

Physiotherapist, Mr B

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

(Case 17HDC02065)

Contents

Executive summary	1
Complaint and investigation	1
Information gathered during investigation	2
Opinion: Mr B — breach.....	3
Recommendations.....	5
Follow-up actions	5

Executive summary

1. Between 23 March 2017 and 30 August 2017, Ms A attended 38 appointments with physiotherapist Mr B at a clinic. During this time, Mr B accepted gifts from Ms A and, from the end of July 2017, they started dating. At the time of this report, Mr B and Ms A are still in a relationship together.

Findings

2. It was found that Mr B failed to provide services that complied with professional standards, and that he breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.¹

Recommendations

3. It was recommended that Mr B establish a six-month mentoring and continuing education plan with the Physiotherapy Board, in relation to the Code of Ethics and with an emphasis on professional boundaries, and report to HDC on the substance of the plan and the arrangements made to ensure compliance with that plan.
4. It was also recommended that the Physiotherapy Board of New Zealand consider whether a review of Mr B's conduct is warranted and, if so, particularly whether supervision for a period may be required, and report back to HDC on the outcome of its consideration.

Complaint and investigation

5. The Physiotherapy Board referred a complaint to the Commissioner about the services provided by a physiotherapist, Mr B. The Board had been sent the complaint by Mr B's employer. The following issue was identified for investigation:
 - *The appropriateness of Physiotherapist Mr B's relationship with Ms A.*
6. An investigation was commenced on 22 March 2018. This report is the opinion of Deputy Commissioner Meenal Duggal, and is made in accordance with the power delegated to her by the Commissioner.
7. The parties directly involved in the investigation were:

Ms A	Consumer
Mr B	Physiotherapist/provider
8. Further information was received from the clinic and the Physiotherapy Board.

¹ Right 4(2) of the Code states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

Information gathered during investigation

9. On 23 March 2017, Ms A had her first consultation with physiotherapist Mr B at the clinic. Over the next five months, Ms A had a further 37 appointments with Mr B, the last one being on 30 August 2017.
10. Several of Ms A's appointments were conducted in a shared area. Retrospectively, some of Mr B's colleagues told Mr B's employer, the clinic, that at the time of these events they had concerns about the way Mr B had been overly familiar with Ms A during his appointments with her. They said that he seemed to be flirting with Ms A, and that he seemed to extend her treatment duration unnecessarily. This is denied by Mr B.
11. At an appointment in June 2017, Ms A learnt that it was Mr B's birthday and she gave him two tickets to a show, which he accepted. Mr B said that he took a family member to the show with him.
12. On 28 July 2017, after a further appointment, Ms A emailed Mr B asking him out to a show, which they went to the following day. On 31 July they went out for dinner.
13. It became apparent to Mr B's colleagues that he was dating Ms A. One of his colleagues told the clinic, after these events, that Mr B had been "gloating" about the relationship. One of them stated to the clinic that at one point Mr B said that he had stayed at Ms A's house. They said that they raised their concerns with him, and that he would say "rules are made to be broken". This comment is denied by Mr B.
14. Mr B acknowledged that the advent of a relationship after having been single for a prolonged period of time made him happy, and that this could have been apparent to staff. He said that he was painfully aware that in embarking on a non-therapeutic relationship with Ms A he had potentially breached the Code of Ethics, and that there was no justification for his action and he could face significant criticism. He considers with the benefit of hindsight that he should have been more discreet with staff members about the relationship. He said that he can see now that his openness and desire to acknowledge the relationship as a very positive event in his life could be misinterpreted as a flagrant disregard of the Code of Ethics, and for that he is very sorry.
15. From 2–22 August 2017, Mr B was away on a previously planned holiday. Ms A told HDC that they exchanged messages and emails while he was away and spoke on the telephone. Ms A picked up Mr B from the airport. Ms A and Mr B state that Ms A offered to do this.
16. On 30 August 2017, Ms A had her final appointment with Mr B. No clinical notes were made of this visit. Mr B told HDC that with the benefit of hindsight he accepts that it would have been appropriate to cancel the 30 August 2017 appointment or to refer Ms A to another physiotherapist.
17. During the time of these events, Ms A was also seeing a clinical psychologist at the clinic. The clinical psychologist provided a brief statement to the clinic after these events. He stated that during the time that Mr B was in a professional relationship with Ms A he had discussed Ms A's care with Mr B as part of normal interdisciplinary communication with a

shared client. Ms A did not allow HDC to obtain her medical records in relation to her visits with the clinical psychologist.

18. Although Mr B and Ms A have both acknowledged that he entered into a non-therapeutic relationship with her while also in a professional relationship, they state that they began a “romantic” relationship only on 5 September 2017.
19. On 22 September, Mr B’s employers met with him to advise that they had been informed that he was currently seeing a client only recently discharged from the clinic. He was suspended on full pay, and a formal disciplinary hearing was set up, which he did not attend. Instead, Mr B resigned from the clinic.
20. Ms A told HDC that she instigated the relationship with Mr B, and she does not support the complaint made against him. Contrary to statements by Mr B’s colleagues, Ms A told HDC:

“[A]t no time during my treatment did [Mr B] exhibit any behaviour that could be considered unprofessional. There were no inappropriate comments (suggestive/sexual or otherwise), neither was there any inappropriate touching.”
21. Mr B told HDC that he “regrets the decision to embark on a relationship with [Ms A] at a time when the therapeutic relationship was still in existence”.
22. Currently Mr B and Ms A are still in a relationship together.

Responses to provisional opinion

23. Mr B was given the opportunity to respond to my provisional opinion. He maintains that there was no inappropriate or flirtatious behaviour during the treatment sessions with Ms A. He said that he takes issue with any suggestion that his relationship with Ms A arose out of him exploiting her alleged vulnerability, or any perceived power imbalance between them as a result of their initial interactions as patient and practitioner.
24. Mr B further said that he takes issue with Ms A’s sessions with a clinical psychologist at the clinic being seen as evidence of Ms A’s perceived vulnerability.
25. Mr B has taken steps to implement a supervision regimen with a senior colleague, which involves fortnightly supervision sessions where they discuss issues that have arisen in their respective practices.

Opinion: Mr B — breach

26. Physiotherapist Mr B formed a non-therapeutic relationship with Ms A whilst being in a professional relationship with her as her physiotherapist. While I am unable to ascertain whether there was a sexual relationship at the time, Mr B has acknowledged entering into a “romantic relationship” very soon after their professional relationship ended.

27. Entering into a non-therapeutic relationship with a client (whether sexual or otherwise) whilst being in a professional relationship is a breach of the Aotearoa New Zealand Physiotherapy Code of Ethics and Professional Conduct (October 2011) (Code of Ethics) as well as a breach of the Standards on Professional Boundaries (Sexual and Emotional Boundaries, May 2017).
28. Principle 2 of the above Code states: “Physiotherapists act to promote the health and wellbeing of the patient/client, while acknowledging, respecting and facilitating patient/client autonomy.” The commentary in relation to this principle (March 2017) states that “in nearly all instances *sexual contact with former patients* would be regarded as unethical [writer’s emphasis]”.
29. I further note that Physiotherapy New Zealand’s Position Statement *Clear Sexual Boundaries in the Patient Physiotherapist Relationship* (December 2012) states:
- “The abuse of professional boundaries is not restricted to sexual relationships but may include any conduct which crosses professional boundaries, or may be reasonably construed by the patient as having that purpose.”
30. I further note that the same Statement above refers to the physiotherapy patient as always being considered a “vulnerable” patient, and that “[b]ecause of the power imbalance, initiation by the patient and their consent is not considered a valid defence”.
31. I further note that during the time that Ms A had appointments with Mr B, she also had three appointments with a clinical psychologist at the clinic. Mr B has acknowledged that he was aware of these appointments. The clinical psychologist has acknowledged that he discussed Ms A with Mr B. There was a clear imbalance of power, which was exacerbated by Mr B’s knowledge that Ms A was more of a vulnerable patient.
32. The Standards on Professional Boundaries list several signs that “may indicate potential for breaking of sexual boundaries”, including:
- Accepting personal social invitations;
 - Failing to manage seductive advances by a patient in an appropriate professional manner; and
 - Receiving gifts.
33. While I note Mr B’s statements in response to my provisional opinion that he takes issue with any suggestion that his relationship with Ms A arose out of him exploiting her alleged vulnerability, or any perceived power imbalance between them, and with Ms A’s sessions with a clinical psychologist at the clinic being seen as evidence of Ms A’s perceived vulnerability, I also note that the Standards and Statements outlined above are quite clear that the physiotherapy patient is always considered a “vulnerable” patient. I remain of the view that Ms A was a “vulnerable” patient.
34. Mr B has admitted to having been in a non-therapeutic relationship with Ms A at the same time as being in a professional relationship. He also accepted gifts from her, they went out

on at least two occasions, and Ms A picked him up from the airport. It is quite clear that Mr B failed to uphold his professional standards.

35. For the reasons set out above, I find that Mr B failed to provide services that complied with professional standards, and that he breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.²
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Recommendations

36. I recommend that Mr B establish a six-month mentoring and continuing education plan with the Physiotherapy Board, in relation to the Code of Ethics and with an emphasis on professional boundaries, and report to HDC on the substance of the plan and the arrangements made to ensure compliance with that plan, within three months of the date of this opinion.
37. I recommend that the Physiotherapy Board of New Zealand consider whether a review of Mr B's conduct is warranted and, if so, particularly whether supervision for a period may be required, and report back to HDC on the outcome of its consideration.
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Follow-up actions

38. A copy of this report with details identifying the parties removed will be sent to the Physiotherapy Board of New Zealand, and it will be advised of Mr B's name.
39. A copy of this report with details identifying the parties removed will be sent to Physiotherapy New Zealand, and it will be advised of Mr B's name.
40. 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.

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