General Practitioner, Dr B

A Report by the

Health and Disability Commissioner

(Case 03HDC03984)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer
Dr B	Provider / General Practitioner
Mr C	Physiotherapist

Complaint

On 18 March 2003 Ms A complained to the Health and Disability Commissioner about the standard of service provided to her by Dr B. Ms A's complaint was summarised as follows:

Dr B, general practitioner, did not provide services of an appropriate standard to Ms A on 11 March 2003. In particular:

- *Dr B did not ensure that Ms A was monitored appropriately after he placed acupuncture needles in her neck and back*
- *Dr B's treatment of Ms A's whiplash injury resulted in a pneumothorax requiring hospital admission.*

Dr B did not provide Ms A with information that a consumer in Ms A's circumstances would expect to receive. In particular, Dr B did not provide Ms A with detailed information about acupuncture treatment.

An investigation was commenced on 24 June 2003.

Information reviewed

- Ms A's clinical records from Dr B
- Ms A's clinical records from Mr C
- Ms A's clinical records from the public hospital

Independent expert advice was obtained from Dr Alexander Chan, a general practitioner who practises acupuncture.

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Information gathered during investigation

On the morning of 21 February 2003 Ms A was involved in a traffic accident on her way to work. As a result of the accident Ms A sustained a whiplash injury to her neck. She did not consult her general practitioner about the injury, but instead went to see Mr C, physiotherapist, who had treated Ms A previously for a whiplash injury.

On 21 February Mr C recorded his initial assessment of Ms A's injury. He noted that she had pain and dysfunction of the cervical/thoracic joint, which he treated with traction. Mr C saw Ms A on 24 and 26 February and treated her ongoing neck pain with traction and massage. On 4 March Mr C noted that the tension and pain in Ms A's upper back had increased and he encouraged her to try stretching exercises to relieve the symptoms. On 7 March Ms A again consulted Mr C and informed him that there was no improvement in her symptoms. Mr C referred Ms A for an X-ray and suggested that she consider acupuncture to relieve the pain.

In the course of her work, Ms A had occasion to pass by an occupational health clinic. She observed that the clinic's general practitioner, Dr B, provided an acupuncture service.

At lunchtime on 11 March Ms A attended the clinic and asked Dr B if he could provide her with acupuncture treatment. Dr B agreed to provide acupuncture treatment and showed Ms A to a treatment room in the clinic where he usually treats patients who require acupuncture. The treatment room is opposite his consulting room. The two rooms are divided by a corridor about 1.5m in width.

Dr B sat Ms A on a chair facing an examination plinth.

Information provided
There is a discrepancy in the evidence about the information provided to Ms A prior to treatment. Ms A stated that Dr B did not give her any details about acupuncture or what to expect. She said that this was the first time she had been treated with acupuncture.

Dr B informed me that he spent time explaining to Ms A "how acupuncture works and also offered her literature to read". He said that prior to inserting the needles he asked her "if she had had fainting or near fainting spells for whatever reason". Dr B recalled that Ms A informed him that she had not fainted previously. He said that if Ms A had revealed a history of fainting he would have asked her to lie face down on the plinth for the treatment, but he prefers patients who require acupuncture to the neck area to be sitting, as it is easier to insert the needles in this position.

Treatment
Dr B pulled a curtain across the end of the plinth to provide Ms A with privacy from people walking past the treatment room door and asked her to lean forward so that she supported herself by resting her arms on the surface of the plinth. Dr B placed an acupuncture needle on either side of Ms A's spine at the base of her skull. A third needle was placed centrally below the 7th cervical vertebra. He finally placed two further needles on either side of the 4th thoracic vertebra in the thick parathoracic muscles that run down either side of the spine.

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Dr B often uses the same type of needle, a 0.25mm x 40mm Tai Chi needle, which he inserts about 2cm into the tissue.

Dr B then gave Ms A the magazines he keeps on the plinth for acupuncture patients to read while being treated. Dr B stated that he kept a "close eye on her initially" and then told her that he would be in the room across from the treatment room and to call out if she had any concerns.

Dr B informed me:

> "As is the case with all my patients receiving back or neck acupuncture I proceeded to spend time explaining to [Ms A] as to how to avoid problems by keeping her back and neck erect while reading, although I did not specifically mention the word pneumothorax. The explanation was definitely given. … After closely observing her for at least 6 minutes and ascertaining that the only sensation she felt was the usual numb-like feeling at the tip of the needles and that she had no signs or symptoms of wanting to faint, I went on to get the next patient to my consulting room."

Shortly after Dr B left the room Ms A started to sweat, could not hear and started to "black out". She leant forward onto the plinth extending her arms out and into a bent position, and rested her head on her arms to try to relieve the fainting symptoms she was experiencing. There was no call bell available for Ms A to call for assistance. When Ms A heard someone pass the doorway to the room, she called out, "Can you please get the doctor." Ms A said:

> "It is clear that I should have been monitored while receiving the acupuncture treatment particularly given the location of the needles and proximity to vital organs. I was left unattended, with no explanation."

Ms A informed me that she was left unattended for about 15 minutes. However, Dr B estimated that about three to four minutes had elapsed from the time that he left Ms A and when his colleague's practice nurse knocked on his door to tell him that Ms A was unwell. He immediately went into the treatment room and removed the acupuncture needles from Ms A's back and neck before he lay her down on the plinth to recover. Ms A stated:

> "I told [Dr B] that I was now experiencing difficulty breathing and that I could feel a sharp pain every time I breathed in, and that this pain had not occurred previously. He said that the pain had been caused by my movement with the needles in place as some muscle tissue may have been torn. He said that pain should ease overnight and not to worry."

Dr B recalled that Ms A complained of pain when she breathed deeply, but when specifically questioned did not report any breathlessness. Dr B said that Ms A's reaction was "not uncommon with acupuncture practice". Dr B stated that there are a lot of things that can cause chest pain with deep breathing. He said that when this occurs he checks whether the patient has been breathless. He said that it was his impression that the pain Ms A was complaining of was caused by the needles. He said that as he remembers, Ms A did report pain, but she was not breathless and only reported breathlessness when she telephoned him

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the following day. Dr B stated that it is his experience that some people complain of pain following an acupuncture treatment; it is "not uncommon with acupuncture practice".

After a period of observation Ms A fully recovered from her faint and was allowed to go back to work.

Subsequent complications
The following morning Ms A developed chest pain and difficulty in breathing. She telephoned the medical clinic at about 8am and left a message for Dr B. Dr B returned her call at 9am and, after hearing Ms A's symptoms, advised her to return to the clinic at 9.30am. When Dr B examined Ms A he recorded that although she had no neck pain, and her dizziness had resolved, she had pleuritic pain with deep breathing, and her pulse rate was 66 per minute (the normal rate is about 72). Her breathing was not rapid. Dr B advised Ms A to have a chest X-ray.

The chest X-ray revealed that Ms A had a "moderate sized left pneumothorax". (A pneumothorax is a leak of air from the lung into the cavity between the covering of the lung and the chest wall.) Dr B contacted the medical registrar at a public hospital, and arranged for Ms A to be admitted.

Ms A was admitted to hospital at 12.24pm on 12 March by the medical registrar who noted:

> "[C]entral retrosternal chest pain radiating to the back. Pain is 8/10 + sharp when deep breathing + when lying flat; + dull 3-4/10 when sitting forward + breathing normally. No associated SOB [shortness of breath]."

Ms A was treated with oxygen only and observed overnight. The following morning she was assessed by a medical consultant, who recorded, "Not for aspiration/drainage. Reassured that pneumothorax will improve with time." He advised Ms A to have a repeat chest X-ray in four days and to avoid flying and scuba diving for four weeks. Ms A was discharged at 10am on 13 March with instructions to return to the hospital if her condition deteriorated.

Dr B's response

Dr B informed me:

> "I am a Fellow of the New Zealand Royal College of General Practitioners since 1998. My acupuncture training was with AMAT (Associated Medical Acupuncturist Teachers) in 1993. I am a member of the Auckland Chinese Medical Association (ACMA).
>
> …
>
> I have performed some 20,000–30,000 needlings in the past 10 years and this is the first case of any direct complication. It is a very rare complication especially when the needles were placed in the back and not the chest wall as the parathoracic muscles are very thick. I would normally warn patients of the risk of pneumothorax if I needle the

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chest wall but not routinely when it comes to the back muscles unless asked by the patient.

Normally a nurse would sit about 3 feet away from the new patient and respond very quickly to any call for help. Unfortunately [Ms A] rushed into our clinic during lunch time which was our busiest time of the day, (…) and she opted to have the acupuncture straight away while my nurse was at the reception desk relieving the receptionist, rather than coming back a second time later in the day. On consideration I did not feel that proceeding with the treatment at this time was unreasonable.

…

[I] have from the day this happened in March 2003 felt very sorry towards [Ms A] as it has caused her severe distress and loss of time. From then on I have taken additional care to inform patients of this small risk and will continue to do so in the future.

Although I feel that the procedure was performed under reasonable circumstances, I have also determined that all new acupuncture patients and those likely to react to the needles will be monitored by a nurse at all times to provide an extra level of safety. However, my understanding is that such close monitoring of acupuncture patients is by no means standard practice with other acupuncturists. Other patients will be provided with an alarm system to call us should the need arise. I normally check on the acupuncture patients every 5–15 minutes to twirl the needles. This shall continue to be carried out."

Independent advice to Commissioner

The following expert advice was obtained from Dr Alexander Chan, a general practitioner who practises acupuncture:

"[Ms A] consulted [Dr B] on 11.3.2003 for a Cervical/Thoracic spine strain from a car accident because of persistent pain despite four sessions of physiotherapy treatments.

According to [Dr B], acupuncture treatment was specifically requested. According to [Dr B], he had explained to [Ms A] 'how the acupuncture works and also offered her literature to read'. He had also asked [Ms A] 'if she had had fainting or near-fainting spells in the past'. He then 'proceeded to spend time explaining to her as to how to avoid problems by keeping her back and neck erect while reading'. These actions are appropriate, though there was a lack of details of what information was passed on to [Ms A] at the time and how much was retained. There was a lack of description of information provided by [Dr B] of possible side effects or 'problems' during and after acupuncture (in [Dr B's] letter). Therefore, it is not possible to comment on whether the information given by [Dr B] to [Ms A] was appropriate or not. (However, in her letter, [Ms A] noted that she was not given any explanation or instruction.)

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[Dr B's] acupuncture treatment for [Ms A's] condition was according to accepted practice. The acupuncture points chosen were reasonable, given the information obtained from the history and physical examination. Sitting in flexion is one of the postures recommended for needling the neck and back (Cheng, 1987). There was, however, a lack of information regarding [Ms A's] previous experience, if any, with acupuncture. This is important because some people could have some degree of anxiety when having acupuncture for the first time and this may precipitate a vasovagal attack and syncope. A prone posture would be safer in this situation.

[Ms A] was left alone during the acupuncture treatment. This is reasonable provided an effective means of observation (by other staff) or communication with [Ms A] could be established during the period. At the minimum, the staff should be aware that a patient is left alone with needles inserted and that an alarm bell that could be heard by the staff at their station be available. The patient should be instructed and encouraged to use the alarm bell at the earliest sign of discomfort. One cannot rely on the patient to call out for help when the occasion arises. In addition, the doctor should briefly check on the patient and the needles every 5-10 minutes during acupuncture.

Pneumothorax is the most common mechanical organ injury from acupuncture (Norheim, 1996; Yamashita et al., 2001). However, it is rare and occurs only twice in nearly a quarter of a million treatments, though a degree of under-reporting is likely (Ernst & White, 2001). No incidence of pneumothorax was reported in two prospective studies consisting of 32,000 and 34,000 acupuncture consultations respectively (MacPherson, Thomas, Walters, & Fitter, 2001; White, Hayhoe, Hart, & Ernst, 2001). The most dangerous acupuncture points which are involved in causation of pneumothorax are those in the supraclavicular and infraclavicular regions, in the parasternal Kidney meridian and in the midclavicular Stomach meridian (E. Peuker & D. Gronemeyer, 2001). In the region of the lateral line of the bladder meridian, located approximately on the medial scapular line (BL-41 to BL-54), the surface of the lung is about 15 to 20 mm beneath the skin (E. Peuker & D. Gronemeyer, 2001), and these acupuncture points could also be potentially dangerous. The acupuncture points used by [Dr B] were not situated in these areas. In particular, the acupuncture points BL-14 are situated midway between the medial border of the scapula and the midline of the back, where the muscle layers are generally thicker. However, depending on the thickness of the needles and the tissue resistance, a variable degree of compression of the soft tissue takes place, and the actual puncturing depth may be considerably greater than the length of the needle (E. Peuker & D. Gronemeyer, 2001). Body build of an individual may also play a part.

I am not aware of any other professional, ethical and other relevant standards that apply here but would be happy to comment if there is any concern on any other issues.

Informed consent forms are not generally or regularly used prior to acupuncture. The provision of detailed information regarding possible adverse effects of treatments was found to help in increasing patient's understanding and satisfaction without increasing anxiety (E. T. Peuker & D. H. Gronemeyer, 2001). A proposed consent form for

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acupuncture was developed in Germany (E. T. Peuker & D. H. Gronemeyer, 2001). In the UK, the Acupuncture Association of Chartered Physiotherapists, the British Acupuncture Council and the British Medical Acupuncture Society have also developed a 1-page information sheet for the patients (White, Cummings, Hopwood, & MacPherson, 2001). Perhaps, a similar information sheet should be developed and used locally.

Pneumothorax as a complication from using BL-14 acupoint has not been reported in the literature. Although pneumothorax from acupuncture of paraspinal regions have been reported (Ritter & Tarala, 1978; Vilke & Wulfert, 1997; Waldman, 1974), none of the reports specified the acupuncture points used in conventional terms or numbering system. Perhaps, [Dr B] could be asked to write up the incident in an academic manner, with the permission of [Ms A], and submit the article for publication or report to local acupuncture conferences such that other acupuncturists can learn from the incident and all the factors involved.

Attached: Paper from White et al (White, Cummings et al., 2001), and Peuker & Gronemeyer (E. T. Peuker & D. H. Gronemeyer, 2001)

References:

Cheng, X. (Ed.). (1987). Chinese Acupuncture and Moxibustion (1st Edition ed.). Beijing: Foreign Languages Press.

Ernst, E., & White, A. R. (2001). Prospective studies of the safety of acupuncture: a systematic review. The American Journal of Medicine, 110(6), 481-485.

MacPherson, H., Thomas, K., Walters, S., & Fitter, M. (2001). A prospective survey of adverse events and treatment reactions following 34,000 consultations with professional acupuncturists. Acupunct Med, 19(2), 93-102.

Norheim, A. J. (1996). Adverse effects of acupuncture: a study of the literature for the years 1981-1994. J Altern Complement Med, 2(2), 291-297.

Peuker, E., & Gronemeyer, D. (2001). Rare but serious complications of acupuncture: traumatic lesions. Acupunct Med, 19(2), 103-108.

Peuker, E. T., & Gronemeyer, D. H. (2001). Risk information and informed consent in acupuncture – a proposal from Germany. Acupunct Med, 19(2), 137-141.

Ritter, H. G., & Tarala, R. (1978). Pneumothorax after acupuncture. Br Med J, 2(6137), 602-603.

Vilke, G. M., & Wulfert, E. A. (1997). Case reports of two patients with pneumothorax following acupuncture. J Emerg Med, 15(2), 155-157.

Waldman, I. (1974). Letter: Pneumothorax from acupuncture. N Engl J Med, 290(11), 633.

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White, A., Cummings, M., Hopwood, V., & MacPherson, H. (2001). Informed consent for acupuncture – an information leaflet developed by consensus. Acupunct Med, 19(2), 123-129.

White, A., Hayhoe, S., Hart, A., & Ernst, E. (2001). Survey of adverse events following acupuncture (SAFA): a prospective study of 32,000 consultations. Acupunct Med, 19(2), 84-92.

Yamashita, H., Tsukayama, H., White, A. R., Tanno, Y., Sugishita, C., & Ernst, E. (2001). Systematic review of adverse events following acupuncture: the Japanese literature. Complementary Therapies in Medicine, 9(2), 98-104."

Dr Chan was subsequently asked to comment on whether it is common for patients to complain of breathlessness after acupuncture, as submitted by Dr B. Dr Chan stated that in his experience when treating patients with acupuncture needles in the sites that Dr B used for Ms A, they do not report pain on deep breathing following the treatment.

Response to Provisional Opinion

In response to the provisional opinion Dr B stated:

"Thank you for allowing me to comment on your provisional opinion regarding the above complaint made by [Ms A].

I have made the necessary corrections in the copy of your report.

I have also enclosed a letter of apology to [Ms A].

As suggested I am happy to submit the article for publication as soon as I receive permission from [Ms A] through you."

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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 4
Right to Services of an Appropriate Standard

1) Every consumer has the right to have services provided with reasonable care and skill.

…

4) Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.

RIGHT 6
Right to be Fully Informed

1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including –

…

b) An explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; …

Opinion: No breach – Dr B

Acupuncture treatment resulted in a pneumothorax requiring hospital admission
Dr B stated that he has performed between 20,000 and 30,000 acupuncture treatments in the 10 years he has been practising acupuncture, and this is the first complication he has experienced. Dr B always uses the same type of needle, a 0.25mm x 40mm Tai Chi needle, which he inserts about 2cm into the tissue. He placed an acupuncture needle on either side of Ms A's spine at the base of her skull. A third needle was placed centrally below the 7th cervical vertebra, and then two further needles on either side of the 4th thoracic vertebra. He said that the parathoracic muscles where the needles were placed in Ms A's back are very thick. Dr B informed me that pneumothorax is a very rare complication of acupuncture.

My independent expert advised me that Dr B's acupuncture treatment for Ms A's condition was according to accepted practice. The acupuncture points chosen were reasonable. He stated that while pneumothorax is the "most common mechanical organ injury from acupuncture, … it is rare and occurs only twice in nearly a quarter of a million treatments". He said that there are acupuncture points that have been identified as being associated with pneumothorax, but the acupuncture points used by Dr B were not situated in these areas.

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Pneumothorax as a complication from acupuncture using the points utilised by Dr B has not been reported in the literature. On the information provided, it is not clear whether Ms A's pneumothorax was caused by Dr B's treatment, or whether a different unrelated event caused the pneumothorax. However, I accept my expert advice that the acupuncture points used by Dr B were appropriate and that his treatment for Ms A's condition was according to accepted practice. If Ms A's pneumothorax was caused by Dr B's treatment, it was a rare and unusual complication that was not the result of any lack of care or skill by Dr B. Accordingly, in my opinion Dr B did not breach Right 4(1) of the Code.

Opinion: Breach – Dr B

Failure to monitor appropriately

Dr B informed me that Ms A arrived at the clinic at one of the busiest times of the day. He said that normally his practice nurse would be stationed about three feet from a patient undergoing acupuncture treatment to respond to any adverse reaction to the treatment, but on that day his nurse was relieving at the reception desk.

Dr B admitted that Ms A was not provided with a call bell while she was left in the treatment room, but he had reassured himself that she had not experienced a previous fainting spell. Dr B was in the room immediately opposite and intended to check the position of the needles at regular intervals.

When Ms A began to experience fainting symptoms she had to call out to seek help from a passer-by, who alerted Dr B.

My expert stated that it is reasonable to leave a patient alone during acupuncture provided the patient has an effective means of communication or is able to be observed by other staff. He said:

> "At the minimum, the staff should be aware that a patient is left alone with needles inserted and that an alarm bell that could be heard by the staff at their station be available. The patient should be instructed and encouraged to use the alarm bell at the earliest sign of discomfort. One cannot rely on the patient to call out for help when the occasion arises."

Ms A was a new patient and had not had the procedure before. Fainting symptoms are not unusual in acupuncture treatment. Although Dr B usually has his practice nurse available to monitor a patient undergoing acupuncture treatment, the nurse was not available at the time that Ms A had her treatment. There was no call bell that Ms A could use.

I accept that in a busy clinic that there will be times when the nurse is called away to perform other duties, leaving the acupuncture patient unsupervised. Thankfully, Ms A was able to call out and seek help from a passer-by, who alerted Dr B. However, in my opinion, the monitoring arrangements were unsatisfactory and did not minimise potential harm to

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patients. Dr B did not provide Ms A with a service with reasonable care and skill when he left her unattended, and therefore breached Right 4(4) of the Code.

Insufficient evidence to form opinion

Information about acupuncture treatment
There was a discrepancy in the information provided to me about what Ms A was told regarding the acupuncture treatment. Ms A stated that Dr B gave her no information other than to tell her not to move from the position he had placed her in for the treatment. She said that Dr B did not provide her with sufficient information about acupuncture and that she was totally unprepared for the fainting symptoms that she experienced following the insertion of the acupuncture needles.

On the other hand, Dr B informed me that he asked Ms A if she had ever fainted, explained how acupuncture works and advised her to keep her neck and back erect while she was reading the magazines he had provided to occupy the time it took for the treatment.

My expert noted that informed consent forms are not generally used prior to acupuncture, but advised that the provision of detailed information regarding possible adverse side effects of treatment was found to help in increasing a patient's understanding and satisfaction with the care provided without increasing anxiety.

It appears that Dr B provided Ms A with some information about acupuncture, but because of the discrepancy in the statements of Ms A and Dr B I am unable to conclude whether Dr B provided the information about acupuncture therapy that would reasonably be expected by patients undergoing acupuncture. I note that under Right 6(1)(b) of the Code, providers have an obligation to provide information about expected risks, side effects and benefits of proposed treatments.

Actions taken

I note that Dr B has reviewed his practice as a result of Ms A's experience. He informed me that he now advises his acupuncture patients of the rare possibility that the treatment might cause a pneumothorax. He has installed a call bell for patients, and ensures all patients receiving acupuncture treatment are monitored by his practice nurse for the duration of the treatment.

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Recommendations

I recommend that Dr B take the following actions:

- Provide an information sheet for patients undergoing acupuncture treatment.
- Note the suggestion of my advisor that he write up the incident in an academic manner, with the permission of Ms A, and submit the article for publication, so that other acupuncturists can learn from the incident.

Further actions

- A copy of my final report will be sent to the Medical Council of New Zealand.
- A copy of my final report, with details identifying the 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.

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