General Practitioner, Dr C

A Report by the

Health and Disability Commissioner

(Case 06HDC01330)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Mrs A	Consumer
Mr A	Complainant
Dr C	Provider/General practitioner
Ms D	Witness
Mrs E	Witness
Ms F	Nurse
Dr G	General Practitioner
Dr H	General Practitioner

Complaint

On 7 February 2006 the Commissioner received a complaint made by Mr A about general practitioner Dr C. The following issue was identified for investigation:

- *The appropriateness of Dr C's relationship with his patient Mrs A.*

An investigation was commenced on 26 May 2006.

Information reviewed

Information was obtained from:

- Mrs A
- Mr A
- Ms D
- Mrs E
- Ms F
- Dr G
- Dr H
- A Medical Centre

Information gathered during investigation

Complaint
In a letter dated 16 August 2005 to a professional body, Mr A stated that from 1986 to 1988 general practitioner Dr C engaged in a sexual relationship with his former wife, Mrs A while acting as their family doctor.

The professional body advised Mr A that if he wished to take the matter any further, he should take it up with the Medical Council of New Zealand (the Council). In a letter dated 24 January 2006, to the Council, Mr A made a complaint of what he termed "serious professional misconduct" against Dr C. In Mr A's words:

> "It is … about [Dr C's] integrity of a doctor in a small town who abused his privileged status, so compromising his profession … He needs to be called to account for his actions."

By letter dated 2 February 2006, the Medical Council forwarded Mr A's complaint to the Health and Disability Commissioner.

Doctor–patient relationship
In 1985, Mrs A was a full-time mother living in a rural town. In response to notice of this investigation, she wrote:

> "My former husband [Mr A], our 2 month old son and I, moved to [a rural town] in January 1980. From 1980 to 1985, our family were patients of [a doctor], during this time we had two further children. When [the doctor] left the local practice, in approx 1985, [Dr C] took over his practice and our family remained with the practice as his patients.
>
> As [it] was a small country town we met in similar social circles and both [Dr C] and I shared a love of music. I knew his wife, […] through the local book club and also trained for a half marathon together."

Dr C also lived in the rural town. His medical practice was based in a nearby town at a medical centre but he also held several clinics each week in the rural town. Mrs A primarily saw Dr C for minor medical issues such as chest infections or laryngitis. Otherwise, she was "as healthy as a horse", and had no ongoing medical conditions for which she consulted Dr C.

Mr A was also Dr C's patient and states that he did not see any other doctor during this period. Mr A recalls that he too was generally healthy; however, he remembers Dr C treating him on one occasion at his home for chest pains, and on another occasion for an eye injury. Dr C also performed a vasectomy on Mr A in 1985.

Dr C (via his lawyer) advised that he "does not have medical records going back to his time [in the rural town]" and "does not accept the accuracy of [the] bald allegation that he was "the family doctor" of Mr A, Mrs A and their children. (Indeed, Dr C requested that the Commissioner's Office "please provide copies of the relevant records".)

Dr C's practice nurse, Mrs F, confirmed that Mrs A was a patient of Dr C. She stated:

> "The nursing care I provided for [Mrs A] would have been concerning all family health matters.
>
> As a practice nurse I was in the room assisting [Dr C] during any procedure for women's health. This included smear taking and breast examination. I wish to advise you that at all times [Dr C] was professional. I have no concerns about [Dr C's] relationship with [Mrs A] during these procedures."

Ms D worked as a psychologist at the medical centre and had a collegial relationship with Dr C. Ms D met Mrs A shortly after the family moved to the region, and they became the "best of friends". In January 1998, Ms D became Mrs A's neighbour in the rural town, and their relationship became closer. Ms D stated that she has no doubt that Dr C was the "whole family's doctor", and that it was convenient for the family to consult him.

Ms D recalls that Mrs A did not have any particular health problems that required ongoing management. However, she was aware that Mrs A had regular contact with Dr C because of her children.

Mrs E was employed as a nurse at the local hospital and knew Dr C in a professional capacity. Mrs E was a former neighbour of Mrs A and described herself as a close friend. (Mrs E had occupied the house into which Ms D moved in January 1987.) Mrs E understood that Mrs A met Dr C around the time that she became his patient. Mrs E has no doubt that Mrs A was a patient of Dr C.

Emotional involvement

Mrs A recalls that she became emotionally involved with Dr C around the beginning of 1987:

> "[Dr C] and I were aware of our attraction to each other, I was lonely and unhappy in my marriage and I believe that [Dr C] was in a similar situation with his marriage."

Mr A agrees that his relationship with his wife was often difficult. He was aware of his wife's friendship with Dr C, but at the time had no knowledge (or real suspicion) of any affair. He commented:

> "On a Saturday she [Mrs A] disappeared with [Dr C] in his four wheel drive, off to whatever the show they were doing in town or when we were on holiday, she would be

> buying sound equipment or whatever — like microphones or parts for their electronic keyboard. I just remember her doing this and I always being vaguely uneasy about this kind of relationship in the night because you would be long asleep and gone when she returned in the morning, and the kids and so forth."

Ms D recalls that Mrs A was unhappy in her marriage, primarily because she and her husband had quite different personalities, and were "probably not particularly well-suited". Ms D stated that Mrs A talked to her "about the fact that she was interested in him [Dr C]" and that they "were flirting and they had lots of mutual interests".

Mrs E stated that Dr C and Mrs A moved in the same social circle and had a shared interest in music. Dr C and Mrs A performed together at venues in the area. Dr C played the piano and Mrs A would sing.

Mrs A recalls that the first physical contact she had with Dr C was around the time of a festival in 1987:

> "[W]e were at a concert, somehow [Mr A] wasn't there and, I don't know whether [Dr C's wife] was on the other side but we [sort] of laughed, laughed together and you know, had quite a powerful connection I suppose that night and yeah I found myself at one point alone with him and I initiated, I just sort of hugged him and went into his arms and he responded and after that point he started phoning me at home, which I was very excited about but you know, because I was obviously attracted to him really early so I would say I initiated really that first physical contact but after that there were phone calls [from Dr C] because I knew it was wrong, absolutely I thought this is wrong but I responded to the phone calls."

Commencement of sexual relationship

Mrs A was present, as a "birth partner", when her friend Mrs E gave birth to her son on 29 May 1987. Mrs A recalls meeting Dr C in the kitchen of the maternity house in a nearby town immediately after the birth. Mrs A stated:

> "… it just became, quite physical in the kitchen, well not that we had sex, I mean it was very emotional and you know I hugged him and all that sort of stuff."

According to Mrs A, a sexual relationship with Dr C commenced shortly afterwards. She stated:

> "I had three small children and was experiencing ongoing problems with my husband. I was emotionally vulnerable and I responded to [Dr C's] attention and phone calls. I consider we were both responsible for the affair which commenced around June 1987."

Mrs A stated that because both she and Dr C had families with young children, the opportunities to "get together" were not particularly frequent ("maybe once a week for a

while") and took place in various locations, including Dr C's surgery in the rural town and his surgery in a nearby town. She described the affair as "desperately intense".

Mrs A stated that Dr C used condoms to avoid pregnancy resulting from their sexual liaisons. After a period of time Mrs A started to use the contraceptive pill. Dr C gave her the contraceptive pill, although she cannot recall whether he gave her a prescription, or simply gave her the pill.

Mrs A cannot recall whether Dr C had any particular distinguishing physical characteristics, apart from the fact he "wasn't hairy".

Dr C does not accept the allegation that he had a sexual relationship with Mrs A.

Mrs A's two close friends recall her telling them in mid-1987 that she was having an affair with Dr C. Mrs E recalls that Dr C's sexual relationship with Mrs A began within days or weeks of the birth of her (Mrs E's) son. Mrs E said that Mrs A told her of the commencement of the "affair" when it began. Mrs E stated that the sexual relationship between Mrs A and Dr C was common knowledge between herself and Ms D.

Ms D confirmed that Mrs A told her about the sexual relationship immediately when it commenced. She recalls that this occurred in the "middle of that year [1987]". She considered that it was "an intense affair with a lot of emotion involved". Ms D stated that the Medical Centre, "a very tiny space", was sometimes used as a place for them to get together.

Continuation of doctor–patient relationship

Mrs A recalls that even before their physical affair started, she and Dr C had discussed whether it was appropriate for her to continue to be his patient because they were both aware that they were attracted to each other.

Mrs A also stated:

> "Once our affair had begun I suggested to [Dr C] that maybe I should not be his patient any longer, but he assured me that it was okay for him to carry on as our family GP. We both felt guilty but continued the affair. I made visits to his surgery, after his practice nurse, [Ms F], had left for the day, the visit would be usually once a week because our opportunities together were limited."

Mrs A also consulted Dr C about her children, particularly her daughter, who had a kidney reflux condition. She believes that Dr C's intimate relationship with her resulted in his being slow to diagnose her daughter's condition:

> "I don't think he [Dr C] picked up stuff that was happening with [my daughter's] kidney problem because he was too in love with me really … because a simple urine test would have picked up that she had, you know, major problems with her kidneys."

Mr A also expressed concern that the problem "wasn't picked up for quite a long time".

Ms D recalls that she was very concerned that Dr C continued to be Mrs A's doctor. Ms D commented that it would not have been particularly difficult to find another doctor in the nearby town, which is a relatively short drive from the rural town. Ms D stated that she "struggled with the fact" that Dr C was also seeing Mr A as a patient.

Disclosure of sexual relationship

Ms D recommended that Mrs A contact Dr H at the medical centre for marriage guidance counselling. In normal circumstances, patients seeking this type of counselling would be referred to Ms D. Dr H was the senior medical practitioner and was the most appropriate other person for Mrs A to see. Ms D understood that Mrs A remained Dr C's patient, and she consulted Dr H specifically for the purpose of marriage guidance counselling.

Dr H's medical records[1] refer to marriage guidance counselling sessions in September, October and November of 1988. On 12 November 1988 Dr H recorded that Mr A "is now fully informed of the situation". Mrs A stated:

> "So we went to a counselling session, I was still in love with [Dr C], it was still continuing but it was getting really really messy and [Mr A] and I were hardly speaking and then it came out. Basically [Dr H] saw me on my own in one of the sessions and encouraged me to tell [Mr A], although I didn't really, it sort of came out. I think [Dr C] must have told [his wife] or [his wife], you know, phoned [Dr C] up. I don't know how it came out but then [Dr C] told me that [his wife] was going to come round and confront, talk to [Mr A] about it. So it was really easy deciding to tell him [Mr A]."

Mr A confirmed that he attended several counselling sessions. He did not return to see Dr C after Mrs A told him of the sexual relationship — in November 1988.

Dr H informed me that, due to the length of time that had elapsed, he is unable to recall (other than vaguely) the marriage guidance counselling sessions with Mrs A and Mr A. He stated:

> "It seems from the notes that [Mrs A] initially came to see me for a routine cervical smear and at the same time spoke of some relationship problems with her husband. It would be wrong of me to commit myself as, to the reason for the problems, though there is reference to 'risk taking behaviour' on [Mrs A's] part."

[1] See Appendix 1.

Dr H explained that a marriage guidance counselling folder was kept separately from the medical records to ensure that it was not accessible to other staff. These notes have since been destroyed.

Aftermath

Mrs A said that, after the sexual relationship was disclosed, Dr C separated from his wife and moved into an apartment. Mrs A recalls that her sexual relationship with Dr C continued sporadically until she moved with her husband and children to a city in December 1988.

Mrs E stated that there was quite a lot of gossip in the local community about Mrs A and Dr C, particularly after the relationship ended. The family moved to the city reasonably soon after the affair ended. Mrs E understood that the family's actions in moving to the city were directly connected with the ending of the affair with Dr C.

Ms D stated that the end of the affair was "really painful for everyone" and that she thought there was definitely a connection with the family returning to the city.

Impact on Mr A

Mr A was devastated to learn that his wife had been having a sexual relationship with Dr C. He described his response:

> "… the shock of the whole thing really is that he's our family doctor … it's something that actually devastates you … because you sort of look back … hell, he delivered my child, he gave me [my] vasectomy, he saw there, he saw me here for this and that and the kids and all that kind of stuff."

Mr A also stated:

> "And then when you find out it's not sort of the local butcher, milkman or whatever, that it's the actual doctor, that sort of compounds the whole thing, you've got someone who's in a position of trust, in a position in the community, as [Dr C] has, who's having this full blown affair with your wife, that's kind of the pain of the whole thing I suppose."

Medical records

Mrs A transferred her medical records to general practitioner Dr G after the family moved to the city. Dr G confirmed that Mrs A became his patient on 23 May 1989. Dr G was not able to provide any medical notes concerning Dr C's treatment of Mrs A.

The current complaints officer at the medical centre, confirmed that the centre no longer holds any records of Mrs A:

> "We understand that records held here [at the medical centre] were requested by her new doctor some years ago and forwarded accordingly. Historically records for our [surgery] were held in [in a nearby town]. Unfortunately we do not have copies on file as

> in line with legal requirements it is the policy of the medical centre to destroy all records for patients not seen within the last ten years. Due to the size of the practice this is done on a yearly basis."

Dr C's response to complaint

On the basis of legal advice, Dr C has chosen not to respond to the allegations, except to say that "the allegations are not accepted" and that he "does not have medical records going back to his time in the rural town and he does not accept the accuracy of this bald allegation".

Dr C's lawyer submitted:

> "The antiquity of the events in question, coupled with the complainant's full knowledge of the matter at the time (or thereabouts) and the need to see copies of the medical records, are all points that, properly exercised, ought result in a discretion that no further action be taken."

Dr C renews contact with Mrs A

In a letter dated 17 July 2006, Mrs A described being contacted by Dr C in 2005 and 2006:

> "About 12 months ago, [Dr C] rang me stating that he was applying [for a senior position in a professional body] and would I have any objections about him holding a position that would be considered in the 'public arena'. I assured him that I did not have an issue with this, but I reminded him that our affair has not been discreet and with [the rural town] being a small community many people knew of the affair.
>
> I encouraged [Dr C] to contact my ex-husband to discuss the issues that could arise should [Dr C] be in such a public position. To the best of my knowledge [Dr C] did not contact [Mr A]. Sometime after this I contacted my ex-husband and told him of this phone conversation.
>
> In late September or early October 2005, [Dr C] rang me to tell me that he was [in a senior position with the professional body] and that [Mr A] had sent a letter to [the professional body] objecting to [Dr C] being in this new position.
>
> [Dr C] phoned me on the 6th June 2006 telling me that [Mr A] had lodged a formal complaint and the complaint was to be investigated. I informed [Dr C] that I had received a letter from the Deputy Commissioner, Complaints Resolution. During this phone conversation I made the following notes in my diary.
>
> He [Dr C] encouraged me to not respond to the Commissioner's letter and that if I had requested any medical records they could perhaps 'go missing'. He also wanted me to talk to his solicitor or to a solicitor of my choice and he would pay for their services, at

this stage I felt anxious, I said to him 'why should I need to contact a solicitor', his reply was that there could be major repercussions for all families involved if the complaint went any further, he also said 'that what happened twenty years ago was a long time ago and that he was now a different person and that I had not really been his patient and that he had only treated me for the odd thing'. I told him that he was certainly my GP and it was only in the last few months of the affair that I went to [Dr H].

[Dr C] ended the conversation by encouraging me once again to consider talking to his solicitor and that he would phone me again at 9.00am the next day.

On the 7th June, [Dr C] rang, I saw it was a [out of area telephone number] and I assumed it was [Dr C], I did not answer the call, as I did not want to talk to him. He left a message saying that I could ring him on his mobile and that he really wanted to discuss the issue, but that if I did not phone him he would not contact me again. I have had no contact with [Dr C] since."

Dr C's response to the provisional opinion

In response to my provisional opinion, Dr C's lawyer submitted that Dr C had been "seriously" prejudiced by the delay in Mr A bringing this complaint. He also stated that "it would appear that the sexual relationship allegations against Dr C have not sprung out of or arisen from the alleged medical practitioner relationship with him. Moreover, Mrs A makes it clear … that she regarded the relationship as an equal relationship and not one where he took advantage of her." Dr C's lawyer submitted that in these circumstances the matter does not warrant referral to the Director of Proceedings, particularly given the considerable passage of time and the prejudice to Dr C arising from the unavailability of medical records.

Professional standards

Under section 40(2) of the Health and Disability Commissioner Act 1996, the Commissioner may investigate any actions of a health practitioner that occurred before 1 July 1996, when the alleged action was, at the time it occurred, a ground for bringing disciplinary proceedings under a former health registration enactment.

At the time of these events, Dr C was a registered medical practitioner subject to the Medical Practitioners Act 1968. The grounds for medical discipline under that statute included "conduct unbecoming of a medical practitioner", "professional misconduct" and "disgraceful conduct in a professional respect". Thus, in order to determine the Commissioner's jurisdiction in respect of Dr C's conduct, it is necessary to determine whether Dr C's actions would have been considered "conduct unbecoming of a practitioner", "disgraceful conduct" or "professional misconduct".

Professional standards in the 1980s in relation to intimate relationships with patients are reflected in the following statement from Cole's *Medical Practice and Professional Conduct in New Zealand* (1984), at pages 40–41:

> "**(a) Unduly Close Relationships between Doctors and Patients**
> A doctor is particularly vulnerable to accusation of undue intimacy.
>
> Every effort must be made to avoid incidents between a doctor and a patient (or a member of the patient's family) which disrupts the patient's family life or otherwise damages the *maintenance of trust* between the doctors and patients. Inevitably medical consultation necessitates quite close personal relationships and meticulous care is needed to avoid misplacing the trust involved.
>
> The Medical Council has always taken a serious view of a doctor who uses his professional position in order to pursue a personal relationship of an *emotional or sexual nature* with a patient or the close relative of a patient. Such abuse of a doctor's professional position may be aggravated in a number of ways. For example, a doctor may use the pretext of a professional visit to a patient's home to disguise his pursuit of the personal relationship with the patient (or where the patient is a child, with the patient's parent). Or he may use knowledge obtained in his professional role of the patient's marital difficulties to take advantage of that situation. These are merely examples of particular abuses. . . .
>
> The trust which should exist between doctors and patients can be severely damaged when, as a result of an intimate emotional relationship between a doctor and a patient, the family life of that patient is disrupted. This may occur *without sexual misconduct* between the doctor and the patient."

In the 1980s, the Privy Council decision in *de Gregory v General Medical Council* [1961] AC 957 was a leading authority on the issue of a doctor forming an intimate relationship with a patient. In an oft-cited passage, Lord Denning stated that a doctor:

> "must not abuse his professional position so as, by act or word, to impair in the least the confidence and security which should subsist between husband and wife. His association with the wife becomes improper when by look, touch or gesture; he shows undue affection for her, when he seeks opportunities of meeting her alone or does anything to show that he thinks more of her than he should. He must shun any association with her altogether rather than let it be improper. He must be above suspicion."

This statement is cited in Cole's Medical Practice and Professional Conduct in New Zealand (1988).

Disciplinary decisions

In a notice published in the *New Zealand Medical Journal*, it is reported that in 1993 the Medical Council ordered that a registered medical practitioner be removed from the medical register following a hearing of "disgraceful conduct in a professional respect". The doctor had maintained a six-month sexual relationship with a female patient while continuing to be her and her family's general practitioner and had continued to be so after the sexual relationship ceased in 1992. The Council viewed the case seriously and did not agree that it was at the lower end of the scale of disgraceful conduct, as had been submitted by the doctor's counsel. He was removed from the register, censured and fined.[2]

In *Brake v Preliminary Proceedings Committee* [1997] 1 NZLR 71 the Full Court stated:

> "The medical profession has for long recognised that any sexual behaviour between a doctor and a patient while a doctor/patient relationship is in existence is completely unacceptable. In a discussion document the Medical Council issued in 1992 it adopted 'the principle of zero tolerance with respect to a doctor who engages in sexual activity with a current patient'.
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> Doctor Robin Briant, the former chair of the Medical Council, said in 1994 (Newsletter of the Medical Council, (no 9) March 1994):
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> > 'The doctor–patient interaction is for the patient's benefit and there is no place in it for a sexual liaison. It would do immense harm to the quality of doctor–patient interactions generally if it were even suspected that intimate or sexual relationships may evolve from medical consultations. Only when people feel safe in a professional relationship can they entrust it with their most private, emotional, psychological and physical secrets.'
>
> She went on to say that 'there is nothing new about Medical Council policy on sexual abuse in the doctor/patient relationship; Hippocrates said it all long ago (500 BC) and much more succinctly: 'into whatever houses I enter, I will go into them for the benefit of the sick and will abstain from every voluntary act of mischief or corruption; and further, from seduction of females or males or free men or slaves'."

In *Evans v General Medical Council* (Privy Council, 19 November 1984, Lords Keith of Kinkel, Brandon of Oakbrook and Templeman), the appellant was found guilty by the Professional Conduct Committee of the GMC of serious professional misconduct. As a result, the Committee ordered that the appellant's name be erased from the Register. The

[2] (1994) 107 NZMJ 21.

appellant did not challenge the finding of serious professional misconduct, but maintained that the penalty of erasure was excessively severe and that a period of suspension should be substituted for it.

Lord Keith of Kinkel, reading the judgment of the Board, described the facts of the case:

> "The misconduct of which the appellant was found guilty consisted in an adulterous relationship with a patient, Mrs Mellor, which extended over a period of some six years ending early in 1983. The appellant carried on general practice in partnership with his wife and others, and his patients included not only Mrs Mellor but also her husband and two children. It is plain from the evidence that the affair had a seriously adverse effect on Mrs Mellor's health and upon her married and family life. … The affair remained entirely unsuspected by Mrs Mellor's husband until she revealed it, early in 1983 …"

On the basis of these rulings from New Zealand and the United Kingdom, I have no doubt that in 1987–1988 a doctor found to have engaged in a sexual relationship with a current patient in New Zealand would have faced disciplinary proceedings under the Medical Practitioners Act 1968. It follows that as Commissioner I have jurisdiction to hear this complaint.

Opinion

There are two key issues of fact in this case. First, were Mrs A and her family patients of Dr C; and secondly, did Dr C have a sexual relationship with Mrs A while she was his patient.

Professional relationship

There are no longer any medical records confirming that Dr C was Mrs A's GP. The medical centre has a policy of destroying all records of patients not seen within the last 10 years. It is not clear whether a copy of Mrs A's medical records and of the records of Mr A and their children was forwarded to her new GP, Dr G, in 1989 when they moved from the rural town. Dr C himself has no medical records from this time, and does not accept that he was the family doctor.

However, I have been provided with unequivocal evidence that Dr C was the regular GP for Mrs A and her husband and children. The evidence comes from Mrs A, Mr A, two friends of Mrs A, and Ms F, who was Dr C's practice nurse at the time. All the statements and information are consistent. I am satisfied on the available evidence that, notwithstanding his own inability to recall his professional relationship as a family doctor, Dr C was the GP for Mrs A, Mr A and their children from 1985 until the end of 1988.

Although Dr H's notes refer to Mrs A consulting him for a "routine smear" in August 1988, there is no other evidence to suggest that Dr H became her regular GP. All of Dr H's other notes refer to counselling services provided to Mrs A and Mr A after that initial appointment. I accept the statements made by Mrs E, Ms D, Mrs A and Mr A and find that Dr C continued to be Mrs A's GP during the relevant period.

Sexual relationship

In my opinion, the information gathered during this investigation corroborates Mr A's complaint that Dr C engaged in a sexual relationship with Mrs A. Mrs A advised that she and Dr C had an ongoing sexual and intimate relationship from about May or June 1987 until December 1988. Other people, who were her close friends, have confirmed that they knew of the relationship at the time, and there are no significant inconsistencies in the information provided by them. Mr A advised that he was told in November 1988 that his wife had been having an affair with Dr C. The medical notes kept by Dr H, who provided relationship counselling to Mrs A and Mr A, from September to November 1988, allude to an extra-marital relationship in the note that "[Mr A] is now fully informed" and "[Mr A] has taken a Christian stance and has forgiven [Mrs A] for the situation and wants the marriage to work" .

Dr C continued as GP for Mrs A, Mr A and their three young children while involved in a sexual and intimate relationship with Mrs A from mid-1987 until the end of 1988. The submission made by Dr C's lawyer that the sexual relationship "had not sprung out of or arisen from the alleged medical practitioner relationship" implies that because Dr C and Mrs A knew each other in a social context their sexual relationship was professionally and ethically acceptable. I do not accept this contention. Whether the sexual relationship between Mrs A and Dr C commenced because of their social connections or because of the medical relationship does not change the fact that Dr C was and continued to be Mrs A's GP during this period.

Dr C could have terminated his professional relationship with Mrs A (and indeed with Mr A and the children). The rural town may have been a small community, but Dr C was not the only doctor practising in the area, and he could and should have insisted on Mrs A finding a new doctor. This is what is recommended in Cole's *Medical Practice and Professional Conduct in New Zealand*.

Dr C must have been aware that his relationship with Mrs A was unethical. Mrs A stated that even before their sexual relationship had started they had discussed whether it was appropriate for her to continue to be his patient as they were aware of their mutual attraction.

Any sexual relationship between a patient and her doctor involves a breach of trust. A doctor is required to have the patient's best interests at heart. That is the fundamental

contract that allows patients to trust the doctor with intimate physical and psychological matters.

The strict prohibition on sexual relationships between doctors and their patients exists both for the protection of the individual patient (who, by virtue of the doctor's social status and the exposure of the patient's body and feelings, is vulnerable to a romantic attraction to his or her doctor) and of the doctor (in whom the prohibition is deeply embedded by medical ethics and professional guidelines, reinforcing the concept of an inviolate boundary that must never be crossed). The prohibition is also essential for the maintenance of public trust in the medical profession.

Proper adherence to professional boundaries is important in any doctor–patient relationship, but especially in an ongoing relationship with a general practitioner, who is the primary care provider and gatekeeper to specialist services. Where a general practitioner also cares for a patient's spouse and family, the breach of trust involved in having a sexual relationship with the patient is compounded by the necessary deception of the other patient (the spouse). That is clearly shown in this case by the devastating impact on Mr A of learning not only that his wife had had an affair, but that the other party was their own doctor.

While the relationship was consensual, it is the responsibility of the medical practitioner to maintain the appropriate professional boundaries and ethical standards. The responsibility in this regard rested on Dr C alone.

Both Mr A and Mrs A also raised a concern that their daughter, who had a kidney reflux problem, was not adequately assessed at the time by Dr C. The standard of care provided by Dr C is not the subject of this investigation, and I make no finding on this point. However, it highlights a further reason why it is unethical for doctors to have intimate relationships with their patients. In addition to the risk of undermining trust, a sexual relationship between a doctor and his patient jeopardises the quality of medical care. It is impossible for a doctor to retain objectivity and professional judgement if he is engaged in an intimate relationship with his patient. (It is precisely for this reason that doctors are advised not to treat family members.) A romantic and sexual attachment places at risk the clinical detachment necessary for effective diagnosis and treatment. In involving himself in an intimate relationship with Mrs A while he remained the family doctor, Dr C jeopardised the quality of his medical care for the family.

The gravamen of the case against Dr C is well stated by Mr A in his letter of complaint:

> "It is … about [Dr C's] integrity, of a doctor in a small town who abused his privileged status, so compromising his profession."

In my view, Dr C's action in 1987–1998 was conduct that, at the time it occurred, was a ground for bringing disciplinary proceedings under the Medical Practitioners Act 1968.

Follow-up actions

These events occurred nearly 20 years ago. Dr C's lawyer has submitted that "[t]he antiquity of the events in question, coupled with the complainant's full knowledge of the matter at the time (or thereabouts) and the need to see copies of the medical records, are all points that, properly exercised, ought result in a decision that no further action is taken". Dr C's lawyer also submitted that Dr C had been "seriously" prejudiced by the delay in bringing the complaint.

The length of time since these events occurred is something I took into account when deciding whether to investigate this complaint. However, I have been provided with consistent and reliable evidence from witnesses who have been able to recall these events accurately despite the time that has elapsed. While I acknowledge that medical records have been lost, I accept the unequivocal statements made by witnesses that Dr C was Mrs A's (and her family's) GP, and that Dr C engaged in a sexual relationship with Mrs A. I do not accept that Dr C has been seriously prejudiced by the delay.

Dr C's lawyer further submitted that Mrs A regarded the relationship as an equal relationship and not one where Dr C took advantage of her. I accept that Mrs A was not a particularly vulnerable patient, and I have considered this along with other relevant factors in deciding what further action to take.

Dr C is entitled, in accordance with his legal advice, to decline to provide a substantive response to the complaint and investigation. However, having found that Dr C had a sexual relationship with Mrs A for 18 months, at a time when she, her husband and children were his patients, it follows that any discretion to excuse his conduct (on the basis that it happened long ago, and that he has admitted and apologised for his misconduct) cannot be exercised in Dr C's favour.

Furthermore, Dr C's historic misconduct is compounded by his attempt to hinder this investigation. Under section 73(a) of the Health and Disability Commissioner Act 1994 (the HDC Act), it is an offence "[w]ithout reasonable excuse" to "hinder" the Commissioner in the exercise of powers under this Act.

Mrs A advised that on 6 June 2006, Dr C telephoned her and encouraged her not to reply to the Commissioner's notice of investigation (dated 26 May 2006) and suggested that any medical records she held from the relevant period "could perhaps 'go missing'". Mrs A also advised that Dr C attempted to persuade her that she had not really been his patient, and warned that there would be major repercussions for all the parties involved if the complaint went any further.

Dr C admits that he spoke to Mrs A, but does not accept that he has obstructed or hindered the investigation in any way. His lawyer explained that "[W]hen [Dr C] contacted her, he had no idea that she was a 'witness' … Nor can you be surprised that he would do this. The complaint [which Dr C was] asked … to comment on is one made by Mr A. He has made no contact with him."

Dr C's lawyer asks: "Where is the authority for [the] suggestion that [Dr C] contacting [Mrs A] may be an offence in as far as obstructing or hindering the Commissioner in exercising his powers under the Act?"

I refer Dr C's lawyer to section 73(a) of the HDC Act, and to the following statement by the Health Practitioners Disciplinary Tribunal in *Director of Proceedings v Martin* (Decision Med/05/15D, para 165, available at www.hpdt.org.nz):

> "[The Tribunal] must send a clear message to [Dr N] and all health practitioners that the Tribunal will punish those who are less than frank and honest with the Commissioner and others investigating complaints."[3]

I accept Mrs A's version of the telephone call she received from Dr C on 6 June 2006 and conclude that his clear purpose was to encourage her not to co-operate with the investigation, and to misplace any relevant medical records.

For Mrs A and her family having to revisit these events has been painful and traumatic. The additional pressure brought by Dr C's contact and pressure "not to respond" and for medical records to "go missing" is unacceptable. I have taken [Dr C's] surprising and unprofessional behaviour into account in deciding to take the following actions:

- Dr C will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.

- A copy of this report will be sent to the Medical Council of New Zealand and the New Zealand Medical Association, and the Royal New Zealand College of General Practitioners.

[3] The Tribunal viewed Dr N's conduct when she misled the Commissioner as the most serious aspect of her offending.

- 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.

Addendum

The Director of Proceedings decided to lay a charge before the Health Practitioners Disciplinary Tribunal. The charge comprised two particulars, the first relating to the sexual relationship and the second regarding an allegation that the doctor had deliberately attempted to subvert the Commissioner's process.

On the first particular, while the Tribunal found that the established facts amounted to malpractice and to the bringing of discredit to the profession, they did not warrant disciplinary sanction. In reaching its decision, the Tribunal noted that this was a very unusual case, and cited the following factors in reaching the decision it had: the genesis of the sexual relationship had been in social contact in the context of the parties living in a small community; the only established medical consultations were for relatively minor matters which did not place the patient in a position of being unduly vulnerable; there was serious delay in bringing the matter before the Tribunal; in response to the complaint, the doctor had stood down from obtaining a senior office within his profession; a Performance Assessment Committee Report verified that the doctor had a high awareness of the need to maintain boundaries and the potential risks associated with not doing so.

With regard to the second particular, the Tribunal was not satisfied that the allegation that there was a deliberate attempt to avert the HDC process had been established. Accordingly, the Tribunal dismissed the charge.

Link to HPDT report:
http://www.hpdt.org.nz/portals/0/med0765ddecdp070-substantive%20hearing(anon).pdf

Appendix 1

Dr H's medical records

4.8.88	Came in for cervical smear, but had chat about some domestic difficulties	
20.9.88	Long counselling session	
30.9.88	Long discussion about marriage and stress factors and the production of stress factors, risk-raking personality	To fill in an MBTI and return
28.10.88	Marriage guidance counselling see folder	
8.11.88	Neither [Mr A] nor [Mrs A] making very realistic attempts to sort out their differences	Further session in 3 days
12.11.88	[Mr A] is now full informed about the situation and is coming in to see me next week	
17.1.89	Domestic crisis seems to have burnt itself out. [Mr A] has taken a Christian stance and has forgiven [Mrs A] for the situation and wants the marriage to work. I think [Mrs A] has finally gained the insight concerning the reasons for her abhorrent behaviour from time to time. It is certainly good that the family is intact and they are moving to [a city], where [Mr A] will be taking up a [new job].	