General Practitioner, Dr B

Medical Centre

A Report by the

Health and Disability Commissioner

(Case 19HDC01197)

Health and Disability Commissioner

Te Toihau Hauora, Hauātanga

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Executive summary

1. This opinion relates to a general practitioner's (GP) failure to maintain professional boundaries with a patient.

2. In June 2015, a man, his wife, and their three children were registered as patients of the GP at the medical centre.

3. The GP failed to comply with professional and ethical standards in the following regards:

- She breached professional boundaries with the man while he was a current patient;
- She formed a relationship with the man while she was his wife's and the children's doctor in circumstances where it was likely that the relationship could impact negatively on their care; and
- She breached the woman's confidentiality on 19 November 2018.

Findings

4. The GP breached professional boundaries with the man while he was a current patient, and failed to comply with professional and ethical standards. Accordingly, the Commissioner found the GP in breach of Right 4(2) of the Code.

5. The medical centre was not found in breach of the Code.

Recommendations

6. The Commissioner recommended that the GP enter into a mentoring relationship with a senior colleague recommended by MCNZ, for one year, and that the mentor provide confirmation to the Council and HDC that mentoring has occurred and that the GP appears to be maintaining appropriate professional boundaries with patients and their families. The Commissioner also recommended that the GP apologise to the woman and her family.

Complaint and investigation

7. The Health and Disability Commissioner (HDC) received a complaint from Mrs A about the services provided to her and her children[1] at the medical centre. The following issues were identified for investigation:

- *Whether Dr B maintained appropriate professional boundaries with Mr A in 2018 and 2019.*
- *Whether Dr B provided Mrs A with an appropriate standard of care in 2018.*

[1] Master C and Master E supported the complaint.

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- *Whether Dr B provided Master E with an appropriate standard of care in 2018 and 2019.*
- *Whether Dr B provided Master C with an appropriate standard of care in 2018 and 2019.*
- *Whether Dr B provided Miss D with an appropriate standard of care in 2018 and 2019.*
- *Whether the medical centre provided Mrs A with an appropriate standard of care in 2018.*
- *Whether the medical centre provided Master E with an appropriate standard of care in 2018.*
- *Whether the medical centre provided Master C with an appropriate standard of care in 2018.*
- *Whether the medical centre provided Miss D with an appropriate standard of care in 2018.*

8. The following parties were directly involved in the investigation:

Mrs A	Consumer/complainant
Mr A	Consumer
Dr B	General practitioner
Master C	Consumer
Miss D	Consumer
Master E	Consumer
Medical centre	Provider
Dr F	Medical practitioner
Dr G	General practitioner (GP)/provider
Ms H	Practice Manager

Also mentioned in this report:

Dr I	General practitioner

9. In-house expert advice was provided by GP Dr David Maplesden (Appendix A).

Information gathered during investigation

Background

10. In June 2015, Mr and Mrs A and their three children were registered as patients of Dr B at the medical centre. Dr B has worked as a GP at the medical centre on a contractual basis since 2005.

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11. Dr B stated that the family was transferred to her care around September 2015. She stated that she saw Mrs A so seldom that she did not realise that Mrs A had transferred to her care.

Consultations with the family

Mr A[2]

12. Mr A consulted Dr B in January 2016 and October 2017, and had a final consultation on 21 September 2018. On 27 September 2018, Dr B transferred Mr A to the care of GP Dr I. Dr B said that on each of the three occasions she saw Mr A she provided repeat prescriptions for his blood pressure medication, and lifestyle advice and recommendations for hypertension (high blood pressure). She stated:

> "At no time did I discuss private, confidential or personal information with [Mr A]. The only physical examination that I ever carried out was a routine blood pressure check. My three consultations with [Mr A] were entirely professional and appropriate."

Mrs A

13. Mrs A consulted Dr B twice in 2016, once in 2017, and in July 2018. In response to the provisional opinion, Mrs A said that Dr B also handled her mammography results in July 2015, a smear recall in December 2015, her smear result in January 2016, an appointment reminder in January 2016, a smear recall in March 2017, breast-screening results in June 2017, and a smear recall in July 2018. Mrs A also noted that Mr A's Facebook page contained many pictures of her, Mr A, and their children.

Master E

14. Master E attended the medical centre infrequently, and there is no record of him being seen by Dr B.

Master C

15. Master C was seen by Dr B on 14 April 2014, and in 2017 and 2018 she reviewed incoming correspondence and results relating to an injury of Master C. In response to the provisional opinion, Dr B stated that she also saw Master C on 24 June 2013 for a sore throat and mild rash. She said that either she or her locum would have filed the incoming correspondence about Master C's injury.

Miss D

16. Miss D saw Dr B on 21 June 2017.

Development of relationship

17. Dr B stated that she joined Facebook in mid-August 2018 and, in early September 2018, she received a Facebook friend request from Mr A. She said that this was the first Facebook friend request she had received, and she knew that Mr A was a local business owner. She told HDC that she had been to his business premises twice in 2015 but had not been there since then.

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[2] Mr A did not support the complaint or provide information.

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18. Dr B stated that she had last seen Mr A as a patient on 20 October 2017, so at the time that she received the Facebook friend request, "she did not really know [Mr A] at all". In response to the provisional opinion, Dr B said that at the time, she could not be 100% sure that the Facebook friend request was from Mr A.

19. Dr B stated that on the day after she received the Facebook request (15 September 2018), she went to Mr A's business with a friend, Dr F. Dr B said that she asked Mr A whether he had sent her a Facebook friend request, and he confirmed that he had. She said that she told Mr A that she was not intending to have any Facebook friends, and that the only friends she had were in real life. She stated that Mr A then asked whether he could be one of those friends, and she said yes. She stated:

> "While I was at [Mr A's place of work] with [Dr F] she pointed out the potential dangers of social media contact with patients. As we discussed these I certainly recognised that such social media contact had the potential to blur the professional doctor/patient relationship."

20. Dr F told HDC that she does not remember the exact date of the conversation in September 2018. However, she recalls that Dr B mentioned that a patient of hers had either "requested to be friends" or had already "befriended her" on Facebook. Dr F stated: "The patient's name was [Mr A] and [he] was well known to [Dr B]."

21. Dr F said that she had just read the revised Medical Council of New Zealand (MCNZ) statement on Professional Boundaries in the Doctor–Patient Relationship, and reminded Dr B about the guidelines covering doctor–patient relationships. Dr F said that she discussed the fact that it is against the Code of Conduct for a doctor to have a sexual relationship with a patient. She stated:

> "We did discuss whether the same would apply if a patient was no longer registered with the doctor but had been a patient in the past. I remember advising [Dr B] that she needed to be careful about how she navigated this situation."

22. In response to the provisional opinion, Dr B said that she does not accept that the conversation she had with Dr F was about a possible relationship with Mr A because, at the time of that conversation, the possibility of such a relationship did not exist. Dr B disagrees with Dr F's account of the conversation. Dr B said that Dr F was correct when she said that Mr A had "requested to be friends", but is not correct that he had already "befriended her" on Facebook. Dr B stated that Dr F was also incorrect in saying that Mr A was well known to Dr B, and that at that point she had never met Mr A socially or communicated with him on any media platform. Dr B stated:

> "At the time that [Dr F] and I had our discussion [Mr A] was, at the very most, no more than a passing acquaintance who I had seen as a patient on a few occasions over the previous several years."

23. Dr B agreed that Dr F warned her about social media and the impact of that on the doctor–patient relationship, but said that at no time was there any talk about a sexual relationship, nor was there any discussion about past or present patients. Dr B stated that

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at that time, she had given no thought whatsoever to the possibility of forming any form of relationship with Mr A.

24. Dr B said that later that day, Mr A sent her a Facebook message.

25. Dr B told HDC that a week later, Mr A messaged her again saying, "How is your day?" In response to the provisional opinion, Dr B said that on 18 September 2018 she was at Mr A's business, and Mr A told her that he would be coming to the practice on Friday to pick up his blood pressure pills.

26. Dr B said that she then saw Mr A on 21 September 2018 for his repeat script for his blood pressure medication. Dr B stated that she was concerned that the messaging was blurring professional boundaries, and so on 27 September 2018 she transferred Mr A to another doctor at the medical centre, Dr I. Dr B said:

> "At this point I had no relationship emotional, physical or otherwise with [Mr A]. I had simply thought about [Dr F's] advice, recognised the risk, and decided to take steps to ensure that the doctor/patient boundary was not or could not be blurred."

27. Dr B told HDC that "some time later" a relationship developed between her and Mr A, and she met him once in an outdoor public seated area and occasionally when she was out walking. She stated that she had recently separated from her husband, and by the time Mr A told his wife that he intended to leave her (on 18 November 2018), she (Dr B) had an emotional attraction or attachment to him, but there was no physical relationship between them until January 2019.

Mrs A's account

28. Mrs A stated that on 18 November 2018, her husband told her that he was "having an affair". She said that later he told her and the children that he intended to leave and live with his married mistress and her children. She stated that early on the morning of 19 November 2018, he told her that his mistress was Dr B of the medical centre.

29. With regard to when the affair commenced, Mrs A said:

> "He told me on 19 November 2018 while we were standing in the kitchen of our home that the affair had been going on for 'about 6 weeks'. He said he couldn't remember exactly when it started. [Mr A] also said it wasn't just, 'about the sex'. He and [Dr B] had fallen in love, [Mr A] said."

30. Mrs A stated that she does not believe that her husband gave up his marriage of 20-plus years and left her and the children for a six-week affair, and she believes the affair had been happening for much longer than six weeks. In response to the provisional opinion, she and the children stated:

> "We cannot see why [Mr A] would have lied to us in November 2018 about the nature of the relationship he had with [Dr B]. We do not believe he would have left us based on an exchange of innocent messages, a meeting once in an outdoor public seated area and occasionally when [Dr B] was [walking]."

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31. Mrs A stated that she and the children were devastated.

Events of 19 November 2018

32. Mrs A stated that on Monday 19 November 2018, she felt incapable of working, and so made an appointment with the medical centre to see a doctor, hoping to obtain a medical certificate. The telephonist booked her with Dr B (her usual doctor) for later that morning.

33. Dr B said that on the morning of 19 November 2018, Mr A told her that he had told his wife that he was leaving her. In response to the provisional opinion, Dr B said that the fact that Mr A contacted her and told her that he had informed his wife that he was leaving her is not a factor that points to there having been a personal relationship between herself and Mr A at that time.

34. Dr B stated:

> "That morning at work I saw on my template that [Mrs A] was booked to see me as a patient at, I think, about 11.30am. I thought she must have specifically asked to see me and I was scared about why she wanted to see me and what might happen. I got a fright and panicked. I literally feared for my safety. I Facebook messaged [Mr A], telling him that [Mrs A] had made an appointment to see me. At the time I did not really know or appreciate that I was [Mrs A's] doctor."

35. Dr B said that although she had seen Mrs A four times, in the context of a very busy practice, she did not recollect any of the consultations.

36. In response to the provisional opinion, Mrs A and the children stated that there was no possible reason for Dr B to fear for her safety if her account of events was correct. They stated:

> "Why would [Dr B] be fearful of a woman she didn't even remember was a patient? What had [Mrs A] done up to this point — in action and/or speech — to make [Dr B] fear for her safety yet not remember she was [Mrs A's] doctor? And why would [Dr B] panic if she was not out of order at this point? ... This extraordinary statement in the context of her other claims, in our view, simply does not make sense or ring true."

37. At 9.20am on 19 November 2018, Mrs A received a text from Mr A stating: "Why did u make an appointment to see [Dr B]?" Mrs A responded that she needed to see a doctor to get a medical certificate, and Mr A responded: "Please don't make it worse."

38. Dr B met with the Practice Manager, Ms H, and GP Dr G, on the morning of 19 November. She told them that she was separated from her husband and that she had met someone else, and that it was Mr A. She said that it was very much early days and the relationship was not physical or sexual in any way. She told them that she had discovered that Mr A's wife had booked to see her later that morning, and that she would not be able to see her.

39. The medical centre stated that Dr B told Dr G that recently she had met Mr A socially, and had seen him a few times outside of the practice. Dr B explained that Mr A was no longer

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an enrolled patient of hers. Dr G then informed Ms H of the situation, and that Mrs A was coming in for an appointment that morning. Ms H stated:

> "While [Dr B] had reassured the practice the relationship was platonic, it seemed there was potential that a more intimate relationship would develop. The practice's primary concern was for [Mrs A's] health and wellbeing and therefore it was agreed that I would talk to [Mrs A] to explain why it was not appropriate for [Dr B] to consult with [Mrs A] or her children and offer for her to see one of the other doctors at the practice instead."

40. Ms H said that when Mrs A presented at the practice she was distressed, and explained that her immediate health need was to get a certificate for some time off work. Ms H offered for her to see Dr G for that purpose, and Mrs A accepted the offer.

41. Dr G said that during his consultation with Mrs A, he assessed her well-being and helped her to form a plan that included identifying available supports for her, counselling, and time off work, and he provided her with three sleeping tablets for short-term use if required. He also suggested a follow-up appointment.

42. Dr G told Mrs A that if she was not comfortable with him acting as her GP, she could enrol with a female GP or consider moving to another practice, as she might find it distressing if she came across Dr B at the practice. Mrs A indicated that she was in no position to consider moving medical practice at that time.

43. During a consultation on 17 December 2018, Mrs A told Dr G that she was worried about Mr A, and stated: "He suffers from depression and I feel he is going to crash. I still love him, too." She told Dr G that Mr A was still living in the house with her but she expected that to change because Dr B was due back from holiday that day. Mrs A expressed concern that the details of her situation were in her notes and could be accessed by others at the practice.

44. Mrs A said that subsequently her husband left her and the children. She stated:

> "I believe [Dr B] has breached the Code of Ethics on multiple fronts … she did not consider the health and wellbeing of me and my children — as her patients — to be her first priority. I believe she has not acted with moral integrity, compassion and respect for human dignity, nor has she respected my privacy."

Contact with MCNZ

45. The medical centre stated that it did not make a report to the MCNZ about these events. That decision was based on legal advice, and took into account the minimal doctor–patient involvement Dr B had had with Mr A; that he was no longer enrolled with Dr B; and the reportedly non-sexual nature of the relationship at that time. Ms H stated: "We did however, meet again with [Dr B] and advised her she should seek clarification herself from the Medical Council, which she agreed she would consider."

46. MCNZ advised HDC that it received no contact from Dr B about this matter.

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47. In response to the provisional opinion, Dr B stated that she did not contact MCNZ. She said that she contacted the Medical Protection Society on 19 November 2018 and was directed to the Medical Council Guidelines — "Sexual Relationships with Former Patients", particularly in respect of power imbalance at paragraphs 4, 5, and 6.

Subsequent events

48. On 3 September 2019, Master C saw Dr I and reported suffering from anxiety and panic attacks. In response to the provisional opinion, Master C said that he had several counselling sessions through the employee assistance programme offered by Mrs A's employer, which helped him to find ways to cope with these attacks. Through the counselling sessions — some of which Mrs A also attended at his request — it was determined that the trigger for these attacks was twofold — the decision by Mr A to leave the family, and the actions of Dr B as the family's GP, which created in him a feeling of distrust for members of the medical profession.

Further information

Medical centre

49. The medical centre stated that until it received notification of Mrs A's complaint, it was unaware that Dr B had sent a message to Mr A informing him that his wife had made an appointment to see her (Dr B). The medical centre stated that it did not take any action with respect to this issue, other than to advise Dr B that it would be inappropriate for her to have any involvement with the family as their doctor, and not to access their clinical records or discuss any aspects of Mrs A's health with Mr A. In response to the provisional opinion, Mrs A said that during her consultation with Dr G on 17 December 2018, she told him that Dr B had contacted her husband. She said that she asked Dr G whether he considered Dr B's action to be unethical, but Dr G did not respond.

50. The medical centre stated that at the time of these events, it did not have a specific policy on professional relationships and patient boundaries. It said that it has since set up GP docs (an online forum/folder that contains all the practice's policies and procedures) as part of the practice's Cornerstone accreditation process. This includes a sexual harassment policy, which references the MCNZ's guideline, "Sexual Boundaries in the Doctor–Patient Relationship".

Dr B

51. With regard to sending a Facebook message to Mr A telling him that his wife had made an appointment with her, Dr B stated:

> "I do accept with the benefit of hindsight that this is outside accepted practice and something I have never done before or will do again. At the time I was acting out of shock and fear — a situation with which I was totally unfamiliar."

52. Dr B stated that she had last seen Mrs A in July 2018, and that she had seen Miss D once and Master C twice, and had never seen Master E as a patient.

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Responses to provisional opinion

53. Responses were received from the medical centre, the family (a joint response from Mrs A and her children) and Dr B. These have been incorporated into the "information gathered" section of the report as appropriate. In addition, the following submissions were made:

Medical centre

54. The medical centre stated that it had no comment on the information gathered.

The family

55. The family submitted:

> "Overall, we find the narrative by [Dr B] and — at times — [the medical centre] … to be, frankly, unbelievable. We cannot believe [Dr B] did not know [Mrs A] was her patient. We do not believe [Dr B] can be absolved from her responsibility to consider the health and wellbeing of us — as her patients — to be her first priority and protect our privacy because we didn't have enough consultations with her."

56. The family submitted that Dr B had a duty from the outset to put their health and well-being first, and to protect their privacy.

Dr B

57. Dr B submitted that the doctor–patient relationship between herself and Mr A was "very minor, and indeed temporary". She said that she did not provide long-term emotional support or counselling to Mr A.

58. Dr B said that as far as she is aware, Mr A had not been sexually abused in the past. She stated: "There is no suggestion that the relationship was in any way influenced by the previous doctor/patient relationship."

59. Dr B submitted that she transferred Mr A to Dr I on 27 September 2018. She said that at that point she had no relationship — emotional, physical, or otherwise — with Mr A. Following her discussion with Dr F, she "recognised the risks associated with a patient becoming a Facebook friend (whereby the patient has a means to communicate with his/her doctor and ask medical questions, etc.) and decided to take steps to ensure that the doctor/patient boundary was nor or could not be blurred".

60. Dr B believes that an emotional relationship with Mr A started to develop from about mid-October 2018. She first met Mr A in her lunch break at an area where others sit outdoors for lunch. She had separated from her husband but they were still living together in the same house with their children. They had not told their children about having recently separated, because the children were about to go on holiday and they thought it would be better to wait until the children returned.

61. Dr B said that in November 2018, there was only an emotional attraction or attachment to Mr A, and there was most definitely no physical relationship until January 2019. By that time, Mr A and Dr B's husband had moved out of their respective family homes. Dr B said that she "rejects absolutely" any suggestion that "the affair had been going on for 'about 6

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weeks'". She stated that it is not correct to suggest that in November 2018, or prior to that time, there had been a sexual relationship between Mr A and herself, and it is not correct to say that she and Mr A had fallen in love at that time.

Relevant standards

62. The New Zealand Medical Association (NZMA) Code of Ethics (2014) provides: "1. Consider the health and wellbeing of the patient to be your first priority." Under the heading "Responsibility to the Patient", it states:

> "…
>
> 3. The NZMA considers that breaching sexual boundaries with a current patient is unethical and that, in most instances, a breach of sexual boundaries with a former patient would be regarded as unethical. It is acknowledged that in some cases the patient/doctor relationship may be brief, minor in nature, or in the distant past. In such circumstances and where a sexual relationship has developed from social contact away from the professional environment, impropriety would not necessarily be inferred. Any complaints about a sexual relationship with a former patient therefore need to be considered on an individual basis before being regarded as unethical.
>
> …
>
> 12. Doctors should keep in confidence information derived from a patient, or from a colleague regarding a patient, and divulge it only with the permission of the patient or in those unusual circumstances, when it is clearly in the patient's best interests or there is an overriding public good, including the risk of serious harm to another person. If there is any doubt, doctors should seek guidance from colleagues or an appropriate ethics committee
>
> …
>
> 14. When it is necessary to divulge confidential patient information without patient consent, this must be done only to the proper authorities, and a record kept of when reporting occurred and its significance. Whenever possible, the patient should be informed this has occurred.
>
> ….
>
> 45. Doctors should exercise caution when using social media in a professional or private capacity. The risk of boundary violations in this area is considerable. All the ethical obligations set out in this code, such as confidentiality and appropriate doctor patient relationships, are applicable to social media."

63. MCNZ's guideline, "Sexual boundaries in the doctor–patient relationship" (August 2018) states:

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“**Breaches of sexual boundaries**

7. The Council has a zero-tolerance position on doctors who breach sexual boundaries with a current patient. This is because:

   (a) A breach of sexual boundaries in the doctor–patient relationship has proven to be harmful to patients and may cause emotional and/or physical harm to both the patient and the doctor.

   (b) The 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 that is not a sufficient excuse and it is still considered a breach of sexual boundaries.

   (c) Sexual involvement with a patient can impair your judgement about diagnosis or treatment because your emotions are involved. That may influence your decisions about seeking and providing good care to the patient.

What is considered a breach of sexual boundaries?

8. A breach of sexual boundaries comprises any words, behaviour or actions designed or intended to arouse, or gratify sexual desires. It is not limited to physical behaviour. It incorporates any words, actions or behaviour that could reasonably be interpreted as sexually inappropriate or unprofessional.

9. The Council has defined three levels of inappropriate sexual behaviour in the doctor–patient relationship. These are sexual impropriety, sexual transgression and sexual violation.

…

Patients acting inappropriately towards doctors

20. If a patient is attracted to you and their behaviour is threatening the sexual boundaries of the doctor–patient relationship, you need to take measures that put a stop to that behaviour.

21. If possible, try to discuss the patient’s feelings and attraction in a constructive and helpful manner that explains the inappropriateness of a relationship. If that is not possible, it is best to transfer the care of the patient to another doctor.

22. Advice from your peers is helpful and the Council strongly recommends you speak with a peer before taking any action.

…

Sexual relationships with former patients

39. A former patient may be harmed by having a relationship with their former doctor even if they have been transferred to another doctor. The degree of harm is linked to the intensity of the doctor–patient relationship. For example,

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the length of the professional relationship, the frequency of contact, and the type of care provided.

40. Because each doctor–patient relationship is unique, and because everyone reacts differently to different circumstances, it is difficult to have clear rules on when it is or is not acceptable for a doctor to have a relationship with a former patient.

41. Council's zero-tolerance position on sexual relationships in the doctor–patient relationship has not expanded to include doctors and former patients. The Council recognises that, where a former doctor–patient relationship was very minor or temporary, a total ban on any subsequent relationship is unfair and unrealistic.

42. However, there are some situations where it would never be acceptable for a doctor to have a sexual relationship with a former patient.

When a sexual relationship is never acceptable

43. A sexual relationship between a doctor and a former patient is never acceptable if:

…

(d) The doctor–patient relationship is ended in order to initiate a sexual relationship.

Intimate relationships with family members of patients

45. You should think carefully before developing a relationship with a family member of a patient. An intimate relationship between you and a family member of a patient (irrespective of whether there is any sexual contact) will always be regarded as unethical if:

(a) there is any likelihood that such a relationship could impact negatively on the patient's care …"

64. The MCNZ publication "Professional Boundaries in the Doctor–Patient Relationship" (November 2018) states that there is an inherent power imbalance in the doctor–patient relationship, and that:

"2. At all times, you must maintain appropriate professional boundaries with your patients.

…

13. Maintain professional boundaries in the use of social media. Keep your personal and professional lives separate as far as possible. Avoid online relationships with current and former patients."

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65. The MCNZ statement, "Sexual boundaries in the doctor–patient relationship" (November 2018) states:

> "…
>
> 37. A former patient may be harmed by having a relationship with their former doctor even if they have been transferred to another doctor. The degree of harm is linked to the intensity of the doctor–patient relationship. For example, the length of the professional relationship, the frequency of the contact, and the type of care provided.
>
> 38. Because each doctor–patient relationship is unique, and because everyone reacts differently to different circumstances, it is difficult to have clear rules on when it is or is not acceptable for a doctor to have a relationship with a former patient.
>
> 39. Council's zero-tolerance position on sexual relationships in the doctor–patient relationship does not extend to doctors and former patients. The Council recognises that, where a former doctor–patient relationship was very minor or temporary, a total ban on any subsequent relationship is unfair and unrealistic.
>
> 41. A sexual relationship between a doctor and a former patient is never acceptable if:
>
> …
>
> (d) The doctor–patient relationship is ended in order to initiate a sexual relationship.
>
> 43. You should think carefully before developing a relationship with a family member of a patient. An intimate relationship between you and a family member of a patient (irrespective of whether there is any sexual contact) will always be regarded as unethical if:
>
> (a) there is any likelihood that such a relationship could impact negatively on the patient's care; and/or
>
> (b) you have used any power imbalance, knowledge or influence obtained as the patient's doctor to initiate or maintain that relationship."

Opinion: Dr B — breach

Relationship

66. In June 2015, Mr A registered as a patient of Dr B. He consulted Dr B in January 2016 and October 2017.

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67. Dr B said that she joined Facebook in August 2018 and she received a Facebook friend request from Mr A in early September 2018. She stated that this was the first Facebook friend request that she had received, and she knew that Mr A was a local business owner.

68. Dr B stated that the following day, she went to his place of work and asked Mr A whether he had sent her a Facebook friend request, and he confirmed that he had. She said she told Mr A that she was not intending to have any Facebook friends and that the only friends she had were in real life. She stated that he then asked if he could be one of those friends, and she said yes.

69. Over the next two days, Dr B and Mr A had an exchange by Facebook Messenger and a conversation outside Mr A's business. Mr A told Dr B that he would see her later in the week for his blood pressure pills.

70. Mr A had a final consultation with Dr B on 21 September 2018, and on 27 September 2018 Dr B transferred Mr A to the care of Dr I. On each of the three occasions Dr B saw Mr A she provided repeat prescriptions for his blood pressure medication and lifestyle advice and recommendations for managing his hypertension. In response to the provisional opinion, Dr B submitted that the doctor–patient relationship between herself and Mr A was "very minor, and indeed temporary". She said that she did not provide long-term emotional support or counselling to Mr A, and that there was no relationship — emotional or physical — between them. I accept that the care Dr B provided to Mr A was focused on managing his hypertension, but do not agree that there was anything to indicate that the relationship was temporary.

71. MCNZ's August 2018 guideline refers to the importance of recognising danger signs that professional boundaries may be threatened, and advises that in this situation: "Advice from your peers is helpful and the Council strongly recommends you speak with a peer before taking any action." It appears that Dr B did recognise the significance of her developing relationship with Mr A, and in September 2018 she discussed this with a colleague, Dr F, and also the appropriateness of a sexual relationship with a former patient. Dr F recalls that Dr B mentioned that a patient of hers had either "requested to be friends" or had already "befriended her" on Facebook. Dr F stated: "The patient's name was [Mr A] and [he] was well known to [Dr B]."

72. Dr F said that she discussed the fact that it is against the Code of Conduct for a doctor to have a sexual relationship with a patient. She stated:

> "We did discuss whether the same would apply if a patient was no longer registered with the doctor but had been a patient in the past. I remember advising [Dr B] that she needed to be careful about how she navigated this situation."

73. In response to the provisional opinion, Dr B said that she does not accept that the conversation she had with Dr F was about a possible relationship with Mr A because, at the time of that conversation, the possibility of such a relationship did not exist.

74. Dr B stated that in August 2018 she was concerned that Mr A's messaging with her was blurring professional boundaries, but at that time she had no relationship with him. Dr B

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said that a personal relationship developed subsequently, with some meetings taking place, but she asserted that there was no sexual relationship until January 2019.

75. In contrast, Mrs A stated that on 18 November 2018, Mr A told her that he was having an affair, and on 19 November 2018, he told her that the affair was with Dr B. Mrs A said that her husband told her that the affair had been going on for about six weeks. She stated that she does not believe that her husband gave up his marriage of 20-plus years and left her and the children for a six-week affair, and she believes the affair had been happening for much longer than six weeks.

76. Mrs A was very distressed, and on 19 November 2018 she made an appointment to obtain a medical certificate. The telephonist booked her with Dr B, who was her usual doctor. Dr B said that Mr A had contacted her to tell her that he had informed his wife that he was leaving her. Dr B stated that when she saw that Mrs A had made an appointment with her, she got a fright, panicked, and feared for her safety.

77. The appropriate standard of proof in this matter is the civil standard — proof on the balance of probabilities. The degree of satisfaction called for will vary according to the gravity of the allegations. The greater the gravity of the allegations, the higher the standard of proof.[3]

78. In this case, multiple factors point to a personal relationship having developed while Mr A was a patient of Dr B. In September 2018, Dr B had a conversation with Dr F regarding a possible relationship with a patient called "Mr A"; Dr F counselled Dr B to be careful about how she navigated the situation; according to Mrs A, Mr A informed her on 19 November 2018 that he had been having an affair with Dr B for about six weeks; and Mr A contacted Dr B on 19 November to say that he had told his wife that he was leaving her. The subsequent exchange of Facebook and text messages between Dr B and Mr A when Dr B discovered that Mrs A had an appointment to see her on 19 November 2018 also implies a personal relationship. Having considered all these factors, I find it more likely than not that Dr B breached professional boundaries in her relationship with Mr A from early September 2018. In all the circumstances, I am unable to make a finding as to whether the breach amounted to a sexual relationship.

Former patient

79. As noted above, I have found that Dr B breached professional boundaries in her relationship with Mr A from early September 2018. On 27 September 2018, Dr B transferred Mr A to Dr I. The MCNZ guideline, "Sexual boundaries in the doctor–patient relationship", provides that although the Council's zero-tolerance position on sexual relationships in the doctor–patient relationship does not extend to doctors and former patients, there are some situations where it would never be acceptable for a doctor to have a sexual relationship with a former patient. Included in this is where the doctor–patient relationship is ended in order to initiate a sexual relationship.

[3] See *Z v Complaints Assessment Committee* [2009] 1 NZLR 1.

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80. I consider it more likely than not that Dr B terminated the professional relationship with Mr A on 27 September 2018 because a personal relationship with him had commenced. However, based on the evidence, I am unable to make a finding as to whether the professional relationship was terminated in order to initiate a sexual relationship.

Family members

81. Mrs A and the children were still registered as Dr B's patients until the events of 19 November 2018. Mrs A, Master C, and Miss D had previously consulted Dr B, but Master E had never consulted Dr B.

82. The MCNZ publication, "Sexual boundaries in the doctor–patient relationship", states that a doctor should think carefully before developing a relationship with a family member of a patient. It states that an intimate relationship between the doctor and a family member of a patient (irrespective of whether there is any sexual contact) will always be regarded as unethical if there is any likelihood that such a relationship could impact negatively on the patient's care.

83. Dr B stated that she was not aware that she was Mrs A's or the children's doctor. My expert advisor, GP Dr David Maplesden, advised that it should have been readily obvious from a brief review of the patient file, that Dr B was Mrs A's registered GP, and that a further brief review of the consultation module would show who Mrs A had been attending for GP services in recent times. In my view, it should also have been obvious to Dr B that the children were her patients. I do not accept that Dr B did not know or appreciate that she was their doctor.

84. In my view, Dr B should have been aware that forming a personal relationship with Mr A could impact negatively on Mrs A's care and that of the children. I accept that Dr B's interactions with the children were relatively minor; however, these events have had negative effects on the family. Mrs A said that she and her children were devastated by these events.

85. Mrs A was placed in the position of having sensitive discussions with a new provider, and she was concerned that her records could be accessed by other staff at the practice. However, she felt unable to change medical practices at that time.

Breach of confidentiality

86. On 19 November 2018, Mr A told Dr B that he had told his wife that he was leaving her. Dr B saw that Mrs A had made an appointment to see her that morning.

87. Dr B stated: "I got a fright and panicked. I literally feared for my safety. I Facebook messaged [Mr A], telling him that [Mrs A] had made an appointment to see me."

88. Dr Maplesden advised that the fact that Mrs A had made an appointment for a GP consultation was confidential health information. He stated:

> "To share this information with an unauthorised third party when there was no compelling reason to do so (such as significant risk of harm to the patient or others, if

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the information was not shared) I would regard as a departure from accepted practice which would be met with severe disapproval by my peers. The fact that the information was unsolicited and shared on a social media platform might be regarded as aggravating factors, as might the general circumstances of the incident."

89. I agree. I consider that Dr B's actions in this regard were wholly inappropriate.

Conclusions

90. Dr B failed to comply with professional and ethical standards in the following regards:

- She breached professional boundaries with Mr A while he was a current patient;
- She formed a relationship with Mr A while she was Mrs A's and the children's doctor in circumstances where it was likely that the relationship could impact negatively on their care; and
- She breached Mrs A's confidentiality on 19 November 2018.

91. Accordingly, I find that Dr B breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code).[4]

Opinion: Medical centre — no breach

92. On 19 November 2018, Dr B told Dr G that she had formed a relationship with Mr A, and that Mrs A was booked to see her that day. Ms H agreed to meet with Mrs A prior to the consultation and explain that it was not appropriate for her to see Dr B, but she could see another doctor at the practice. Mrs A then saw Dr G. Dr G told Mrs A that the health and well-being of her and her children were his prime concern, and that if she was not comfortable with him as her GP, she could enrol with another female doctor at the practice or consider moving to another practice, as she might find it distressing if she came across Dr B at the practice.

93. Mrs A did not wish to consider moving practices at that time. The practice owners then met with Dr B and told her that she should have no further professional contact with the family, and should not access their clinical notes or discuss their health issues with other family members. Dr B was advised to seek legal advice, and the practice also sought legal advice to ascertain whether it had an obligation to report Dr B to the MCNZ. Based on the legal advice and Dr B's assurances regarding the minimal professional interactions that she had had with Mr A, and the platonic nature of their relationship, and that the professional relationship had been terminated, the practice did not refer the matter to the MCNZ. However, the practice owners advised Dr B that she should contact the MCNZ directly regarding the relationship.

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

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94. The medical centre has since incorporated a specific policy on sexual harassment into its suite of policies.

95. Dr Maplesden advised that the management and doctors at the medical centre addressed Mrs A's immediate health needs empathetically and in a clinically appropriate fashion on 19 November 2018 and subsequently. He noted that to some extent the practice owners were reliant on an accurate portrayal by Dr B of the nature and extent of her relationship with Mr A. Dr Maplesden stated that it was a reasonable action to encourage Dr B to make her own report to MCNZ. I accept Dr Maplesden's advice that given these circumstances, the actions of the medical centre management were reasonable. Accordingly, I find that the medical centre did not breach the Code.

Recommendations

96. I recommend that Dr B enter into a mentoring relationship with a senior colleague recommended by MCNZ, for one year, and that the mentor provide confirmation to the Council and HDC that mentoring has occurred and that Dr B appears to be maintaining appropriate professional boundaries with patients and their families.

97. I recommend that within three weeks of the date of this opinion, Dr B apologise in writing to Mrs A and her family for her breach of the Code. The apology is to be sent to HDC for forwarding.

Follow-up actions

98. A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to MCNZ, and it will be advised of Dr B's name.

99. A copy of this report with details identifying the parties removed, except the expert who advised on this case, will be sent to the New Zealand Medical Association and the Royal New Zealand College of General Practitioners, and will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

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Appendix A: Independent advice to the Commissioner

The following expert advice was obtained from Dr David Maplesden:

"1. Thank you for providing this file for advice. To the best of my knowledge I have no conflict of interest in providing this advice. I have reviewed the available information: complaint documentation from [Mrs A]; statement from [Dr B]; statement from practice manager [the medical centre] [Ms H]. The details of the complaint will not be reproduced here but I have provided comments on the two questions you have asked.

2. ***Whether it was appropriate for [Dr B] to contact [Mr A] and advise him that his wife had made an appointment to see her.***

(i) As far as I can ascertain, [Mr and Mrs A] and their children were registered under [Dr B] following the departure of [their previous GP] in June 2015. In Medtech 32, the patient's registered provider is obvious as a provider code adjacent to the patient's name and other details when the patient's file is opened. In the sample image below, the patient (Mr M Mouse) is registered under provider ASP. The provider should be familiar with their own code and that of their colleagues.

(ii) [Dr B] states in her response that on 19 November 2018 she noted [Mrs A] was booked as a patient to see her and *I thought she must have specifically asked to see me and that I was scared about why she wanted to see me and what might happen.* [Dr B] was aware that [Mrs A's] husband had told [Mrs A] that morning that he was going to leave her and a third party was involved (unsure if [Dr B] had been identified as the third party at that stage). [Dr B] states further: *At the time I did not really know or appreciate that I was* [Mrs A's] *doctor.* It should have been readily obvious from a brief review of the patient file (as noted above) whether [Dr B] was [Mrs A's] registered GP, and further brief review of the consultation module would show who [Mrs A] had been attending for GP services in recent times. I am unable to confirm the content of [Mrs A's] clinical file in this regard but [Dr B] states [Mrs A] had consulted with her twice in 2016, once in 2017 and in July 2018.

(iii) [Dr B] states she Facebook messaged [Mr A] *telling him that [Mrs A] had made an appointment to see me.* I am assuming [Mrs A] had not consented to her health information being shared with [Mr A]. I would regard the fact [Mrs A] had made an appointment for a medical (GP) consultation as being confidential health information. To share this information with an unauthorised third party when there was no compelling reason to do so (such as significant risk of harm to the patient or others if the information was not shared) I would regard as a departure from accepted practice which would be met with severe disapproval by my peers. The fact the information was unsolicited and shared on a social media platform might be regarded as aggravating factors, as might the general circumstances of the incident.

3. ***Whether [the medical centre] managed [Mrs A's] complaint appropriately. In particular, by suggesting that she should move to a different medical practice.***

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(i) The statement from [the medical centre] management notes the following actions taken once they were made aware of the situation regarding [Mr A] and [Dr B]:

- On 19 November 2018 [Dr B] shared details of her relationship with [Mr A] and the fact [Mrs A] was booked to see her that day with colleague [Dr G]. [Dr G] then discussed the situation with the practice manager who agreed to meet with [Mrs A] prior to the consultation and explain it was not appropriate under the circumstances for her to consult with [Dr B], but she could see another doctor at the practice promptly. The discussion took place and [Mrs A] consulted with [Dr G] that day.

- [Dr G] assisted [Mrs A] with her immediate needs and suggested a follow-up appointment. He emphasised the health and wellbeing of [Mrs A] and her family were his prime concern but if she was not comfortable with him as her GP, she could enroll with another female doctor at the practice *or could consider moving to another practice as she might find if distressing if she came across [Dr B] at the practice.* [Mrs A] indicated she was currently in no position to consider moving practices.

- Practice owners then met with [Dr B] to clarify the nature and extent of her relationship with [Mr A]. It was noted that [Dr B] should not have any further professional contact with [the family] and she should not access the clinical notes of the family or discuss their health issues with other family members. [Dr B] was advised to seek legal advice regarding the standing of her relationship with [Mr A] and the practice owners also sought legal advice. Legal advice was sought specifically to ascertain whether there was an obligation to report [Dr B] to the Medical Council. The decision was made not to report based on legal advice and [Dr B's] assurances as to the minimal professional interactions she had had with [Mr A] previously, the platonic nature of their relationship and the fact the professional relationship had been terminated.

- Additional legal advice received referred to the importance of ensuring there was prioritization of the wellbeing of [Mrs A] and her children without involvement of [Dr B], and *to offer* [Mrs A] *the option of transferring to another practice if she wished to do so, which we did. We again offered* [Mrs A] *the option of moving to another practice but fully accepted her decision to currently stay within the practice.*

- Practice owners met again with [Dr B] and advised her she should seek clarification directly from the Medical Council regarding the standing of her relationship with [Mr A].

- Practice management has incorporated a specific policy on sexual harassment into their suite of policies.

(ii) [Mrs A's] statement includes: [Dr G] (at the consultation of …) *then asked me how I felt about continuing to come to [the medical centre]. I told him I had thought about*

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changing practices but I was shocked to learn all the details are in my notes … I asked [Dr G] *if he would prefer that I went somewhere else. I think that's what he wants — he asked me about changing practices in November 19, the first time I saw him after* [Mr A's] *confession … However,* [Dr G] *told me that he wasn't saying that he would prefer I move.*

(iii) [Mrs A] expresses concern that [medical centre] management failed to notify the Medical Council of [Dr B's] relationship with [Mr A].

(iv) Comments

- In my opinion the management and doctors at [the medical centre] addressed [Mrs A's] immediate health needs empathetically and in a clinically appropriate fashion on 19 November 2018 and subsequently. I think it was appropriate to offer [Mrs A] the option of remaining at [the medical centre] or transfer to another practice on this occasion and on subsequent occasions. While [Mrs A] states her perception that [Dr G] wished she would transfer, this is a subjective impression not supported by the contemporaneous documentation which clearly showed the options with which she was provided. The rationale for offering a transfer of practice takes [Mrs A's] wellbeing into account, specifically the potential for further distress caused by seeing [Dr B] at the practice even if [Mrs A] was attending for consultation with other providers.

- It appears practice owners took the situation of a potential collegial professional boundary breach seriously in the prompt meeting with [Dr B] and subsequent seeking of legal advice which appears they followed. They were reliant to some extent on an accurate portrayal by [Dr B] of the nature and extent of her relationship with [Mr A], and based on the information recorded in the response I think it was reasonable to seek legal advice in the first instance prior to considering immediate reporting of the relationship to the Medial Council. I am unable to comment on the quality or appropriateness of the legal advice received, but if the advice was that reporting of the relationship was not mandatory under the circumstances presented, as indicated in the response, it was reasonable to assume the advice was robust and that reporting was not required. I note [Dr B] was encouraged to make her own report to the Medical Council which I think was a reasonable collegial action."

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