General Practitioner, Dr A

General Practitioners, Dr A, Dr B, and Dr C
(Trading as the medical centre)

A Report by the

Health and Disability Commissioner

(Cases: 21HDC01972; 21HDC01770; 21HDC01965; 21HDC01971; 21HDC01978; 21HDC01981; 21HDC02003; 21HDC01995; 21HDC01997; 21HDC01999; 21HDC02043; 21HDC02118)

Contents

Executive summary

1. This report considers the actions of general practitioner (GP) Dr A and the manner in which he advised multiple patients not to have the COVID-19 vaccination. He sent an unsolicited text message to around 600 patients and advised others in person not to be vaccinated.

2. The report also considers the adequacy of the actions of the other medical practitioners at the medical centre.

Findings

3. The report finds that the services Dr A provided to the consumers who received the text message did not comply with legal, professional, and ethical standards.

4. Dr A used the medical centre's patient list to send an unsolicited text message to around 600 patients expressing his non-conventional views about the COVID-19 vaccine. This was contrary to the "Unprofessional behaviour" and the "Use of the internet and electronic communication" Medical Council of New Zealand (MCNZ) standards.

5. Dr A's failure to provide balanced information to patients was contrary to the MCNZ "Doctors and complementary and alternative medicine (CAM)" standard, the MCNZ guidance statement "COVID-19 vaccine and your professional responsibility", and the MCNZ publication *Good Medical Practice*. It was also contrary to the "Unprofessional behaviour" statement in that it had the effect of potentially reducing the patient uptake of the COVID-19 vaccine. This could have resulted in poorer health outcomes for patients who received the message.

6. The Commissioner found that Dr A breached Right 4(2)[1] of the Code of Health and Disability Services Consumers' Rights (the Code), and that the breach finding applied to nine patients.

7. The Commissioner made adverse comment about Dr A's failure to give one patient balanced, accurate information in order for her to make an informed choice about whether or not to be vaccinated.

8. The Commissioner also found that Dr A did not provide another patient with the information that a reasonable consumer in his circumstances would expect to receive, and therefore Dr A breached Right 6(1)[2] of the Code. Dr A also did not provide services to the patient that

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

[2] Right 6(1) states: "Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including—
(a) an explanation of his or her condition; and
(b) an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and
(c) advice of the estimated time within which the services will be provided; and
(d) notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and

complied with legal, professional, and ethical standards, and breached Right 4(2) of the Code. The Commissioner was further critical of Dr A's failure to document the information he provided.

9. The Commissioner found that Dr A, Dr B, and Dr C (trading as the medical centre) did not breach the Code.

Recommendations

10. The Commissioner recommended that:

- Should Dr A be granted a further practising certificate, the Medical Council of New Zealand consider undertaking a competence assessment and requiring that he practise with conditions that address the issues in this report.
- Dr A separately apologise for his breaches of the Code, to each of the individual patients referred to in this opinion.
- Should Dr A return to medical practice, he undertake training on professional and ethical standards.
- Dr B and Dr C consider developing guidelines on the use of patient lists and the PMS system.

Complaint and investigation

11. The Health and Disability Commissioner (HDC) received complaints from multiple consumers about the conduct of Dr A with regard to the manner in which he expressed his views about the COVID-19 vaccination. Following a preliminary assessment of this complaint, the Commissioner, Morag McDowell, decided to commence an investigation on her own initiative pursuant to section 40(3) of the Health and Disability Commissioner Act 1994, because the concerns raised had a potential impact on multiple consumers, and are of high public interest. The following issues were identified for investigation:

- *The appropriateness of services provided by Dr A to Patient 1 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 2 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 3 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 4 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 5 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 6 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 7 in 2021.*

(e) any other information required by legal, professional, ethical, and other relevant standards; and
(f) the results of tests; and
(g) the results of procedures."

- *The appropriateness of services provided by Dr A to Patient 8 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 9 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 10 in 2021.*
- *The appropriateness of services provided by Dr A to Patient 11 in 2021.*
- *The appropriateness of services provided by Dr A to patients at the medical centre in 2021 with regard to the provision of information about vaccination against COVID-19.*
- *The appropriateness of services provided by Dr A, Dr B and Dr C (trading as the medical centre) in 2021 with regard to the provision of information about vaccination against COVID-19.*
- *The appropriateness of the actions of Dr A, Dr B and Dr C (trading as the medical centre) with regard to the conduct of Dr A since January 2019.*

12. The parties directly involved in the investigation were:

Dr A	Provider
Dr B	Provider
Dr C	Provider
Patient 1	Consumer/complainant
Patient 2	Consumer/complainant
Patient 3	Consumer/complainant
Patient 4	Consumer/complainant
Patient 5	Consumer/complainant
Patient 6	Consumer/complainant
Patient 7	Consumer/complainant
Patient 8	Consumer/complainant
Patient 9	Consumer/complainant
Patient 10	Consumer/complainant
Patient 11	Consumer/complainant

13. Further information was received from the Primary Health Organisation and the Medical Council of New Zealand (MCNZ).

Information gathered during investigation

Introduction

14. This opinion relates to complaints made by 11 patients regarding the conduct of GP Dr A in 2021. The opinion sets out the background that is applicable to all the patients affected, reaches conclusions about the services Dr A provided to those patients, and considers each individual complaint.

15. The conduct concerned relates to the actions of Dr A when providing information regarding vaccination against COVID-19 to patients at the medical centre. This report also considers whether the other doctors in the group practice, Dr B and Dr C, acted appropriately in the circumstances.

Medical centre

16. The medical centre is a group practice that, at the time of these events, comprised Dr A, Dr B, and Dr C. Dr B and Dr C told HDC that prior to Dr A's departure,[3] the medical centre did not have patients registered with it, because each doctor operated their own practice with their own practice list, and shared the expenses of the practice.

17. The practice agreement[4] states that it does not create a partnership between the doctors, but if any doctor sells their practice, all information relating to patients of the seller and/or the medical centre is confidential information and will remain the property of the medical centre and/or the purchaser. It states that no confidential information can be removed from the medical centre in any circumstances. It also requires each practitioner to consult with the other practitioners in respect of a matter if they have a reasonable expectation that the matter is of sufficient importance that they should be consulted (clause 6.5).

18. Dr B and Dr C told HDC that each practice owner has a separate lease agreement with the owner of the premises, and each contributes by means of a monthly transfer of funds to certain shared expenses (for example, utilities, wages, and certain consumables).

19. The medical centre is a member of the Primary Healthcare Organisation[5] (PHO) network. The PHO has in place a back-to-back agreement with the individual GPs for subsidised primary care services to their enrolled patients. Dr B and Dr C told HDC that each practice owner has an individual agreement with the PHO and receives capitation[6] funding, which is paid directly to the practice owner.

COVID-19 vaccine

20. The main COVID-19 vaccine[7] used in Aotearoa New Zealand at the time of the matters giving rise to this investigation was made by Pfizer-BioNTech (Pfizer). The vaccine is also known by its brand name, Comirnaty.

21. Medsafe is New Zealand's medicines safety authority. It checks applications for all new medicines, including vaccines, to make sure they meet international standards and local requirements. It will recommend that a medicine is approved for use in New Zealand only if it meets these standards.

[3] See para 51.
[4] Practice Agreement 2016.
[5] A not-for-profit social enterprise that provides primary healthcare services.
[6] Capitation is a payment arrangement for general practice providers. It funds each practice a set amount for each enrolled person per year.
[7] AstraZeneca and Novavax COVID-19 vaccines have also been approved.

22. Medsafe formally made the decision to provisionally approve the Pfizer vaccine in New Zealand on 3 February 2021, and the provisional approval was renewed on 28 October 2021. Pfizer must give Medsafe ongoing data and reporting to show that it meets international standards. Medsafe monitors the safety and efficacy of the vaccine as it is used. It reviews data from ongoing clinical trials around the world, and reports from healthcare professionals and people who have been vaccinated.

Public letter

23. Dr A is a member of New Zealand Doctors Speaking Out with Science (NZDSOS). NZDSOS has a website that states: "We are an independent collection of experienced NZ registered real-world medical experts." On 17 April 2021, members of NZDSOS wrote an open letter to MCNZ, the New Zealand Medical Association, and the Royal New Zealand College of General Practitioners, outlining concerns regarding the safety and efficacy of the Pfizer Comirnaty Investigational Vaccine (see Appendix A). Dr A was one of the signatories to the letter. Each signatory included their MCNZ registration number after their name.

24. In response to the provisional opinion, Dr A submitted that the NZDSOS letter raised concerns about the efficacy of the COVID-19 vaccine, but it did not relate to the care that he provided to specific patients or any of the medical centre's patients more generally, and so is outside the jurisdiction of HDC.

Medical centre responses to public letter

25. Dr B and Dr C told HDC that they did not respond directly to the public letter signed by Dr A, as the views in the letter were his personal views expressed in the public domain. They said that the NZDSOS letter "was plainly in the form of a public statement aimed at changing Government policy regarding the vaccine rollout — not directed at individuals for the purpose of discouraging them from becoming vaccinated". They stated that it did not occur to them that they could or should have taken any action to prevent Dr A from expressing his opinions, and said that they "recognise and respect the fact that all people in New Zealand are entitled to their own opinion and, seemingly, to be able to express them. That is at least what [they] genuinely believed at all times through this matter."

26. Dr B and Dr C said that once they were aware of the letter, the medical centre's Practice Manager liaised with the PHO through its Chief Executive Officer (CEO) and its External Communications Advisor and it was decided that the best approach to address any potential issues arising from the letter would be to promote the COVID-19 vaccination clinic that was planned with other local providers, and to reassure the medical centre patients that they would all be invited to attend.

27. Dr A, Dr B, and Dr C had a management meeting on 6 July 2021, at which it was decided to offer all patients who were registered with a GP at the medical centre, including Dr A's patients, the opportunity to be included in the vaccine rollout. Dr B said that she also had a direct verbal discussion with Dr A, during which she told him that she did not agree with his views and advised him not to discourage his patients from vaccination, as it was their right to receive it. She said that her impression from the discussion was that Dr A agreed that he

would not do so. She told HDC that she does not remember the date of this conversation, other than that it was well before Dr A sent the text message to his patients on 19 August 2021 (outlined below at paragraphs 35–38).

28. In response to the provisional opinion, Dr B said that during a conversation in the corridor, Dr A indicated to her that he would not be advising his patients directly against having the vaccine. She said that he attended monthly meetings, during which they were setting up the COVID-19 vaccination clinics, and he did not object to this at all, so she thought that he would be on board with the vaccination programme despite his personal views.

29. In addition, Dr B said that she made her views very clear to Dr A — that she was going to be vaccinated as soon as the vaccine was available and would be actively promoting the vaccine to all patients.

30. Dr B and Dr C said that during practice meetings (including the management meeting on 6 July 2021), they both advised Dr A that they would invite all his eligible patients to have a COVID-19 vaccine as per the vaccination programme that their practices had initiated for the community.

31. Dr B and Dr C told HDC that medical centre staff advised patients to get their information from the government website. They said that they had no "direct knowledge" of Dr A's professional communications with patients registered with him, and he seemed to have indicated to Dr B that he would not be directly advising his patients against having the vaccine.

MCNZ guidance statement

32. MCNZ issued a guidance statement, "COVID-19 vaccine and your professional responsibility" (the MCNZ guidance statement) on 28 April 2021 (see Appendix B). HDC asked Dr A whether at the time he sent his text to patients (discussed below) he was aware of the guidance statement, but he did not respond because he considered that this information was not relevant to the scope of the Commissioner's investigation.

Complaint to medical centre 20 June 2021

33. On 20 June 2021, a former patient of the medical centre emailed the practice expressing concerns about Dr A's public stance with regard to the COVID-19 vaccine, and in particular concerns about the potential harm to vulnerable individuals and the community.

34. The Practice Manager responded to the former patient that she had forwarded his email to Dr A. She also told the former patient about the planned community COVID-19 vaccination centre.

Text message

35. On 19 August 2021, Dr A sent a text message to around 600 of his patients that stated:

> "Hi [name], your GP [Dr A] here. I cannot in conscience support COVID vaccination of, particularly, children, and pregnant and fertile women, from my assessment of current

> risks and benefits, best explained at www.nzdsos.com. All to make their own best decision. I apologise for any distress. My views are my own, not the consensus. [The medical centre] will continue with rollout invites. Email, do not ring, to [email address]. With gratitude, and respect for the informed decision this has to be. Do not reply by text."

36. Dr A told HDC that his fundamental issue with the COVID-19 vaccine stems from his belief that an "experimental drug" should not be rolled out to children and pregnant women on a wide scale, and certainly not without their properly informed consent. He stated: "[COVID-19] is a virus with an influenza-level mortality that carries very low risk of serious harm to the young." He said he accepts that his concerns about the COVID-19 vaccine are not widely shared by the medical profession. His legal counsel stated:

> "Ethically, how could [Dr A] obtain a patient's informed consent to vaccination without expressing his views as to potential risks and unknowns, as he is specifically required to do by the Code[8] and the common law? Furthermore, although it is acknowledged that patients will often have a great deal of trust in their GP, it does not follow that patients will blindly align their views with that of their GP. In fact, some of the complaints [HDC has] received confirm that the very opposite is true. To that end, we note that the Code presumes, rightly so, that every patient has the capacity to make their own decision in respect of any health services they receive, provided they receive appropriate information (risks and benefits) about their treatment and care."

37. Dr A told HDC:

> "In the end I prepared a hastily contrived text message which has come at a huge financial, personal and professional cost. I simply did not feel that I could, in good conscience, ignore the VAERS [the US Vaccine Adverse Event Reporting System], Eudra Vigilance [the system for managing and analysing information on suspected adverse reactions to medicines that have been authorised or are being studied in clinical trials in the European Economic Area] and Yellow Card reporting system [a UK site for reporting suspected side effects to medicines, vaccines, and medical device and test kit incidents used in coronavirus testing and treatment] record of post vaccine deaths and injuries as a signal of concern."

38. Dr A said that when he heard the Prime Minister's announcement that 12- to 15-year-olds were eligible to receive the vaccine, made on 19 August 2021, he felt compelled to act because of his concerns about the vaccine. He stated:

> "I felt it important for my patients to know that there is not unanimity among the medical profession about the vaccine and like me, some doctors have concerns. This has not been signalled in any of the Ministry of Health's public guidance, and in my view patients have a right to know this."

[8] The Code of Health and Disability Services Consumers' Rights.

Use of patient list

39. The medical centre told HDC that each doctor has their own independent and individual patient list, and Dr A sent the text only to patients on his list. Dr A told HDC that some of the patients to whom he sent the text were casual[9] patients.

40. The medical centre said that the patient contact information is used to communicate health information to patients, and recalls for health checks/immunisations. It is also used for audits and quality control within the practice. Bulk messages can be sent via sms.[10] Usually this is used for a mass recall like the flu vaccination or to relay information to multiple patients, as the practice did with its COVID Vaccination Clinic. The medical centre said that the practice has no specific policy for "patient lists", but other practice policies contain guidelines regarding the use and storage of patient information.

41. Dr A said that he carried out a search on the practice's PMS (patient management system) to identify his enrolled patients who were under 65 years old, had not been vaccinated, and had cell phones. He stated that in doing so, he inadvertently brought up the details of some casual patients. Dr A said:

> "Of course, I appreciate the patients were surprised to receive my message and I appreciate they are entitled to feel the way they did about my message. I do regret the distress and upset my message caused, as well as not reflecting for longer on how else I might have communicated my concerns in a more private and nuanced way to the cohort of patients who received my message."

42. Dr A acknowledged that at that time he suspected that some patients could be upset or angry about the text message, but he considered that his professional obligation was to "fill in the gaps" in understanding about the vaccine for his patients, particularly those who were parents and had young children. He stated:

> "I did not want their decision about whether to get the vaccine to be rushed, coerced or inadequate. Making sure my patients were in a position to make an informed decision regarding the vaccine was my priority, whilst accepting risks of comeback."

43. Dr A said he believes that he has the right to advise his patients according to his conscience and his understanding of the evidence, and to highlight any counter view.

Actions following text message

44. On 19 August 2021, Dr A informed the other GPs in the practice that he had sent the text to 600 patients, and that he would pay the costs of sending the texts. He said in the email:

> "We have never formally discussed my departure from the consensus and I have been grateful for the, thus far, tacit support of my right to my views. Certainly plenty of my patients have been vaccinated, without me throwing myself in front of them."

[9] A patient not enrolled with the medical centre.
[10] Short message service (a system for sending short text messages).

45. On 20 August 2021, Dr C replied:

> "Unfortunately, I think the costs are not likely to be limited to payment of the SMS fees, and we are all likely to bear some part of them. Professional suicide is one thing, but I'd prefer not to go down in the hail of bullets that has already descended on the email account."

46. Dr B replied to Dr A's email emphasising her support for patient autonomy, and that the consequences of his actions would affect everyone in the practice.

47. Dr A responded:

> "Thanks guys, the practice will survive this fine, with or without me. The writing's been on the wall for me for ages, and I will leave when I have to. I wasn't expecting they would start vaccinating the children so soon. This is a medical treatment not a philosophical trope. I cannot absolve the responsibility I feel. If I'm wrong about a pandemic of vaccination illness then even more fool me. I can live with that."

48. The medical centre said that it has not conducted a formal internal review or investigation in relation to this matter because of the actions detailed below and subsequent investigations undertaken.

49. On 20 August, the Practice Manager was telephoned by the CEO of the PHO, who stated that the PHO would be taking action against Dr A and possibly would cancel his contract with them, and that they were in discussion with their lawyers. The CEO also said that the district health board and MCNZ were aware of Dr A's text and would be taking their own action against him.

50. On the evening of 23 August 2021, the CEO advised Dr B and Dr C that the PHO would be cancelling Dr A's contract, and requested that they take on the care of Dr A's medical centre patients.

51. On 24 August 2021, Dr A returned to work at the medical centre. That evening he was notified that his contract with the PHO had been cancelled. Dr A has not seen any patients at the medical centre since then. The medical centre said that on 25 August 2021 it removed Dr A's access to PMS and his ability to send text messages to his patients.

52. The medical centre provided HDC with 16 written complaints it had received from patients regarding the text message, many of whom wished to change doctors. Dr B and Dr C told HDC that the same provisions were made as for any other patient wishing to enrol with a new GP — the departing patient remained enrolled with and cared for by the original GP until the new GP made a request for transfer of enrolment and medical records.

53. Dr B and Dr C said that initially the patients were advised that they could see one of the locums at the medical centre, as they did not have the capacity to enrol additional patients. However, when the PHO asked whether they would be able to offer care to Dr A's patients

in the likely event of its cancellation of his contract, they agreed to offer care until a replacement (locum) could be found. In addition, they assumed responsibility for Dr A's commitments to another medical centre.

54. Dr B and Dr C told HDC that after Dr A's departure from his practice, the PHO changed his patients' enrolments to the trading name of the medical centre (an entity that previously had not had any enrolled patients); their care was undertaken initially by Dr B and Dr C as "casual" patients, as well as by locum doctors previously employed by Dr A, and then by additional doctors employed under locum tenens[11] contracts with the medical centre as doctors became available. They said that the current situation with respect to Dr A's former patients is not ideal, as their care is now shared between three locum doctors, but there are other practices in close proximity to the medical centre, and patients have been able to move to those practices if they wish.

Complaints about text message

55. The following complaints relate to patients who received the text message from Dr A outlined above. In each case, the discussion should be read together with my discussion of the MCNZ standards commencing at paragraph 104 of this report. This section will outline the concerns of each patient.

Patient 2[12]

56. Patient 2 complained to HDC about the text message, and said: "I consider this to be dangerous and could put people at risk of death or ongoing illness."

57. Patient 2 said that she did not discuss the COVID-19 vaccination with Dr A at any time. She told HDC that by the time she was eligible for vaccination, she had already seen media articles linking Dr A to the anti-vaccination lobby, and because of that she had decided not to see him again. She stated that she would have seen one of the other doctors in the practice had she been ill.

Patient 3[13]

58. Patient 3 stated:

> "I want to inform authorities that he is using his position to undermine the COVID vaccine roll out. Not only is he sending this to patients, he isn't even providing information for his view."

59. Patient 3 said that she had not had any communication or conversation with Dr A regarding the vaccine prior to his sending her the text message.

[11] A person who temporarily fulfils the duties of another.
[12] 21HDC01965.
[13] 21HDC01971.

Patient 4[14]

60. Patient 4's complaint to HDC about the text message stated: "[I]t is incredibly unprofessional and dangerous of him." She said that she has no issues with the care Dr A provided to her and her family, and stated:

> "I never felt that our care was compromised by his beliefs and he provided our family with a good level of care. I do feel that he crossed a line in using my personal details to message me with his private beliefs that is what I have an issue with."

Patient 7[15]

61. Patient 7 complained to HDC and MCNZ about the text message he received from Dr A about the COVID-19 vaccine. He said that the message was also sent to his brother and sister (whose ages ranged from 25–31 years). He noted that the message discussed Dr A's personal views on the COVID-19 vaccinations and not the general medical consensus.

62. Patient 7 told HDC:

> "I feel this is an inappropriate use of [medical centre] records, regardless of any potential truth to his statements. Considering recent media articles relating to nzdsos.com and [Dr A] I believe this genuinely was his doing and warrants further investigation."

Patient 8[16]

63. Patient 8 complained that she was sent a text that informed her that Dr A did not support COVID-19 vaccination, and it directed her to a website with anti-vaccination content.

64. Patient 8 said that she had not asked Dr A for his personal views on vaccines or for any opinion at all. She stated that she has had no conversations or correspondence about COVID-19 or related vaccines or treatments with Dr A at any point other than the text message he sent, but he had administered nasopharyngeal COVID-19 tests for herself and her son on one occasion.

65. Patient 8 stated that she feels that it was inappropriate for Dr A to use her personal data from the medical centre to contact her and share "this misinformation", and she wants to know whether doctors can use patient data for this kind of communication. She said that her husband, who was also a patient of Dr A, did not receive the text message, so there seemed to have been some element of targeting of who received the message.

66. Patient 8 said that this was not an appropriate message to send to patients, and noted that receiving the text caused her stress, and she thinks that Dr A targeting her with this kind of message was reckless because of her personal circumstances.

[14] 21HDC01978.
[15] 21HDC01981.
[16] 21HDC02003.

Patient 5[17]

67. Patient 5 said:

> "I find it inappropriate and totally out of line to be contacted in this way about a vaccine I already had in April, and I feel fine. It's not acceptable for a so called medical professional to contact people like this pressing his personal views on patients. I am completely disgusted by his behaviour and feel he is abusing his privilege by contacting me."

68. Patient 5 said that Dr A had been his doctor for many years, and he thought he could rely on Dr A as a medical professional, but after this occurred, he wanted nothing more to do with him.

Patient 6[18]

69. MCNZ referred a complaint from Patient 6 regarding the text message Dr A sent to him. Patient 6 stated that he was very concerned that a GP was spreading "this misinformation", and said it was highly concerning and felt like a breach of conduct as a doctor.

Patient 9[19]

70. Patient 9 stated:

> "I was and am shocked such a communication was sent. [Dr A] should have kept his own opinions, with regards to the COVID-19 vaccine, to himself. Anti-vaccination conspirators should have no place in the Medical Profession."

71. Patient 9 informed the medical centre that he no longer wanted Dr A to be his GP, and said he was happy to be transferred to another GP within the practice.

Patient 10[20]

72. Patient 10 told HDC that Dr A had been her GP since he began practising in the area, and she had never previously had any reason to doubt his professionalism. She said that she had never consulted Dr A about the COVID-19 vaccination or sought his opinion about it.

73. Patient 10 stated:

> "I feel strongly that the effect of this text will be to put doubt into the minds of some of his patients who may be feeling uncertain about getting the COVID 19 vaccination. I feel the Government made the decision on our behalf to vaccinate the population based on scientific evidence. We have to trust these decisions and in my opinion this action of [Dr A's] is undermining that trust and [is] therefore unprofessional."

[17] 21HDC01995.
[18] 21HDC02118.
[19] 21HDC01997.
[20] 21HDC01999.

Complaints not supported by consumers

74. In addition to the complaints included in this investigation, there were a number of other complaints about Dr A having expressed his views about the COVID-19 vaccine, some made directly to the medical centre, some to the MCNZ, and five complaints made to HDC by whānau of Dr A's patients, which were not supported by the patients themselves.

75. In one case, the complaint was made by the patient's sister-in-law. The patient (aged in her thirties) told HDC that she did not support the complaint and she wants to remain anonymous. The patient stated that Dr A is "very believable" and he has convinced her not to have the COVID-19 vaccination. She said that Dr A told her that the "COVID 19 vaccine would settle in her ovaries", and he made her promise that she would not have the vaccine. Dr A told her that he suspected that the COVID-19 vaccine given to the Prime Minister was fake, and told her that the data on vaccine reactions was not correct.

76. The patient said that following surgery last year, she developed an infection and had a traumatic experience. She developed anxiety, for which she is taking medication, and is terrified of having a reaction to the vaccine. She said that Dr A was aware of her concerns, and knew that she was vulnerable. She stated that she believed Dr A's advice that she would have a reaction to the COVID-19 vaccine, and consequently she has not been vaccinated.

77. One complainant told HDC that Dr A's actions had had a "ripple effect" by widening the antivax community, and as a result his actions had caused harm.

78. Another complaint that was not supported by the patients was from a concerned daughter who said that her parents had been advised by Dr A that the Pfizer vaccine is dangerous and untested. After a consultation with Dr A, they both decided not to get vaccinated.

Further comment from Dr A

79. Dr A said that his view is that there are too many unknowns about the vaccine for him to feel comfortable recommending it, and the evidence in support of its efficacy and safety is changing over time.

Comments on changes made to practice

80. Dr A made a number of comments about how he would communicate with patients about the COVID-19 vaccine in the future. He stated:

> "I have very closely examined the evidence to form my beliefs, with which my actions have been consistent, and I acknowledge it is my personal view whilst at the same time recognising that there is plainly another (consensus) view when talking to patients."

81. Dr A said that he appreciates that when he has discussions with his patients about the vaccine, it is important that he clarify that his own views are not the consensus. He said that this is evident from the text message that he sent to his patients, which expressly stated: "My views are my own, not the consensus."

82. Dr A stated that hereafter if a patient asked about his views or if they were relevant to a consultation, he would caveat his views by advising patients that his concerns are not the consensus, and he would direct patients to "official forums" where they could carry out their own research and reach their own informed views.

83. Dr A told HDC that given that a large number of people have complained about the text message he sent on 19 August 2021, in the future he would not proactively contact patients or communicate his views in that way. He said that although his views on the vaccine have not changed, in future he will be more circumspect in the way he communicates them.

84. Dr A told HDC that his advice about COVID-19 or the COVID-19 vaccine will be tailored to each individual patient and their risk–benefit as best as he can discern it. If he were asked about COVID-19 by a patient with no autoimmune illness or other morbidities relevant to COVID-19, his advice would be that COVID-19 is a virus with an influenza-level mortality and while it carries a low risk of harm to the young, it is "no joke" and can be very serious in some patients and many have died from it.

85. Dr A said that consistent with an undertaking he has provided to MCNZ, in future he would also inform patients of the extent to which his views and concerns vary from conventional theories of medicine, including the Ministry of Health's position in support of the national pandemic response in New Zealand and the MCNZ's position and guidance statement on COVID-19. He said that he would also offer to refer the patient to another doctor nearby, who could provide the patient with further advice on COVID-19 that is in line with guidance issued by the Ministry of Health.

Information on NZDSOS website

86. As stated above, Dr A's text message to his patients suggested that the patients obtain information from the NZDSOS website. The text message includes:

> "I cannot in conscience support COVID vaccination of, particularly, children, and pregnant and fertile women, from my assessment of current risks and benefits, best explained at www.nzdsos.com."

87. This indicates that Dr A advised the patients that they should assess the risk and benefits by perusing the NZDSOS website, and the text does not refer to other sources of information such as the Ministry of Health website.

88. An article on the NZDSOS website published on 22 July 2021 states that the toll of dead and injured from the COVID-19 vaccine is ten times more than we are being told. It states that at least 40 people had died,

> "often suddenly and unexpectedly, suspiciously close to their vaccination. We know of another 80 'probables and possibles' where there is not yet enough information on timing etc. Most of these cases are close enough that a proper investigation MUST be carried out, as befits the clinical trial that all recipients are part of."

89. The NZDSOS website published an article dated 28 October 2021[21] setting out Dr A's responses to questions from a journalist, in which Dr A stated: "The vaccine is truly hurting people but our amoral leaders show no interest as it is just a means to an end: biometric ID as a tool for total control." The article contained positive statements from Dr A about the use of vitamin D, the alleged "real world success" of hydroxychloroquine,[22] and the use of ivermectin[23] to treat COVID-19.

90. In the article, Dr A stated:

> "I'm deeply uncomfortable to claim officially that in the last few weeks we have learned of: a 12 year old girl who collapsed and died in the arms of a helper at camp, 2 weeks post vaccine; and two 17 year olds sacrificed to the Pfizer, a girl after 10 days from blood clots and a boy suddenly, 2 days following. There are plenty more."

91. With regard to the vaccination causing people to experience magnetism, Dr A said in the article:

> "I visited a patient to confirm the magnetism for myself. We have plenty of compelling videos from patients that are available for the government, following our urgent request that they do their own assessment, given the deaths and defective batches in Japan."

92. The NZDSOS website refers to COVID-19 as "a cold" and, with regard to the vaccine, states:

> "There seem to be micro-scale and possibly self-assembling electronic components in the COVID-19 jabs. We have seen pictures of this in the jabs given in New Zealand. This could provide further explanation for the harm already apparent."

Responses to provisional opinion

93. All parties were given an opportunity to comment on the "information gathered" section of the provisional opinion. Dr A and the other medical centre doctors were given an opportunity to comment on relevant sections of the full report. All comments have been incorporated above as appropriate. In addition, the following submissions were received.

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[21] Footnote removed to address the privacy of the provider.

[22] Pharmac's website states: "Hydroxychloroquine has not demonstrated an overall benefit in the treatment of COVID-19, as indicated by the World Health Organization." The United States Food and Drug Administration (FDA) approved an Emergency Use Authorization (EUA) on 28 March 2020 to allow distribution of hydroxychloroquine to treat adults and adolescents who weigh at least 50kg and who are hospitalised with COVID-19, but who are unable to participate in a clinical study. However, the FDA cancelled this on 15 June 2020 because clinical studies showed that hydroxychloroquine is unlikely to be effective for treatment of COVID-19 in these patients and some serious side effects, such as irregular heartbeat, were reported.

[23] The Medsafe data sheet states: "Ivermectin is a prescription medicine typically used to treat parasites in humans. It is also used for prevention of heartworm in small animals and treating parasites in various animals. Ivermectin is NOT APPROVED to prevent or treat COVID-19, which means that Medsafe has not assessed the safety and efficacy for this use. Inappropriate use of ivermectin can be dangerous." (Emphasis in original.)

Dr B

94. Dr B said that she agrees with the need for principals at the medical centre to have unanimous agreement when mass texts get sent to patients regarding clinical matters, and that all principals must obtain consent. She noted that this is stipulated in their practice agreement, which Dr A did not comply with in this matter. She stated: "We will ask our practice manager to put something into our privacy policy regarding the fact that all principals must consent to sending out mass texts on clinical matters."

Dr C

95. Dr C agreed with the finding that the medical centre did not breach the Code, and said that he had nothing further to add.

Individual complainants

96. Patient 10 noted that although Dr A said that he identified patients under 65 years of age to send the text message to, she was sent the text message despite being 77 years old at that time.

97. Patient 4, Patient 2, Patient 8, Patient 5, Patient 6, Patient 9, and Patient 3 had no further comment to add.

Dr A

98. Dr A submitted that the relevant context to his decision to send the text message to his patients was that he holds genuine and serious concerns about the efficacy and safety of the COVID-19 vaccine. He said he was concerned that the Ministry of Health, Medsafe, MCNZ, and other authorities were not engaging with his concerns about the COVID-19 vaccine in a meaningful way. He stated that he was concerned about the lack of awareness, information, or publicity surrounding the negative side effects of the COVID-19 vaccine and its "unknowns".

99. Dr A said that on 19 August 2021 he was made aware that the COVID-19 vaccine was to be rolled out to children aged between 12–15 years old, and that this would begin the following day. He had concerns about the lack of detail included in the COVID-19 vaccine consent form, as well as the standard of the "informed consent" process being following at vaccination centres. He felt that he had an obligation to voice his concerns.

100. Dr A submitted that the information published on the NZDSOS website does not relate to the care that he provided to specific patients or any of the medical centre's patients more generally. In addition, he submitted that "much of the information referred to [regarding information on the NZDSOS website] post-dates the text message [he] sent to his patients".

101. With regard to whether his actions did not comply with the MCNZ CAM Standard and the Guidance Statement, Dr A submitted that none of the complaints alleged that he recommended treatment with either vitamin D, hydroxychloroquine, or ivermectin. He said that the basis for the reference to these treatments in the provisional opinion appears to be the NZDSOS website. Dr A submitted that any information included in the NZDSOS website falls outside the jurisdiction of the HDC.

102. Dr A said that vitamin D, hydroxychloroquine, and ivermectin are fully approved prescription medicines available for human use in New Zealand, so it is incorrect to label their use as "alternative medicines".

103. The use of the term "alternative" by NZDSOS, which recommends their strongly evidence-based use, refers to vitamin D, hydroxychloroquine, or ivermectin being alternatives to simply doing nothing for early treatment, as well as an alternative to relying solely on vaccination, which current evidence indicates does not stop infection with, or transmission of, the virus.

Opinion: Dr A — breach

Application of MCNZ standards and the Code

104. This section of the report considers whether the way in which Dr A expressed his opinion on the COVID-19 vaccine complied with the Code, including whether his actions complied with the standards promulgated by MCNZ. Under Right 4(2) of the Code, a consumer has the right to have services provided that comply with professional, legal, and ethical standards. Right 6(1) of the Code states that every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including an explanation of the options available, an assessment of the expected risks, side effects, benefits, and costs of each option, and any other information required by legal, professional, ethical, and other relevant standards.

105. Dr A has expressed his opinions about the COVID-19 vaccination roll-out in a number of fora, including the public letter (see Appendix A), in his text message to his patients and to casual patients of the medical centre, and in consultations with his patients. With regard to the public letter, legal counsel for the medical centre submitted that Dr A had the right to express his views, and stated that Dr B and Dr C "recognise and respect the fact that all people in New Zealand are entitled to their own opinion and, seemingly, to be able to express them. That is at least what [they] genuinely believed at all times through this matter."

106. I accept that Dr A was entitled to hold and express opinions regarding the COVID-19 vaccine subject to maintaining legal, professional, ethical, and other relevant standards. The issue is whether the manner in which Dr A expressed his opinions was in breach of the Code.

107. MCNZ's standards for the medical profession set out its expectations for medical practitioners' conduct and practice, including how information and opinions are imparted to their patients. The statutory powers of the MCNZ to prescribe standards of professional practice and conduct for doctors are set out in the Health Practitioners Competence Assurance Act 2003 (the Act). MCNZ is the authority appointed in respect of the practice of medicine under section 114(1)(a) of the Act. It is a function of MCNZ, under section 118, to

set standards of clinical competence and ethical conduct to be observed by medical practitioners.

108. The following section considers the MCNZ standards and guidance relevant to Dr A's conduct.

Good Medical Practice

109. *Good Medical Practice*[24] states:

> "Be committed to ongoing maintenance and improvement in your clinical standards in line with best evidence-based practice.
>
> …
>
> 20. Your personal beliefs, including political, religious and moral beliefs, should not affect your advice or treatment. If you feel your beliefs might affect the advice or treatment you provide, you must explain this to patients and tell them about their right to see another doctor. You must be satisfied that the patient has sufficient information to enable them to exercise that right.
>
> 21. Do not express your personal beliefs to your patients in ways that exploit their vulnerability or that are likely to cause them distress."

110. Dr A acknowledged that when he sent the text message he suspected that some patients could be upset or angry and surprised to receive an unsolicited message of this type. It is evident from the response from patients that many found Dr A's actions to be distressing. In my view, there is a power imbalance in the doctor–patient relationship, which means that patients are likely to be influenced by advice given by their doctor, as discussed below.

Unprofessional behaviour

111. The MCNZ standard "Unprofessional behaviour" (August 2020) provides that unprofessional behaviour includes repeated inappropriate behaviour, as well as one-off incidents that may be disruptive. The inappropriate behaviour or incident may apply to interactions with patients, other healthcare professionals and colleagues, or outside of work. Whether a doctor's behaviour is unprofessional often depends on the context, and how that behaviour is perceived.

112. In the healthcare setting, the "Unprofessional behaviour" standard identifies that unprofessional behaviour may (among other things) contribute to the reduced acceptance of, and compliance with, treatment options, and result in poorer health outcomes.

113. The "Unprofessional behaviour" standard also states that unprofessional behaviour does not necessarily occur only within the healthcare setting; it can also extend to behaviours outside the healthcare team that may damage the trust and confidence that patients have in their doctor, and how the public perceives the medical profession. Unprofessional

[24] Te Kaunihera Rata o Aotearoa — Medical Council of New Zealand, *Good Medical Practice* (April 2019).

behaviour includes a refusal to follow best practice, and inappropriate communication, including the use of social media.

Use of the internet and electronic communication

114. The MCNZ standard "Use of the internet and electronic communication" (June 2021) states:

> "You need to be aware of the applicable guidance surrounding communication with patients. Any electronic communication with patients needs to observe this guidance and not put patient safety at risk."

115. It provides that patients have rights under New Zealand's privacy laws and the Code with respect to electronic communication, as they do with all other forms of communication. The standard states: "Inappropriate communication, including use of social media, can also be considered unprofessional, whether this is directly related to a doctor's work or not."

Doctors and complementary and alternative medicine

116. MCNZ has another standard, "Doctors and complementary and alternative medicine (CAM)" (November 2017) (the CAM standard). CAM refers to therapies and treatments that are not commonly accepted in conventional medical practice. Complementary therapies are healthcare and medical practices that are used alongside conventional medical treatments but are not an integral part of conventional medicine, while alternative therapies are used instead of standard medical treatments. In this context, vaccination is a standard medical treatment.

117. Dr A does not support the use of the COVID-19 Pfizer vaccine, and instead of vaccination, he recommends a number of alternative treatments for COVID-19, such as the use of vitamin D, hydroxychloroquine, and ivermectin. He also supports a number of views regarding the effect of the vaccine (for example, magnetism) and its content (for example, micro, self-assembling electronic components). He claims that there have been many unreported adverse events from the vaccine, including deaths. As stated above, these are not standard treatments and opinions, are not supported by conventional theories of medicine, and do not have the support of the majority of practitioners. As such, cumulatively they amount to alternative treatment.

118. Dr A submitted in response to the provisional opinion that none of the complaints alleged that he recommended treatment with either vitamin D, hydroxychloroquine, or ivermectin. He therefore submitted that it was wrong to apply the CAM standard. He further said that the basis for the reference to these treatments in the provisional opinion appears to be the NZDSOS website. He submitted that any information included in the NZDSOS website falls outside the jurisdiction of the HDC and, in any case, the treatments are approved medicines in New Zealand (albeit for other purposes).

119. I disagree. That Dr A's text message referred patients to the website for information clearly places it within the scope of this investigation and my jurisdiction. Furthermore, the CAM standard applies for broader reasons than just the recommendation of alternative, non-evidence-based medicines/products for the treatment or prevention of COVID-19.

Specifically, Dr A advised his patients against the standard medical treatment at that time, which was the COVID-19 vaccination. In addition, he recommended in his text that patients obtain information about the current risks and benefits of the vaccination from the NZDSOS website, which referred to the alternative treatments, as well as non-evidence-based/non-conventional theories of the content and effects of the vaccine. In my opinion, the totality of that advice, in itself, constitutes unconventional medical practice such as to trigger the application of the CAM standard.

120. The CAM standard states that MCNZ does not oppose the use of alternative medicines when they are commonly accepted to have benefits and minimal risks for the patient, and patients have made an informed choice and given their informed consent. It states that no person may be found guilty of a disciplinary offence under the Health Practitioners Competence Assurance Act 2003 merely because that person has adopted and practised any theory of medicine or healing if, in doing so, the person has acted honestly and in good faith. However, MCNZ expects doctors who practise alternative medicine to do so in a manner that is consistent with their professional, legal, and ethical obligations. This includes explaining the difference between CAM and conventional medical care so that the patient understands and is clear about the different approaches to treatment when making decisions about their care. Where a patient is making a choice between conventional medicine or CAM, or whether to engage in CAM alongside conventional medicine, a doctor should:

a) Assist the patient to evaluate likely benefits and risks of the proposed CAM treatment;

b) Make it clear to the patient, the level or limits of the doctor's knowledge about CAM;

c) Be aware that their views may influence their patient's beliefs and choices; and

d) To the extent of their knowledge, skills, and judgement, provide sufficient information to allow competent patients to make an informed choice.

121. The Medical Practitioners Disciplinary Tribunal stated in a 2003 decision:[25]

> "There is an onus on the practitioner to inform the patient not only of the nature of the alternative treatment offered but also the extent to which that is consistent with conventional theories of medicine and has, or does not have, the support of the majority of practitioners."

122. MCNZ states in the CAM standard that careful attention to the process of informed consent is always important, and doctors should advise patients when scientific support for treatment is lacking, and should not misrepresent personal or published information or opinion about any treatment. Where doctors disagree with any personal or published information or opinion, they should explain the basis for their disagreement in order for the patient to understand their reasoning. Patients must be made aware of the likely effectiveness of a given therapy according to recognised peer-reviewed medical publications, notwithstanding the doctor's individual beliefs. In addition, doctors must make it clear to patients if a particular therapy lacks evidence and is not supported by the majority

[25] *Director of Proceedings v Dr R W Gorringe*, MPDT Decision No: 237/02/89D.

of doctors. Patients should be informed of the evidence-based and conventional treatment options, and their risks, benefits, and efficacy as reflected by current knowledge, and all of the information provided should be documented.

Guidance statement

123. The MCNZ guidance statement regarding COVID-19 vaccination (28 April 2021) includes:

> "As a health practitioner, you have a role in providing evidence-based advice and information about the COVID-19 vaccination to others. You should be prepared to discuss evidence-based information about vaccination and its benefits to assist informed decision making. There is information on the Ministry of Health (MOH) website to support engagement with staff or colleagues and the public who may be hesitant about getting a vaccine. As regulators we respect an individual's right to have their own opinions, but it is our view that there is no place for anti-vaccination messages in professional health practice, nor any promotion of anti-vaccination claims including on social media and advertising by health practitioners."

Discussion

124. In assessing whether Dr A's actions in sending the text message complied with the Code, I consider that there are two issues. The first is whether it was an appropriately professional form of communication for Dr A to access the PMS to send an unsolicited text message of this nature to his patients. The second is whether the text message itself included appropriate information. In assessing those two issues, I have carefully considered the context and the application of the standards outlined above.

Communicating complex information via text message

125. Dr A used the PMS to access patient contact details in order to send an unsolicited text message to around 600 patients on his patient list (including casual patients), who had not sought his opinion and were not necessarily making a choice about the vaccine or giving informed consent at that time. By the very nature of a text message, the information provided was brief, and the message referred the patients to the NZDSOS website for further information.

126. Dr A stated that he intended that the recipients would take the information in the text message into account when deciding whether to be vaccinated. He said he sent it to those who were under the age of 65 years and not vaccinated (although one patient who complained was aged 77 years and at least one other was already vaccinated). He said that his fundamental issue with the COVID-19 vaccine was his belief that an "experimental drug" should not be rolled out to children and pregnant women on a wide scale, and certainly not without properly informed consent. However, the text message was not tailored to each individual patient, was not limited to pregnant women or parents of children, and it specifically referred to "fertile women". The text message was sent to both men and women.

127. The medical centre had no policies regarding the use of patient lists. However, in my view, it is self-evident that a text message was an inappropriate means of communicating information that needed to be nuanced, balanced, and personalised to individual consumers. I consider that Dr A's use of patient information in this way was inappropriate, unprofessional, and contrary to the MCNZ "Unprofessional behaviour" standard and the "Use of the internet and electronic communication" standard. Many patients were distressed and offended by their personal information being used in this way and by receiving this unsolicited text message, and many commented on the damaging effect it had on their trust in their doctor (discussed below).

Content of message

128. In his capacity as their GP, Dr A's text message to his patients set out his views on the COVID-19 vaccine. Those views are not supported by the accepted conventional evidence base, and his advice therefore triggered the application of the CAM standard. The CAM standard states:

> "Patients must be made aware of the likely effectiveness of a given therapy according to recognised peer-reviewed medical publications, notwithstanding your individual beliefs. In addition, you must make it clear to patients if a particular therapy lacks evidence and is not supported by the majority of doctors."

129. Dr A asserts that in the text message, he attempted to convey that this was his own opinion and not the "consensus". In this respect, the text message that Dr A sent to his patients states: "All to make their own best decision … My views are my own, not the consensus … With gratitude, and respect for the informed decision this has to be."

130. However, in my view, there is a lack of clarity in the message, and it provides insufficient information to enable patients to make an informed choice. It is unclear, for example, in that it does not specify what is meant by "the consensus" and does not refer to evidence-based and conventional treatment options, and their risks, benefits, and efficacy, as reflected by current knowledge.

131. Furthermore, Dr A's text message included:

> "I cannot in conscience support COVID vaccination of, particularly, children, and pregnant and fertile women, from my assessment of current risks and benefits, best explained at www.nzdsos.com."

132. The NZDSOS website recommended alternative treatments such as the use of vitamin D, hydroxychloroquine, and ivermectin. It also supports views regarding the effect of the vaccine that are not evidence-based, for example, magnetism, and statements about the vaccine's content, for example, that it has micro, self-assembling electronic components in it. It claimed that there have been many unreported adverse events from the vaccine, including deaths.

133. Having considered Dr A's submissions to the provisional opinion, I have outlined my view that the information published on the NZDSOS website is relevant and within the scope and

jurisdiction of this investigation (see paragraph 119 above). In addition, Dr A submitted that "much of the information referred to post-dates the text message [he] sent to his patients".

134. I am not persuaded by this argument. Dr A's text message did not tell patients to refer solely to the information on the NZDSOS website on that day — it recommended the website as a source of information. Patients could reasonably gather from this that Dr A considered the NZDSOS website to be a reliable ongoing source of information. I further note that many of the 600 patients who received the text message could well have made decisions about the vaccine at some time in the future, rather than on the day the message was sent.

135. Given that Dr A's stated intention was to allow people to make an informed choice, he should have made it clear that his views were not supported by the majority of doctors. He should also have explained the basis for his disagreement with the generally accepted views in order for the patient to understand his reasoning. In addition, he should have directed patients to other sources of information that outlined the likely effectiveness of the vaccine according to recognised peer-reviewed medical publications, notwithstanding his beliefs.

136. The MCNZ guidance statement and the CAM standard reinforce the need to provide balanced information to patients. Dr A clearly failed to do this, and his actions did not comply with the MCNZ CAM standard, or its guidance statement.

137. Furthermore, in my view, Dr A's actions could have contributed to a reduced acceptance of the COVID-19 vaccination and compliance with Ministry of Health advice, with the potential to result in poorer health outcomes for patients in his care. I therefore consider that it was a breach of the MCNZ "Unprofessional behaviour" standard to send the information in the text message to his patients.

Counsel's submission that the Code and common law required Dr A to express his views

138. Dr A said that he did not want the patients' decisions about whether to get the vaccine to be rushed, coerced, or inadequate. He stated: "Making sure my patients were in a position to make an informed decision regarding the vaccine was my priority, whilst accepting risks of comeback." Dr A's legal counsel submitted:

> "Ethically, how could [Dr A] obtain a patient's informed consent to vaccination without expressing his views as to potential risks and unknowns, as he is specifically required to do by the Code and the common law?"

139. I disagree that Dr A's actions were required by the Code or the common law. The information required by Right 6 of the Code includes an explanation of the options available, including the expected risks, side effects, benefits, and costs of each option. It also requires the provision of any other information required by legal, professional, ethical, and other relevant standards, including the CAM standard. Neither the Code nor any MCNZ standards obligate providers to share their opinions with patients who have not sought advice, especially where those views contradict recommended evidence-based practice. In fact, to the contrary, if Dr A was going to express his opinion, given that the advice was not

supported by the accepted evidence base, the Code obliged him to provide his patients with appropriately balanced information.

Conclusion

140. Dr A sent a text message containing his views about COVID-19 vaccination to around 600 patients using the patient information contained in the patient list. Dr A said that the text message was "hastily contrived" when the decision to vaccinate 12- to 15-year-olds was announced. He said that he was aware when he sent it that patients might be upset or angry about the text message, but he considered that he had a professional obligation to "fill in the gaps" in understanding about the vaccine for his patients. He said that he regrets the distress and upset his message caused, but noted the "huge financial, personal and professional cost" to himself.

141. Informed consent is vital, and indeed it is the cornerstone of the Code. I do not accept that the information in the text message was sufficiently balanced to enable the patients to make an informed choice as to whether or not they would be vaccinated.

142. I conclude that the services Dr A provided to the consumers who received the text message did not comply with legal, professional, and ethical standards in the following ways:

- He used the medical centre's patient list to send an unsolicited text message to around 600 patients expressing his non-conventional views about the COVID-19 vaccine. This was contrary to the "Unprofessional behaviour" and the "Use of the internet and electronic communication" MCNZ standards.
- Dr A's failure to provide balanced information to patients was contrary to the CAM standard, the guidance statement, and *Good Medical Practice*. It was also contrary to the "Unprofessional behaviour" statement in that it had the effect of potentially reducing the patient uptake of the COVID-19 vaccine. This could have resulted in poorer health outcomes for patients who received the message.

143. Consequently, I find that Dr A breached Right 4(2) of the Code. For the avoidance of doubt, I find that the breach finding applies to the following patients:

- Patient 2
- Patient 3
- Patient 4
- Patient 7
- Patient 8
- Patient 5
- Patient 6
- Patient 9
- Patient 10

Patients who consulted Dr A

144. In addition to the nine individual complaints about the text message, Dr A met with two complainants in person, Patient 1 and Patient 11 (discussed below).

Patient 1[26]

Facts gathered

145. Patient 1 suffers from an autoimmune disease. She told HDC that she was first diagnosed with the condition in 2004, and she was under the care of a respiratory specialist as well as being treated by Dr A.

146. On 16 March 2021, Patient 1 saw Dr A for review and to ask whether she should have the COVID-19 vaccine.

147. Patient 1 said that Dr A responded: "No, you should not get the COVID 19 vaccination." When she enquired why not, he said that the vaccine had not been tested for long enough, that the numbers of COVID-19 cases had been overstated world-wide, and that the deaths resulting from the vaccine had been understated by the media. He told her that he had concerns with women of child-bearing age having the vaccine as it could result in infertility, again because of his doubts that it had been tested sufficiently. He also said that deaths from the vaccine would not be covered by insurance.

148. Patient 1 said that she asked Dr A what he thought the alternative to the vaccine should be, and his answer was that there should have been more research into treating the COVID-19 virus once people had it, rather than vaccinating the whole population against it. She said that he discussed a treatment that he said had shown favourable results, which she thought may have been hydroxychloroquine.

149. Patient 1 said that she was not comfortable with Dr A's advice, and so made an appointment with her respiratory specialist, who gave her the opposite advice, saying that she should have the COVID-19 vaccination, that no vaccination is 100% safe for 100% of people, but that getting COVID-19 would likely be far worse for her if she was not vaccinated than if she was vaccinated. Patient 1 said that she decided to take her specialist's advice and has been vaccinated. She has also left the medical centre and changed her GP. She said that she was concerned that Dr A was giving the same advice to other patients, because he was the GP for some of her elderly Māori relatives who fell into the most vulnerable group.

150. Dr A said that largely he agreed with Patient 1's description of the consultation on 16 March 2021. However, he recalled:

[26] 21HDC01770.

> "I do not believe I would have told [Patient 1] not to get the vaccine as bluntly as she has described in her complaint, though I suspect I told her my view was that she did not need to get the vaccine at that point in the rollout and that I wanted to check whether her illness was a contraindication."

151. Dr A noted that the consultation occurred early in the vaccine rollout, and the data sheets and contraindications were not well known to him at that stage.

152. In response to the provisional opinion, Patient 1 said that Dr A was "definite and forcefully clear" in saying that she should not get vaccinated. She stated: "I have absolutely no doubt about my recollection of this. This action is what prompted me to make the complaint."

153. Dr A's notes from the consultation include: "[A]sks re COVID vaccine, presume autoimmune disease is contraindication. [W]ill think about it." There is no record of what Dr A told Patient 1, and no evidence that he informed her that his views were not supported by current medical opinion, or that he told her about the options available to her. He did not contact her specialist for advice or suggest that she do so herself, nor did he refer her to the Ministry of Health website or other reputable information sources.

Opinion: Dr A — adverse comment

154. Patient 1 has an autoimmune condition, and consulted her GP for information about the COVID-19 vaccine. There are differences in the recollections of conversation; however, both parties agree that Dr A advised her against the vaccine at that point. I also accept that he did not inform her about the basis for his disagreement with established medical opinion in order for her to understand his reasoning.

155. As noted above, Dr A's views did not accord with the conventional evidence base on the COVID-19 vaccine. The MCNZ CAM standard states that careful attention to the process of informed consent is always important, and doctors should advise patients when scientific support for treatment is lacking, and should not misrepresent personal or published information or opinion about any treatment. Where doctors disagree with any personal or published information or opinion, they should explain the basis for their disagreement in order for the patient to understand their reasoning. Patients must be made aware of the likely effectiveness of a given therapy according to recognised peer-reviewed medical publications, notwithstanding the doctor's individual beliefs. In addition, doctors must make it clear to patients if a particular therapy lacks evidence and is not supported by the majority of doctors. All of the information provided should be documented.

156. I am concerned that Dr A did not give Patient 1 balanced, accurate information in order for her to make an informed choice about whether or not to be vaccinated. Dr A knew that Patient 1 was under specialist care for her condition, and, given his uncertainty, he could have advised her to seek specialist advice or consulted the specialist himself.

157. However, I acknowledge that at the time of Dr A's consultation with Patient 1, he genuinely did not know whether Patient 1's medical condition was a contraindication to her receiving

the vaccine, and that he intended to look into the matter further, presumably before providing her with a final recommendation. For this reason, I do not consider that Dr A's omission on this occasion amounted to a breach of the Code.

158. I remind Dr A of his obligations to provide appropriately balanced information to patients, and to ensure that his documentation accurately reflects the information provided to his patients.

Patient 11[27]

Facts gathered

159. Patient 11's mother complained on his behalf and with his consent. She said that Patient 11 was diagnosed with velocardiofacial syndrome[28] when he was aged four years, and was diagnosed with a mild intellectual disability at the age of 16 years. Since the age of two years, he has been a patient with the medical centre.

160. Patient 11's mother told HDC that in 2021 the Ministry of Health Vaccine Rollout Strategy placed everyone in New Zealand into categories based on their assessed priority for needing the vaccine. Patient 11 and his household received an email on 7 April 2021 inviting them to take part in the vaccine rollout.

161. On 19 May 2021, six weeks after receiving the invitation, Patient 11's mother accompanied him to an appointment with Dr A. She said that the main purpose of seeing Dr A on 19 May 2021 was to address concerns about Patient 11's ongoing lethargic state and, during the appointment, she asked Dr A what he knew about the Ministry of Health vaccine rollout for people in category 3, [29] and whether the medical centre was making vaccination appointments. She told HDC: "I commented on the fact that due to [Patient 11's] disability our household had the possibility to sign up to this priority group."

162. Patient 11's mother said that Dr A rolled his eyes and "started a spiel on why I should not sign up and that the vaccine had not been tested enough to warrant people going along and get[ting] vaccinated". She said that Dr A's reply took her by surprise, and she stopped the conversation abruptly, settled the account, and they left the practice. After this consultation, Patient 11 moved from Dr A to Dr B. He was not one of the patients who received the text message from Dr A.

[27] 21HDC02043.

[28] A disorder caused by a defect in chromosome 22 that results in poor development of several bodily systems. Its features vary widely, and it can cause heart defects, poor immune system function, a cleft palate, and low levels of calcium in the blood.

[29] This group was eligible for the vaccine from May 2021. It included people aged over 65 years, anyone who is disabled and the people who care for them, and people with several health conditions that put them at higher risk if they were to catch COVID-19.

163. Patient 11 and his mother said that Dr A having publicly stated his membership of NZDSOS and his anti-vaccination stance has compromised patient safety and patients' trust in their doctor.

164. Dr A agreed that during the consultation with Patient 11 and his mother on 19 May 2021, Patient 11's mother asked Dr A what he knew about the vaccine rollout for people in group 3, as Patient 11 was potentially eligible to receive the vaccine.

165. Dr A said that he can remember trying to reassure Patient 11's mother that he did not consider Patient 11 to be at higher risk of suffering serious side-effects from COVID-19 because, although he has an inherited syndrome, he has always maintained good immune function. Dr A stated:

> "I do not recall rolling my eyes and don't believe that I would have done so, this would be a most unusual thing for me to do during a consultation. However, I don't doubt that I expressed my view that the vaccine had not undergone sufficient testing for me to feel comfortable recommending it. I have no hesitation in apologising for any distress or offence caused. As our discussion did not impact on the timing of [Patient 11's] vaccine group call-up, I did not make any notes of this discussion. I acknowledge this is not ideal in retrospect."

166. In response to the provisional opinion, Dr A said that he does not deny that he may have felt frustrated during this consultation. He said he felt that he was being asked to push forward and arrange for Patient 11 to have the COVID-19 vaccine in a hurried manner because of his mother's anxiety. Dr A said that he was acting in what he believed to be Patient 11's best interests. Dr A stated that he did not roll his eyes.

167. Patient 11's mother told HDC that Dr A's claim that he tried to reassure her is "false, in fact the opposite is true". She said that they left the consultation in some confusion. She stated:

> "At no point did I say I was 'potentially interested', we were certain of [Patient 11's] entitlements and wishes, we had after all received an invitation from [the Ministry of Health]."

168. Patient 11's mother said that Dr A's claims that Patient 11 had always maintained good immune function and was not at risk of developing the more serious or life-threatening symptoms of COVID-19 was poor reasoning, because compromised immunity is one of the health risks associated with velocardiofacial syndrome. She told HDC that Patient 11 was especially worried about the dangers and risks posed by COVID-19, to the point that his mental health was suffering, and he needed some reassurance that a vaccination was forthcoming. She stated:

> "It was not the prerogative of [Dr A] to provide information that contradicted the benefit of the COVID-19 vaccine and not give [Patient 11] the reassurance he needed to feel in control of his own life."

169. Patient 11's mother said that she had consulted a medical professional under the assumption that he was impartial, and provided factual and science-based information to his patients. She expected that they would receive recommendations that aligned with that of New Zealand's medical authority and the norms of mainstream medicine. She said:

> "If [Dr A's] views departed from such recommendations and norms, then he was obligated to make this known to us, his patients. His failure to do this violated grossly the code of conduct governing his profession."

Opinion: Dr A — breach

170. The MCNZ CAM standard states that alternative therapies are those used instead of standard medical treatments. At the time of his consultation with Patient 11, Dr A was aware that the COVID-19 vaccine was considered to be the evidence-based treatment to lessen the likelihood of being infected with COVID-19 and the severity of illness in people who were vaccinated.

171. The MCNZ CAM standard states that careful attention to the process of informed consent is always important, and doctors should advise patients when scientific support for treatment is lacking, and should not misrepresent personal or published information or opinion about any treatment. Where doctors disagree with any personal or published information or opinion, they should explain the basis for their disagreement in order for the patient to understand their reasoning. Patients must be made aware of the likely effectiveness of a given therapy according to recognised peer-reviewed medical publications, notwithstanding the doctor's individual beliefs. In addition, doctors must make it clear to patients if a particular therapy lacks evidence and is not supported by the majority of doctors.

172. Patients should be informed of the evidence-based and conventional treatment options, and their risks, benefits, and efficacy as reflected by current knowledge, and all of the information provided should be documented.

173. The MCNZ guidance statement was released on 28 April 2021, and the consultation with Patient 11 took place on 19 May 2021. The MCNZ guidance statement states:

> "As a health practitioner, you have a role in providing evidence-based advice and information about the COVID-19 vaccination to others. You should be prepared to discuss evidence-based information about vaccination and its benefits to assist informed decision making. There is information on the Ministry of Health (MOH) website to support engagement with staff or colleagues and the public who may be hesitant about getting a vaccine."

174. Dr A agreed that he told Patient 11 and his mother that the vaccine had not undergone sufficient testing for him to recommend it. Dr A did not refer to the information on the Ministry of Health website or inform Patient 11 that his (Dr A's) views were not supported by the preponderance of scientific evidence, as was required by the CAM standard. Dr A also failed to record the advice he provided to Patient 11.

175. Dr A did not provide Patient 11 with the information that a reasonable consumer in his circumstances would expect to receive, including an explanation of the options available, an assessment of the expected risks, side effects, benefits, and costs of each option, and any other information required by legal, professional, ethical, and other relevant standards, and therefore Dr A breached Right 6(1) of the Code. Dr A also did not provide services to Patient 11 that complied with legal, professional, and ethical standards, and I find that Dr A breached Right 4(2) of the Code.

176. In addition, I am critical of Dr A's failure to document the information he provided to Patient 11.

Public letter: other comment

177. The public letter and extent of Dr A's involvement in the letter as a member of NZDSOS is outlined above in paragraph 23.

178. I note that Dr B and Dr C told HDC that they considered that the NZDSOS letter was a public statement aimed at changing government policy regarding the vaccine rollout. It was not directed at individuals for the purpose of discouraging them from becoming vaccinated.

179. I concur that this was a letter to the public at large, and not to individual consumers. Therefore, with regard to Dr A, I consider this to be an issue best addressed by MCNZ. However, I have considered whether the letter put the other doctors at the medical centre on notice that there could be concerns about Dr A's conduct (see the discussion below).

Opinion: Dr B, Dr A, and Dr C (trading as the medical centre) — no breach

180. This section of the report considers whether Dr B, Dr A, and Dr C (trading as the medical centre) breached the Code directly. At the time of these events, the medical centre was comprised of Dr A, Dr B, and Dr C, who each operated their own practice with their own practice list, and shared the expenses of the practice. Each practice owner had a separate lease agreement with the owner of the premises, and each contributed to shared expenses. Each practice owner had an individual agreement with the PHO and received capitation funding, which was paid directly to the practice owner.

181. The practice agreement states that it does not create a partnership between the doctors, but no confidential information can be removed from the medical centre in any circumstances. It requires each practitioner to consult with the other practitioners in respect of a matter if they have a reasonable expectation that the matter is of sufficient importance to require consultation.

182. It appears that Dr A did not consult Dr B and Dr C before signing the public letter. However, Dr B and Dr C were aware of Dr A's views about the COVID-19 vaccine, at least from April 2021 when the NZDSOS public letter signed by Dr A was published. Dr B and Dr C did not respond to the public letter directly because they considered that the views in the letter were Dr A's personal views expressed in the public domain. Dr B and Dr C said that the NZDSOS letter "was plainly in the form of a public statement aimed at changing Government policy regarding the vaccine rollout — not directed at individuals for the purpose of discouraging them from becoming vaccinated". They stated that they recognised and respected the fact that all people in New Zealand are entitled to their own opinions and are able to express them.

183. After consultation with the PHO, the medical centre decided to promote the COVID-19 vaccination clinic that was planned with other local providers, and to reassure patients that they would all be invited to attend. The medical centre advised Dr A during practice meetings (including the management meeting on 6 July 2021) that the medical centre would invite all his eligible patients. The medical centre believed that Dr A agreed that he would not discourage his patients from being vaccinated. I accept that these steps were reasonable.

184. Dr B and Dr C were not aware that Dr A intended to use the PMS to access his patient list and send a text message to his patients in August 2021. The medical centre had no specific policy regarding the use of patient lists, but in light of the terms of the practice agreement, it would not have been unreasonable for them to have expected Dr A to consult them before sending the text message, given the significance of the action he was undertaking. Once they were aware of the text, they consulted the PHO and made arrangements for Dr A's patients once his contract had been terminated.

185. Consequently, I do not consider that Dr A, Dr B, and Dr C (trading as the medical centre) breached the Code directly.

Recommendations

186. I recommend that should Dr A be granted a further practising certificate, the Medical Council of New Zealand consider undertaking a competence assessment and requiring that he practise with conditions that address the issues in this report.

187. I recommend that Dr A separately apologise for his breaches of the Code, to each of the individual patients referred to in this opinion. The apologies are to be sent to HDC within three weeks of the date of this opinion, for forwarding.

188. I recommend that should Dr A return to medical practice, he undertake training on professional and ethical standards, within three months of his return to practice, and report to HDC with evidence of his attendance and the content of the training.

189. I recommend that Dr B and Dr C consider developing guidelines on the use of patient lists and the PMS system and, within three months of the date of this opinion, report to HDC on the outcome, including any guidelines put in place.

Follow-up actions

190. I have carefully considered whether to refer Dr A 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. I have decided that it is in the public interest to do so, as I consider that Dr A's breaches of the Code are serious and had the potential to impact negatively on health outcomes (especially noting the vulnerable community in which he practised).

191. A copy of this report with details identifying the parties removed will be sent to the Medical Council of New Zealand, and it will be advised of the names of Dr A, Dr B, and Dr C in the covering letter.

192. A copy of this report with details identifying the parties removed will be sent to the Ministry of Health, Te Whatu Ora — Health New Zealand, Te Aka Whai Ora — Māori Health Authority, the Royal New Zealand College of General Practitioners, the New Zealand Medical Association, and the Health Quality & Safety Commission, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Appendix A: Public letter

"OPEN LETTER BY NZ MEDICAL PRACTITIONERS SHARING CONCERNS ABOUT
PFIZER 'COMIRNATY' INVESTIGATIONAL VACCINE FOR COVID-19

We write formally to express our shared concern that:

1) A new prescription only medicine with s23(1) provisional approval, which legally can only be for the treatment of a limited number of patients, is being promoted for the entire adult population of Aotearoa/New Zealand.

2) Medsafe asked 58 questions, but the answers for most of these are not due until March to July 2021.

3) The clinical trials will not be completed until 2023.

4) Nobody currently knows how safe or effective this novel mRNA technology is in the medium to long term, but highly credible medical experts around the world, and even some vaccine developers themselves, are predicting problems and raising urgent redflag concerns.

5) If any safety issues are identified in the remaining period of the trials the effects could be catastrophic for our community or a proportion that have already received the vaccine.

6) The signatories are mindful of their obligations to discuss risks, benefits and uncertainties of any treatment and to ensure informed consent of all patients before giving any treatment and of the other important obligations under the Code of Health and Disability Services Consumers['] Rights. Our insurers have affirmed this obligation.

7) Compelling patients or workers to receive drug, medicine or vaccine which is still investigational would set a significant medical precedent, which would run counter to all international codes of medical ethics since the Nuremberg Code of 1947 and Declaration of Helsinki in 1952. The fundamental tenets of these include complete disclosure of the risks and unknowns to the participants in medical experiments; the obligations on the experimenter for care and after-care of adverse outcomes; and the freedom from coercion, stand over tactics and over-reach. This would seem to include threats of job loss, travel bans etc. Many patients feel pressured to accept this vaccine in the mistaken belief they may protect others due to representations in the media and/or pressure from their employers, and that they may lose their employment or may be disadvantaged in their employment if they do not accept this experimental vaccine.

8) The signatories are concerned to ensure that the Ministry of Health, College of GPs and the Medical Council of NZ are aware of the above concerns, and that they are addressed with urgency to ensure the way the vaccine is being promoted to healthy people who do not require treatment is both lawful and represents best practice.

9) We are eager to clarify that any patients injured by the vaccine will have acknowledgement and cover from ACC.

10) The signatories note that even the promoters of the vaccine do not claim that it prevents transmission and that public representations that the vaccine is effective for this purpose are misleading.

11) We do not accept that lay vaccinators are qualified or competent to partake in the process of informed consent to patients re this vaccine, especially as they have no medical expertise and no prior knowledge of the individual circumstances of the patient or their health issues. Any risk benefit assessment and consideration of alternatives is complex and requires a considered consultation by a qualified practitioner.

Ref: Informed consent disclosure to vaccine trial subjects of risk of COVID-19 vaccines worsening clinical disease. Int J Clin Pract 2021:75e13795.

Signed:

NAMES AND MEDICAL COUNCIL REGISTRATION NUMBERS

…”

Appendix B: MCNZ guidance statement released 28 April 2021

"Guidance statement

COVID-19 vaccine and your professional responsibility

Vaccination is a crucial part of the New Zealand public health response to the COVID-19 pandemic.

Health practitioners can help to protect themselves, their patients, and the wider community by getting their COVID-19 vaccination.

The Dental and Medical Councils have an expectation that all dental and medical practitioners will take up the opportunity to be vaccinated — unless medically contraindicated.

You have an ethical and professional obligation to protect and promote the health of patients and the public, and to participate in broader based community health efforts. Vaccination will play a critical role in protecting the health of the New Zealand public by reducing the community risk of acquiring and further transmitting COVID-19.

Patients are entitled to information that a reasonable consumer, in that consumer's circumstances, would expect to receive (Right 6, Code of Health and Disability Services Consumers' Rights).

As a health practitioner, you have a role in providing evidence-based advice and information about the COVID-19 vaccination to others. You should be prepared to discuss evidence-based information about vaccination and its benefits to assist informed decision making. There is information on the Ministry of Health (MOH) website to support engagement with staff or colleagues and the public who may be hesitant about getting a vaccine.

As regulators we respect an individual's right to have their own opinions, but it is our view that there is no place for anti-vaccination messages in professional health practice, nor any promotion of antivaccination claims including on social media and advertising by health practitioners.

More information:

- The latest government information on the COVID-19 vaccination programme can be found on the MOH website.
- The Ministry for Business, Innovation and Employment (MBIE) has guidance for employers and workers about the employment law implications for the COVID-19 vaccination programme."

Appendix C: MCNZ Standards — *Good Medical Practice*

"Be committed to ongoing maintenance and improvement in your clinical standards in line with best evidence-based practice.

…

20. Your personal beliefs, including political, religious and moral beliefs, should not affect your advice or treatment. If you feel your beliefs might affect the advice or treatment you provide, you must explain this to patients and tell them about their right to see another doctor. You must be satisfied that the patient has sufficient information to enable them to exercise that right.

21. Do not express your personal beliefs to your patients in ways that exploit their vulnerability or that are likely to cause them distress.

…

Doctors and CAM (complementary and alternative medicine) November 2017

Background

1. Complementary and alternative medicine (CAM) refer to therapies and treatments that are not commonly accepted in conventional medical practice. Complementary therapies are health care and medical practices that are used alongside conventional medical treatments but are not an integral part of conventional medicine, while alternative therapies are used instead of standard medical treatments.

2. When complementary and alternative medicines are commonly accepted to have benefits and minimal risks for the patient, and patients have made an informed choice and given their informed consent, Council does not oppose their use.

3. No person may be found guilty of a disciplinary offence under the Health Practitioners Competence Assurance Act 2003 merely because that person has adopted and practised any theory of medicine or healing if, in doing so, the person has acted honestly and in good faith.

4. Notwithstanding this, the Medical Council of New Zealand (Council) expects doctors who practise complementary and alternative medicine to do so in a manner that is consistent with their professional, legal and ethical obligations.

This includes explaining the difference between CAM and conventional medical care so that your patient understands and is clear about the different approaches to treatment when making decisions about their care.

…

10. Where a patient is making a choice between conventional medicine or CAM, or whether to engage in CAM alongside conventional medicine, you should:

(a) assist the patient to evaluate likely benefits and risks of the proposed CAM treatment;

(b) make it clear to the patient, the level or limits of your knowledge about CAM;

(c) be aware that your views may influence your patient's beliefs and choices;

(d) To the extent of your knowledge, skills and judgement, you should provide sufficient information to allow competent patients to make an informed choice.

12. The Medical Practitioners Disciplinary Tribunal stated in a 2003 decision:

> There is an onus on the practitioner to inform the patient not only of the nature of the alternative treatment offered but also the extent to which that is consistent with conventional theories of medicine and has, or does not have, the support of the majority of practitioners …

13. The Council endorses these comments and expects that if you include CAM within your medical practice or refer patients for CAM therapies you inform the patient in the manner suggested by the Tribunal before obtaining consent (and as required by the Code of Health and Disability Services Consumers' Rights) …"