 October 2004. He telephoned Ms B to tell her that he had the result of her X-ray and offered to deliver the report to her home. Ms B suggested that Dr A post the report. However, Dr A told her that he had to pass her house on his way home and it would be no trouble to deliver the report. Ms B invited Dr A to go out for coffee to show her appreciation. Dr A accepted the invitation.

Ms B said that Dr A telephoned her regularly for the next two years and sometimes when he called said he was tired and needed a massage. Dr A denies contacting Ms B at home during this period.

2005

On 14 May 2005, Ms B's sister visited from overseas. She had forgotten to bring her usual medication, so Ms B took her to Dr A's clinic. Ms B, who did not have a regular doctor, completed a patient registration form at this visit, because she was aware that consultations would cost less if she was registered with the practice as a regular patient. (Despite a request for all Ms B's records, this form has not been provided.) This visit was documented in Ms B's records.

During the visit, there was some discussion between Ms B and Dr A about her current job as a registered nurse in a rest home. At this time she was holding a one-year work permit and had applied for residency in New Zealand. Ms B denies that she told Dr A she was looking for other employment.

Ms B states that after this consultation, Dr A started telephoning her at her home. He would generally telephone about 2pm, to ask her out, and occasionally suggested she give him a massage. Dr A denies contacting Ms B during this period.

2006

In 2006, Mr C suggested on a number of occasions that Dr A employ a practice nurse, because he was publicly funded to do so. The Trust had provided some nursing services to his practice such as chronic care management as part of its contractual obligations to the District Health Board. The Trust Nurse Leader, Mrs E, spoke to Dr A about the need to employ a practice nurse. She arranged for four new graduate registered nurses to be interviewed for the position. Dr A interviewed the nurses (although he now denies having done so) and they reported back to Mrs E that he had treated them badly during the interview. He did not consider any of these nurses for the position and told Mrs E that he was trying to persuade one of his patients, a registered nurse who worked in a rest home, to take the position.

Ms B is unable to recall exactly when Dr A contacted her and offered her the position, which was for 15 hours per week (three days from 9am to 2pm). She was initially reluctant to accept the position because of the low wage, but she sent Dr A her curriculum vitae and was interviewed and appointed to the position. Ms B started work at the Health Centre on 3 October 2006.

Ms B said that from the time she started work at the clinic, Dr A would stand close when he talked to her, and touch her arm and put his arm around her.

On 22 December 2006, Dr A took Ms B and the Ms G, the clinic receptionist, to dinner at a restaurant. Dr A drove both women home. He delivered the clinic receptionist to her home first. She lived close to the clinic. At this time, Ms B wanted to go to the toilet. Dr A suggested that she could go to the toilet at the clinic or a motel in the vicinity. Ms B told Dr A that she would prefer to go to the clinic. Ms B claims that they became intimate but, because she was nervous, sexual intercourse did not take place.

The following day when Ms B went to work she felt ashamed and gave Dr A a letter of resignation. He told her that she should not leave because of what happened and said, "We are adults."

Dr A denies that he took Ms B to the clinic on 22 December 2006 or that they became intimate. He said he took her straight home.

2007

Ms B kept a desk calendar¹ on the desk in the nurse's room at the clinic. On 3 January 2007, Ms B wrote on the calendar, in pencil, the times and locations that she and Dr A had sexual intercourse. She recorded, "[Ms B and Dr A] — 1st 22/12/06 surg", and noted that on the second and third occasions, sex had taken place at her home.

Ms B recalls that Dr A visited her at home five times during the Christmas 2006/New Year 2007 break. She recorded on her desk calendar that they had sexual intercourse again at her home on 15 January 2007.

Ms B stated that on 1 February, Dr A took her to a motel after work at around 5pm. Ms B recorded this date on her desk calendar. She recalls that they did not go into the motel reception, but Dr A drove directly to a room at the back of the motel. Dr A denies going to the motel and taking Ms B there. There is no record in the motel's register of either Dr A or Ms B being at the motel on that date. The motel management advised that the names, addresses and other personal information relating to their clients are not always recorded.

On 2 March 2007, Ms B recorded on her desk calendar "[Dr A/Ms B]; surg". Ms B recalls that she had gone to see Dr A that day to ask him to sign a form verifying that she had completed the required homework for a course she was undertaking. Ms B said that he grabbed her and "forced" her to have sex. She said, "he ejaculated inside of me".

Later that day, Ms B sent Dr A a text message to say she was angry that he had ejaculated into her. The following morning Dr A sent Ms B a text when she was at work at a rest home (her other part-time job), to say he would give her a prescription for the emergency contraceptive — the "morning-after pill". Ms B replied that she was too busy to get a prescription filled and Dr A said he would call at the rest home and provide her with the pills. Ms B recalls that she later met Dr A in the rest home carpark and he gave her the pills. Dr A denies these events.

Mr C advised that it is quite common for doctors to order medications such as emergency contraceptive pills on a Medical Practitioner Supply Order (MPSO). The MPSO is filled by a pharmacist so that the doctor has a small supply of medications on hand at the surgery that he can give to patients. There would be no need for Dr A to complete a prescription in this situation.

On 13 March Dr A sent Ms B a text message from his mobile phone stating, "Hi. I'm outside." Ms B said that this message was Dr A informing her that he was waiting in his car outside her house.

¹ The calendar was obtained from the Health Centre on 7 September 2007 during the course of the investigation, and the pencil markings were noted.

Ms B noted on her desk calendar, days one to three of her menstrual period on 17, 18 and 19 March. Ms B recorded on her desk calendar for 28 March 2007, “[Dr A/Ms B] — home”.

At around this time, Ms B became jealous of the attention Dr A paid to his receptionist, Ms G. On Dr A’s birthday, on 29 March, Ms B arrived at work, “nicely dressed”, intending to ask Dr A out for a meal. However, she became suspicious that Dr A was going to take the receptionist out, so she hid around the side of the building in her car watching the surgery. Ms B stated:

“I saw him [close] the surgery from 4.10pm then re-open after 30 minutes with him and [Ms G] inside. I was hurt and angry and text him. I said he was greedy and a liar and I want out of his way as I don’t want to get [involved]. I was afraid of STDs [sexually transmitted diseases]. He rang my cell phone and said I was making him feeling guilty and doesn’t like to listen to my nonsense and called me crazy. He text me then later and said he hope I was feeling better. Since then everything was different.”

Ms B recorded this event on her desk calendar with the words, “[Dr A] — closed door surgery 4:05pm reopen before 5pm 4:40 => [Ms G] & [Dr A] inside — F.”

On 29 March Dr A sent Ms B a text message from his mobile phone to say, “Be careful tis cold is bad. I’ll cum now 2 giv u som meds.” The following day Dr A sent Ms B another text, “Hope you are feeling better. I cud not enjoy anything wit family yesterday. I’m tired as well — 2 much computer [stuff] @work.”

On 18 April, Ms B’s Health Centre clinical records show that a mid-stream urine specimen was sent to the laboratory for testing. The six results were reported as normal.

On 3 May, Ms B’s Health Centre clinical records show that she had a repeat mid-stream urine specimen sent to the laboratory for testing. The test showed no evidence of a urinary tract infection.

Around this time, Ms B told Dr A that she was due her routine cervical smear and asked him to take the smear. Dr A told Ms B that he was reluctant to perform the cervical smear on her and that she would have to arrange a National Health Index (NHI) number before he could take a smear. Ms B arranged to be provided with an NHI number.

Dr A also suggested Ms B ask one of her colleagues on her smear-takers course (which she had attended from 6 to 8 March 2007) to do it. He suggested that they could perform smears on each other and this would be a good opportunity for additional experience. When Ms B said that this would be too difficult to arrange he said he “reluctantly” agreed to take the smear for her. Dr A also said that he had

suggested that Ms B ask her “other GP” to take her smear. However, Ms B did not have another medical practitioner.

Ms B’s clinical records show that Dr A took the cervical smear on 9 May. Dr A recorded that he reviewed the result of the smear on 12 May, which was reported to be negative for “intraepithelial lesion or malignancy”.

On 26 June 2007, Ms B telephoned the Trust Clinical Nurse, Mrs F, upset and crying after an altercation with Dr A and his new receptionist, Mrs D. Ms B told Mrs F, “You are going to hate me.” Ms B told Mrs F that she had been having an affair with Dr A.

Mrs F arranged for Ms B to come into the Trust office at 11am and talk to the Trust’s Clinical Director and the Nurse Leader, Ms E. The Clinical Director discussed the matter with Mr C, who took a statement from Ms B in which she detailed the relationship between her and Dr A.

Dr A wrote to Ms B on 26 June 2007 detailing his concerns about her behaviour and suggesting that she “take time to consider how things can be better and feel free to discuss this further”. Dr A did not post this letter. He telephoned Ms B twice after 26 June to enquire whether she had received her pay cheque, which he had sent to the Trust office as she requested. Ms B’s resignation letter was faxed to him from the Trust office on 28 June 2007.

Patient records

During the course of the investigation, Dr A provided records dated 31 July 2007 headed up as follows:

“**[The] Health Centre**

[Dr A]

[Record code]

[Address]

[Phone] [Fax]

To

31 July 2007

Regarding your patient

[Ms B]

[Address]

[Phone]

[Date of Birth]

[Chart no] [Resident] [NHI number]”

The records detailed Ms B’s consultations and procedures from 14 September 2004 to 12 May 2007.

Dr A advised that the chart number is automatically generated when tests, such as Ms B's urine specimens, were sent to the laboratory. He said that when patients are registered at the Health Centre they are registered either as a regular patient, a casual patient, or a visitor. Dr A said that Ms B was a casual patient.

Dr A's denials

Dr A denies that Ms B was his patient and that they were intimate. He stated:

"[Ms B] is not a registered patient at this practice. I only agreed to do her cervical smear as:

- a. [Ms B] made several request [sic] over a few weeks asking to have a smear done.
- b. [Ms B] said that she could not contact the last GP she used in [another area].
- c. I told her to do a colleague's smear and visa versa whereby both gained experience and increase the numbers required for their course. However she insisted on having one done and that she was comfortable with having it done by me.

[Ms B] used a Practice laboratory request form to send off a urine specimen."

Dr A said that, in relation to the communications he had with Ms B, they exchanged texts, and this was primarily work related. Dr A stated:

"I have had no sexual encounters with [Ms B] or any staff as she claims. ...

I always treat my employees well with respect and care. I have never knowingly mistreated any employee.

I can only conclude that despite my being understanding and compassionate to [Ms B's] moody behaviour and her inexperience — now after carefully reading her letter and her allegations, I deeply regret having employed her or having had any contact with her. She is headstrong, manipulative and demanding and with time her true nature will become apparent to others she works with. In hindsight for some reason, it appears she was terribly infatuated and jealous. This led her to see and believe things that did not exist, eg:

1. That I had sexual relations with [Ms G] and [Mrs D].
2. Seeing similar things in my consultations.
3. Stalking the practice to confirm whether this was happening.
4. Always finding fault with staff members and other people.

The more her suggestions went unnoticed the more difficult she became and the more difficult it was to deal and co-exist with, to the extent of even calling me a homosexual.

Her regular confrontation with staff led to problems and staff members wanting to leave. Due to the stress this was causing on all, I may have been short and less patient with her at times.”

Response to Provisional Opinion

Dr A

In response to the provisional opinion, Dr A denied that he had sexual relations with Ms B or that he had treated her as a patient. She had not signed a practice registration form and was never regarded as a patient.

Dr A said that it was convenient for Ms B to use a practice laboratory form for her urine test, and he performed a cervical smear for her only because she requested that he do so several times, despite his reluctance. These tests were automatically logged electronically in the clinic database. Dr A said, “At all times I was under the impression that she had a regular doctor in [another area].”

Dr A said that morning after pills (MAPs) can be ordered on an MPSO form. He does not keep a stock of MAPs and has not ordered any on an MPSO form.

Dr A stated:

“This allegation needs to be carefully and fairly considered with reference to the circumstances of [Ms B’s] association with me, her statements, her character, her strange notations on her workplace calendar, and her false allegations in respect to sexual relations with other staff members. Furthermore for all intents and purposes and to the best of my understanding and knowledge, [Ms B] was never my registered patient.”

Mr C

Mr C confirmed that Ms B was never enrolled with the PHO through the Clinic and was unable to confirm whether or not she was registered with the practice. Mr C stated that Dr A provided medical services for Ms B in the form of an immigration medical, which included a chest X-ray, and took a cervical smear. He also provided contraceptive medication and signed the laboratory forms to request urine tests. Mr C stated: “That means there was a patient–doctor relationship. Whether or not she was ‘registered’ with him or ‘enrolled’ in the PHO is not that relevant.”

Ms B

Ms B provided a detailed response to the provisional opinion which reiterated the information she had previously provided.

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.

Other relevant standards

The Medical Council of New Zealand's publication "Sexual boundaries in the doctor-patient relationship" (October 2006) states:

"The Council has a zero-tolerance position on doctors who breach sexual boundaries with a current patient. ...

[T]he doctor-patient relationship is not equal. Doctors can influence and possibly manipulate some patients, so even if a patient has consented to a sexual relationship this is not a sufficient excuse and it is still considered a breach of sexual boundaries."

Opinion: Breach — Dr A

In this case, I must determine two key issues of fact:

- 1) Was Ms B a patient of Dr A?
- 2) Did Dr A have a sexual relationship with Ms B while she was his patient?

Professional relationship

The medical records show that Dr A provided Ms B with a medical service on four occasions, the first being on 14 September 2004 when she went to see him for a routine immigration health check. This medical examination included a chest X-ray. Dr A received the X-ray report on 4 October 2004 and delivered the report to Ms B at her home. It appears that Ms B consulted Dr A in a professional capacity again on 18 April 2007 and 3 May 2007 when she believed she had a urinary tract infection. Urine samples were sent for laboratory testing and were subsequently reviewed by Dr A. On 9 May 2007 Dr A performed a cervical smear on Ms B. On 12 May he recorded that the results of the smear were normal.

Dr A confirmed that the records of the professional services he provided to Ms B were accurate, although he said that Ms B sent off her own urine specimens to the laboratory. He said he was reluctant to perform a cervical smear on Ms B and suggested that she see another medical practitioner, but agreed to do so when she insisted.

I am satisfied that Dr A provided Ms B with medical services and that she was his patient, at least between 14 September 2004 and May 2007. Although Ms B was not enrolled at the PHO, Dr A acknowledged that she was a casual patient at the Health Centre. Ms B stated that she completed a patient registration form when she attended the health centre with her sister, but this form has not been provided. However, the plain fact is that Dr A was her doctor and she did not see another medical practitioner during this time.

Sexual relationship

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. Right 2 states that patients have the right to be free from discrimination, coercion, harassment, and sexual, financial, or other exploitation.

The professional and ethical standard expected of a medical practitioner is set out in the Medical Council's publication, "Sexual boundaries in the doctor–patient relationship" (October 2006). The standard is non-negotiable. The Council will not tolerate sexual activity with a current patient by a doctor. Any doctor–patient sexual activity is considered a most serious transgression from the doctor's professional standards, irrespective of consent on the part of the patient.

There is discrepancy in the information provided by Dr A and Ms B. Ms B states that a sexual relationship started in December 2006, nearly three months after she was employed as Dr A's practice nurse, and ended on 26 June 2007. Dr A denies that he ever had a sexual relationship with Ms B.

I am satisfied that, on the balance of probability, Dr A and Ms B had a sexual relationship between December 2006 and June 2007. My reasons for this conclusion are:

- Ms B's account that Dr A kept in regular contact with her after her initial consultation with him in September 2004 and subsequent meeting in May 2005 (when he saw her sister) is credible. It stands to reason that Dr A must have had contact with Ms B throughout 2005 and 2006 in order to offer her the position when he was required to employ a practice nurse in the middle of 2006. Mrs E has also stated that Dr A told her he was trying to persuade a patient, who was a registered nurse working in a rest home, to take the position.
- Ms B kept a record of the occasions when she states that she had sexual intercourse with Dr A. This was recorded on a desk calendar in her office in the clinic. Ms B did not have an opportunity to fabricate that record after making her initial complaint to the Trust's management on 26 June 2007. She did not return to the clinic until 7 September 2007, when my staff accompanied her to retrieve the calendar.
- In March 2007, Ms B recorded the onset of her menstrual period on her desk calendar. Ms B maintains that she and Dr A had unprotected sex on 2 March. It is reasonable to infer that Ms B would be concerned about a pregnancy after unprotected sex and, as a consequence, checked that she was not pregnant by recording her menstrual period on a calendar. Ms B did not record her menstrual period dates on the calendar in January and February 2007, although she did so in May and June 2007.
- I consider that Ms B was frank when relating her account of the events in question. She admitted her jealousy and the actions she took to support her suspicions that Dr A was having an affair with the clinic receptionist.
- Ms B's account of events has not changed from the time of her initial statement.
- I have viewed text messages between Ms B and Dr A that indicate a personal relationship and that he visited her at home.

Dr A must have been aware that his relationship with Ms B was unethical. The strict prohibition on a sexual relationship between doctors and their patients exists for the protection of the individual patient, who is actually or potentially vulnerable in what is

an unequal relationship. The prohibition is so essential for the maintenance of public trust in the medical profession that it is deeply embedded in medical ethics and professional guidelines.

The Health Practitioners Disciplinary Tribunal has reiterated the prohibition on doctors entering into sexual relationships with their patients. In *Nuttall* a general practitioner entered into a long-term sexual relationship with his patient when he was aware that she was in a vulnerable state. The Tribunal stated that Dr Nuttall's conduct "constituted gross negligence, malpractice and brought the medical profession into discredit. His actions justify a severe disciplinary sanction for the purposes of protecting the public, maintaining professional standards, and to punish him."²

In *Patel*, a general practitioner was found guilty of professional misconduct because he had a sexual relationship with a current patient. The Tribunal referred to the Medical Council's policy paper "Sexual Conduct With Patients" and its zero tolerance of doctors who breach sexual boundaries with a current patient.³

In this case, the inequality of the relationship was accentuated by the fact that Dr A was also Ms B's employer and knew how much Ms B needed the job. Ms B was vulnerable — both as an employee and as a patient. It is irrelevant that the sexual relationship was mostly consensual and that Ms B complained only when she became convinced that Dr A was also having a relationship with another member of staff. It is the responsibility of the medical practitioner to maintain professional boundaries and ethical standards. Dr A abused the trust of his patient and employee.

I conclude that Dr A had a sexual relationship with Ms B while she was his patient, between December 2006 and March 2007. In these circumstances, Dr A breached Rights 2 and 4(2) of the Code.

² *Professional Conduct Committee v Nuttall* (8/Med04/03P), para 75.

³ *Director of Proceedings v Patel* (59/Med06/36D), paras 57–60.

Follow-up actions

- Dr 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.
 - A copy of this report will be sent to the Medical Council of New Zealand, with a recommendation that the Council review Dr A's competence to practise.
 - A copy of this report, with details identifying all parties removed, will be sent to the Royal New Zealand College of General Practitioners and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
-

Addendum

The Director of Proceedings decided to lay a charge before the Health Practitioners Disciplinary Tribunal which heard the matter in November 2008. In its decision dated 26 January 2009 the Tribunal, by a majority, held that there was a doctor/patient relationship and that a sexual relationship had been established. The charge of professional misconduct was therefore proved. The Tribunal (also by majority) imposed a period of 18 months suspension and conditions on the medical officer's practice. He was censured, fined and ordered to pay costs.

The medical officer appealed the decision to the High Court which overturned the findings of the Tribunal. The Court held that there was insufficient evidence of an ongoing doctor/patient relationship. It found that the sexual relationship developed out of the employment relationship and that the medical officer then provided medical services to someone he was intimately involved with. The Court did not consider this amounted to professional misconduct and allowed the appeal.

The Tribunal decision can be found at:

<http://www.hpdt.org.nz/Default.aspx?tabid=210>