General Practitioner, Dr C

A Report by the

Health and Disability Commissioner

(Case 09HDC01342)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Overview

The report considers the evidence that general practitioner Dr C entered into concurrent professional and sexual relationships with a patient, Ms A, and measures his conduct against professional standards set by the Medical Council of New Zealand.

Complaint and investigation

On 10 June 2009 the Health and Disability Commissioner (HDC) received a complaint from Ms A about her relationship with Dr C.[1]

The following issue was identified for investigation:

> *Whether general practitioner Dr C provided services to Ms A in accordance with professional and ethical standards between October 2008 to May 2009, during which period it is alleged that Dr C had a sexual relationship with Ms A.*

An investigation was commenced on 29 June 2009.

Information was received from:

Ms A	Consumer
Mr B	Consumer's former partner
Dr C	Provider/General practitioner
A Medical Centre	Provider
A PHO	Provider

Others mentioned in this report:

Dr D	General practitioner

Information gathered during investigation

Background
Ms A was enrolled with a Medical Centre from 2006. Although she saw several of the general practitioners at the practice, her usual general practitioner was Dr D.

The records show that between 21 February 2006 and 12 May 2009 Ms A made a total of 51 visits to the Medical Centre for herself or her daughter. She saw Dr D on four occasions for herself and ten for her daughter. She saw general practitioner Dr C

[1] On 9 July 2009 HDC received a complaint from Ms A's former partner, Mr B, about the relationship between Ms A and Dr C, and the response of the Medical Centre once it became aware of the relationship.

on two occasions for herself and six for her daughter. She also saw other doctors at the Medical Centre.

Consultations with Dr C
Ms A took her daughter to see Dr C on 1 May, 31 May, 9 June, 26 June, 18 July and 25 November 2008. Ms A claimed that Dr C flirted with her on each occasion. She described his behaviour as follows:

> "I remember one time when he touched the ring I was wearing and said that he thought that told him a lot about the type of person that I was — that I was open and friendly and direct. I also remember a time when I said that he looked very good for his age and he told me that I didn't look too bad myself. Usually his flirting consisted of words — paying me compliments all the time and making me feel good. And lots of eye contact. It's very difficult to explain. It was a general feeling rather than specific things that he did."

Ms A had consultations with Dr C for herself on 31 July 2008 and 28 October 2008, because Dr D was unavailable.

On 31 July, Ms A presented with a "cough, maxillary discomfort, sinusitis". Dr C prescribed temazepam ("as needed for sleep") and ciprofloxacin.

On 28 October, Ms A saw Dr C because she was having trouble sleeping and was nervous about starting her new job. During the consultation she talked about her relationship problems. Dr C recalls that Ms A "expressed lack of confidence in [herself] with return to the workforce, and marital stressors". His notes recorded, "Talk about work, and lack of confidence, and marital issues, for short term anxiolytic" and a prescription of diazepam. Ms A "confessed" her "crush" at this appointment and said that when she confessed these feelings Dr C "laughed and told [her] that [she was] lovely" and explained that this was a common sort of thing to happen in a doctor–patient relationship. Dr C recalls that he "explained that this could not result in a relationship".

The following day Dr C "shared this experience with one of [his] peers, and documented the experience". Dr C provided HDC with a printout of an "inbox report" that showed an amendment to his notes. On 30 October 2008, he deleted the following text from Ms A's notes:

> "Discussion with [another doctor at the Medical Centre] re [Ms A] explaining feelings for [Dr C] of a loving nature and [Dr C] expressing that this is part of a transference process, and not unusual in medical practice, but should be seen in that light, as long as both parties are safe. Shared this with [the other doctor]."

Dr C advised HDC that he deleted this entry because Ms A asked him to "make sure the information stayed out of the notes".

On 30 October Dr C received a handwritten note from Ms A thanking him for his professional behaviour, requesting that he keep the discussion confidential and explaining that she would not see him again as a doctor. Ms A said that she told Dr C

that she would change doctors to avoid embarrassment, and he assured her that this would not be necessary because they were both grown-ups and should be able to handle the situation. Ms A said that Dr C provided her with reassurance that they could continue having a doctor–patient relationship without embarrassment. In contrast, Dr C advised HDC that on 31 October 2008 he called Ms A "confirming receipt of the note, and confirming that I was not her doctor, and I was not going to see her again as a doctor".

On 25 November 2008 Ms A took her daughter, who had had a fall, to the Medical Centre. Dr C was the emergency doctor on that day. Ms A claimed that Dr C "again flirted" with her and she concluded that "he must have felt the same way" as she did. She stated that the door was closed during the consultation. In contrast, Dr C recalls that their conversation was friendly, frank and open, and that most of it occurred with the door open, allowing Ms A's daughter to wander from the room into the play area. He stated that "no sexual advances of any sort occurred at this time".

Sexual relationship

On 27 November 2008, Ms A emailed Dr C asking him whether his email address was confidential. Dr C advised HDC that he believed at the time that they were developing a friendship within the context of a work relationship, because she was working at the PHO and he had a business relationship with the PHO. Ms A denied this, stating that Dr C knew that it was not a business relationship because, if it were, she would not have asked for the emails to be treated as confidential.

During March, April and May of 2009 there were email communications and numerous texts between Dr C and Ms A.

Both Dr C and Ms A agreed that they had sexual intercourse once. Dr C recalls that this occurred on 3 April 2009. On 1 May 2009 Dr C emailed Ms A:

> "You also know that what we've done is wrong from a medical ethical point of view, and whatever you and I think about it privately I and indirectly those dependent on me would be punished for this."

Dr C acknowledged in other email communications that he was aware that the relationship was inappropriate.

On 17 May 2009 Dr C texted Ms A to say that he was in trouble with his wife. His wife had enquired about his phone use and he had admitted his relationship with Ms A.

Dr C and his wife went to Ms A's workplace the next day. Ms A stated that Dr C's wife confronted her. Dr C's wife then telephoned Ms A's partner, Mr B, and told him about the relationship. Dr C and his wife informed the Medical Centre of the situation at a meeting on 20 May 2009. The Medical Centre advised HDC that they were not told at this meeting that Dr C's wife had contacted Mr B.

Ms A considers that she was taken advantage of by Dr C when she was in a vulnerable state because of her relationship difficulties. Her former partner, Mr B,

advised HDC that Dr C's actions in entering into a relationship with Ms A has harmed Mr B and their children.

Dr C's response
Dr C admits that he had a sexual relationship with Ms A:

> "I consider that I have made a grave error of judgement in entering into this relationship, and have done substantial work into understanding the process whereby I entered into this relationship, and have a clear understanding of how to prevent a similar situation in the future. I am deeply sorry for the hurt my behaviour has caused [Ms A] and her family, my wife and my family, and my professional colleagues and patients."

Dr C advised HDC that in late 2008 he was becoming increasingly unwell with a recurrence of an illness, considering further treatment, and recovering from a marital problem.

By letter dated 21 December 2009, Dr C advised HDC that he is agreeable to a senior colleague being appointed by the Royal New Zealand College of General Practitioners to provide mentoring to him four times a year until 31 March 2012.

Relevant professional standards

The Medical Council of New Zealand's *Sexual boundaries in doctor–patient relationship: A resource for doctors* (October 2006)[2] states:

> "Council has a zero-tolerance position on doctors who breach sexual boundaries with a current patient. In the Council's view it is also wrong for a doctor to enter into a relationship with a former patient or a close relative of a patient if this breaches the trust the patient placed in the doctor."
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> …
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> "A breach of sexual boundaries comprises any words, behaviour or actions designed or intended to arise or gratify sexual desires … It incorporates any words, actions or behaviour that could reasonably be interpreted as sexually inappropriate or unprofessional."
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> …
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> "It is difficult for any professional to objectively assess the appropriate action when he or she is attracted to a client. By recognising the danger signs you can consciously avoid any improper behaviour before any damage is done."

[2] In October 2009, the Medical Council issued a revised statement on *Sexual boundaries in doctor–patient relationship: A resource for doctors*. This statement postdates these events but, in any event, it would not have affected the outcome in this case.

…

"If you … feel attracted to a patient ask for help and advice from a respected peer who can help you decide the appropriate and ethical course of action."

…

"A sexual relationship between you and a family member of a patient will always be regarded as unethical if it can be shown that you have used any power imbalance, knowledge or influence obtained as the patient's doctor."

…

"Because each doctor–patient relationship is individual, and because everyone reacts differently to 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."

The New Zealand Medical Association's *Code of Ethics* (2008) recommends:

"Doctors, like a number of other professionals, are involved in relationships in which there is a potential or actual imbalance of power. Sexual relationships between doctors and their patients or students fall within this category. The NZMA is mindful of Medical Council policy in relation to sexual relationships with present and former patients or their family members, and expects doctors to be familiar with this. The NZMA considers that a sexual relationship with a current patient is unethical and that, in most instances, sexual relations with a former patient would be regarded as unethical, particularly where exploitation of patient vulnerability occurs. 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 the 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 considered as unethical."

Decision: No further action

Dr C, a general practitioner, engaged in a brief sexual relationship in early 2009 (with sexual intercourse occurring once in April 2009) with a former patient who had consulted him twice for herself and six times for her daughter, the previous year. Ms A was a patient of the Medical Centre where Dr C worked, but he was not her regular doctor.

Ms A and her former partner allege that Dr C acted unethically in engaging in a sexual relationship with her. In order to determine the appropriateness of Dr C's conduct, and whether it breached ethical and professional standards, it is necessary to

analyse Ms A's varying status as a current patient, a family member of a patient (her daughter), and a former patient.

Current patient
Dr C provided medical services to Ms A on 31 July and 28 October 2008. She had been enrolled as a patient at the Medical Centre since 2006, although her usual doctor was another GP at the centre.

It is increasingly characteristic of primary medical care that a patient will be enrolled with a practice and see various doctors in the practice, even though one is her main doctor. In such circumstances, any doctor from within the practice who provides occasional medical services to the patient enters a doctor–patient relationship with that patient and is subject to the responsibilities a doctor owes a patient — including the duties required by the Code of Health and Disability Services Consumers' Rights (the Code).

At her second consultation with Dr C, on 28 October 2008, Ms A had confided her work and marital stresses, and to having a crush on Dr C. He laughed and told her that she was lovely, then explained to her that her feelings were common in a doctor–patient relationship.

This was obviously a warning signal that the professional boundaries of the doctor–patient relationship could be threatened. The Medical Council advises that in this situation the doctor should "ask for help and advice from a respected peer who can help you to decide the appropriate and ethical course of action". It appears that Dr C did recognise the significance of Ms A confessing her feelings for him and subsequently discussed the situation with a colleague. He deleted reference to this discussion from Ms A's medical records because she asked him to do so, to avoid any further embarrassment when she saw doctors at the Medical Centre.

Dr C followed up the consultation with a telephone call to Ms A on 31 October 2008. They differ in their recollections of the call. Ms A states that Dr C provided her with reassurance that she could continue having a doctor–patient relationship with him without embarrassment. Dr C recalls that Ms A confirmed that he was not her doctor. It is not possible to determine exactly what was said. What is clear is that Ms A stayed as a patient at the Medical Centre, but Dr C did not see her again as a doctor other than for her daughter's visit on 25 November 2008, when he was the emergency doctor.

Family member
Ms A alleges that Dr C "flirted" with her, mostly when she took her daughter to see him. Ms A cannot remember the dates or the specific events but claims that Dr C paid her compliments and made her feel good. She states: "It was a general feeling rather than specific things he did."

Ms A recalls that at the 25 November consultation when she took her daughter to the Medical Centre following an accident, Dr C "again flirted" with her and the door was closed during the consultation. She concluded that he "must have felt the same way" as she did. Dr C recalls the conversation as "friendly, frank, and open", but that it

mostly occurred with the door open and "no sexual advances of any sort occurred". Dr C did not see Ms A's daughter again after 25 November 2008.

In relation to sexual relationships with family members of patients, the Medical Council's statement advises, "A sexual relationship between you and a family member of a patient will always be regarded as unethical if it can be shown that you have used any power imbalance, knowledge or influence obtained as the patient's doctor."

There is no evidence that Dr C used any power imbalance, knowledge or influence obtained when treating Ms A's daughter in his subsequent relationship with her mother.

Former patient

Dr C and Ms A agree that any doctor–patient relationship had ended by 7 January 2009, when she wrote, "I won't be seeing you in a doctor–patient situation unless it's by accident" and "Please forget about the responsibility that you owe me in a professional sense — that's irrelevant seeing as you are not my doctor anymore!"

Regarding sexual relationships with former patients, the Medical Council's statement advises:

> "Because each doctor–patient relationship is individual, and because everyone reacts differently to 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."

Although there is not a total ban on relationships with former patients, there are some situations where it would never be acceptable for a doctor to have a relationship with a former patient, including if it can be shown that the doctor has used any power imbalance, knowledge or influence obtained while the patient's doctor.

I accept that the doctor–patient relationship between Dr C and Ms A was brief. The last appointment did contain an element of counselling about Ms A's personal and employment concerns. Dr C appears to have been aware of the dynamics of the doctor–patient relationship and to have appreciated the concept of transference.

The limited doctor–patient relationship ended by mutual agreement after Ms A expressed her feelings for Dr C. It does not appear to have been ended by Dr C for the sole purpose of starting a sexual relationship with Ms A.

Both Ms A and Dr C consider they were vulnerable. Ms A said that she was vulnerable because of her relationship problems. Dr C stated that he was vulnerable because of his diagnosis of an illness, the effects of the treatment for this illness, and his marital issues.

Dr C knew at the time that it was unethical for him to enter into a relationship with Ms A. In an email sent on 1 May 2009, he said, "What we've done is wrong from a medical ethics point of view."

Discussion
Notwithstanding the permissive approach of the NZMA *Code of Ethics*, I do not consider it ethically appropriate for a general practitioner to enter into a relationship with a recent patient. Trust is especially important in the general practitioner–patient relationship. Patients look to their GP as a person in whom they place trust and impart confidences. The development of an intimate relationship cannot be excused because the doctor is himself vulnerable. As the professional, it is the doctor's responsibility to take steps to avoid any blurring of boundaries in the doctor–patient relationship.

In this case, Dr C was not Ms A's usual doctor. Dr C recognised the warning signs after Ms A confessed her "crush" at the consultation on 28 October 2008 and appropriately consulted a colleague. He also appropriately terminated the doctor–patient relationship on 31 October, although he did not formally document this.

Dr C admits that he subsequently entered a brief sexual relationship with Ms A. He accepts that he made a grave error of judgement in entering into the relationship. He says that he has "done substantial work into understanding the process whereby [he] entered into this relationship, and has a clear understanding of how to prevent a similar situation in the future".

Mentoring
Dr C has agreed to arrange regular (four times per year) mentoring from a senior colleague organised by the Royal New Zealand College of General Practitioners (RNZCGP) for the next two years (until 31 March 2012).

Conclusion
In my view, Dr C's conduct was ethically inappropriate. However, in light of all the circumstances (including Dr C's agreement to receive regular mentoring), I consider that no further action is necessary.

Recommendations

I recommend that:

- Dr C arrange regular mentoring from a senior colleague four times per year to be organised by RNZCGP for the next two years, until 31 March 2012.

- The mentor provide written information to the RNZCGP (by 30 April 2011 for year one and 30 April 2012 for year two) that the mentoring has occurred and that Dr C appears to be continuing to maintain professional boundaries.

- The RNZCGP confirm to HDC (by 31 May 2011 for year one and 31 May 2012 for year two) that the mentoring has occurred and that Dr C appears to be continuing to maintain professional boundaries.

Follow-up actions

- A copy of this report will be sent to the Medical Council of New Zealand.
- A copy of this report with details identifying the parties removed, except the name of Dr C, will be sent to the Royal New Zealand College of General Practitioners and the District Health Board.
- A copy of this report, with details identifying the parties removed, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.