Registered Nurse, RN B

A Report by the

Deputy Health and Disability Commissioner

(Case 21HDC00086)

Health and Disability Commissioner

Te Toihau Hauora, Hauātanga

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Executive summary

1. This case relates to a registered nurse in a mental health service who contacted a former patient on social media. The report considers the importance of maintaining appropriate professional boundaries with patients, even after the professional relationship has ceased.

Findings

2. The Deputy Commissioner considered that the nurse inappropriately sent messages of a personal nature to the patient, who was vulnerable because of his age and his mental health. An inherent power imbalance exists between consumers and their healthcare providers, wherein the provider has access to intimate details about a consumer's health, but the consumer has no such knowledge about the provider.

3. The Deputy Commissioner found that the nurse failed to adhere to the Nursing Council of New Zealand Code of Conduct and Guidelines by failing to maintain professional and ethical boundaries with the consumer while or around the time the nurse was providing care. By initiating contact with the consumer outside of a professional setting, and sending messages of a personal nature, the nurse breached his professional and ethical obligations as a registered nurse, and, accordingly, breached Right 4(2) of the Code.

Recommendations

4. The Deputy Commissioner recommended that the nurse undertake further training on identifying and maintaining professional boundaries, and that the Nursing Council of New Zealand consider the nurse's fitness to practise, and whether any reviews of conduct and/or competence are required.

5. The nurse is to be referred to the Director of Proceedings.

6. The Deputy Commissioner recommended that the nurse's employer at the time of events undertake an audit of the nurse's case load of previous clients as a safety measure to ensure that professional boundaries were maintained and that access to appropriate additional support for patients could be facilitated if necessary.

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Complaint and investigation

7. The Health and Disability Commissioner (HDC) received a referral from the Nursing Council of New Zealand (NCNZ) regarding a notification made by a mental health service about the services provided by a former employee, RN B, to a client, Mr A. Mr A supported the complaint. The following issue was identified for investigation:

- *Whether RN B provided Mr A with an appropriate standard of care in 2020.*

8. This report is the opinion of Deputy Commissioner Dr Vanessa Caldwell, and is made in accordance with the power delegated to her by the Commissioner.

9. The parties directly involved in the investigation were:

Mr A	Consumer
Complainant/consumer's mother	
RN B	Provider/registered nurse

10. Further information was received from:

Group provider/mental health service
Nursing Council of New Zealand

Information gathered during investigation

Introduction

11. This report discusses whether RN B maintained appropriate boundaries with his client, Mr A.

Mr A

12. In May 2019, Mr A (in his teens at the time) was referred by his high school guidance counsellor to a service that is the single point of entry into secondary-level mental health services for the area. The referral was made with particular concerns about Mr A's suicidal ideation.

13. Following an urgent assessment on 29 May 2019, Mr A was considered to meet the criteria for diagnosis of depression, and was referred to the Child and Adolescent Mental Health Service (CAMHS) for specialist follow-up and support to address mental health concerns.

14. CAMHS is one of several services operating under the umbrella of the mental health service.[1] Mr A was a community-based client, meaning he was living at home with his parents

[1] The mental health service is a kaupapa Māori secondary-level mental health organisation that is primarily oriented towards provision of community-based interventions.

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throughout his care at the mental health service. Mr A's appointments occurred either at his school or at the premises of the mental health service.

RN B

15. RN B began working for the mental health service and the trust board[2] as a registered nurse in May 2016. RN B told HDC that this was his first job as a nurse following the completion of his nursing degree.[3]

16. On 8 December 2020, RN B's contract was terminated by the mental health service, as a result of the events in this complaint. Currently, RN B has a pending application to a Nursing and Midwifery Board overseas.

Appointments with Mr A: July 2019–March 2020

17. RN B was assigned as Mr A's primary worker in July 2019, and he provided mental health services to Mr A from July 2019 to March 2020 at the mental health service.

18. The mental health services RN B provided to Mr A included face-to-face intervention,[4] psychoeducation,[5] co-ordination of services including referral to a private psychologist, and ongoing risk assessment.

19. RN B first met with Mr A at his school on 27 July 2019 with a co-worker. RN B then had one-on-one appointments with Mr A on 12 August 2019, 11 October 2019, 25 October 2019, 14 January 2020, and 5 March 2020.

20. RN B was also present at psychiatric reviews of Mr A completed at the mental health service on 3 September 2019, 7 November 2019, and 22 January 2020.

21. On 30 March 2020, RN B contacted Mr A by telephone to discuss closing his file and discharging him from the service. Mr A agreed to the closure of his file. This telephone call was RN B's last professional direct contact with Mr A.

22. On 8 April 2020, RN B completed a letter to Mr A's GP advising of Mr A's discharge from the service. Mr A's file was closed on 14 April 2020.

[2] The mental health service told HDC that the trust board is responsible for recruitment and employment on behalf of the mental health service.
[3] RN B registered as a nurse in 2015.
[4] The face-to-face intervention focussed on monitoring mood, anxiety, and stressors.
[5] The psychoeducation was specifically sleep hygiene and self-management during Mr A's exams.

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Personal messages between RN B and Mr A

23. In or around April 2020,[6] RN B sent a Facebook message to Mr A asking how he was going. In the message, RN B said "*Hey muscly*"[7] and added a "winking face" emoticon. Mr A responded saying, "*Hey, I'm okay how about you?*" RN B replied saying that he had another day of "admin work" and asking Mr A what he was "up to".

24. Mr A replied that he was "*just procrastinating having breakfast*". In response, RN B said, "*Sounds good, still in pjs?*" When Mr A replied with "*yeah*" and "*the life of the lockdown haha*", RN B responded with, "*Lol nice, got a pic of [yo]u in [yo]ur pjs?*"

25. RN B and Mr A exchanged more messages before RN B asked Mr A whether he was "*Staying in pjs all day?*", to which Mr A responded, "*Probably not*" and "*I might change soon to go for a run or something.*"

26. RN B then messaged Mr A saying, "*Aww*" and "*Ooo nice, giving p[eo]pl[e] their daily look at [yo]u.*" At the end of that message, RN B added a "smirking face" emoticon. Mr A replied, "*Yeah.*" RN B then responded with, "*Will just have to imagine what [yo]u look like as [you're] running*," with another "winking face" emoticon.

27. In the next message provided to HDC, RN B asked Mr A what he runs in, saying, "*I imagine just shorts [and] shoes.*" Mr A responded, "*Yeah pretty much,*" and then sent another message to RN B saying, "*I might listen to that band, I've just started breakfast now haha.*"

28. RN B replied with, "*Ooo would like to [see you] running now if [you're] just in shorts lol,*" with another "smirking face" emoticon. Mr A messaged, "*I'm not running yet I just had breakfast,*" to which RN B responded, "*Lol, think [yo]u can send a pic of [yo]u in [yo]ur running gear when do go for 1?*"

29. Mr A did not respond to RN B's Facebook message asking for a photo of him in his running gear. RN B sent a further message to Mr A saying, "*Is that asking too much?*" In response, Mr A replied, "*A little bit yeah.*"

Discovery of messages

30. On 26 November 2020, Mr A's mother contacted the general manager of the mental health service regarding the above Facebook messages between RN B and Mr A. Mr A's mother sent screenshots of the messages after Mr A raised his concerns about the messages with his mother.

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[6] Although HDC was provided with screenshots of messages, the screenshots did not make the date or time clear. HDC has been unable to obtain a full copy of all messages between RN B and Mr A or confirm the dates or times of messages. It appears that this contact occurred during the first COVID-19 lockdown in April 2020. Mr A's mother believes that the contact was made during this time, and the mental health service told HDC that it believes the messages occurred during March/April 2020. HDC asked RN B to provide screenshots that include the date, and any prior messages, but he told HDC that he deleted the messages.

[7] The content of all Facebook messages in this report are reproduced as in the original messages — ie, with the original spelling, grammar, and punctuation. Square brackets indicate the author's additions.

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31. The mental health service advised that to the best of its knowledge, its staff were not aware of the personal communications between RN B and Mr A. Once made aware of these by Mr A's mother on 26 November 2020, the general manager notified senior staff members of the mental health service.

32. Two staff members at the mental health service met with RN B on the same day (26 November 2020) to discuss the messages. At this meeting, it was decided that RN B would be stood down on full pay.

33. The mental health service wrote to RN B on 30 November 2020, stating:

> "From the information we have so far, at best, it appears that your conduct has been inappropriate and breached professional boundaries. At worst, it appears that you may have been trying to take advantage of a young, vulnerable person, and potentially grooming him."

34. RN B met with a senior staff member on 4 December 2020, along with a support person. Following that meeting, the mental health service wrote to RN B on 8 December 2020 advising him that he was being dismissed immediately for serious misconduct.

35. In its letter of 8 December 2020, the mental health service provided a summary of RN B's comments in their meeting. In particular, the letter recorded that RN B advised:

a. He had no intent to engage in a sexual relationship with Mr A;

b. He had not engaged with Mr A outside of normal work hours or since he had left the care of the service;

c. He had no social networking contact with Mr A or any other whānau;

d. There had been no exchange of gifts or illicit substances;

e. He was looking for friends and identified with Mr A as he had similar personal issues, namely anxiety;

f. He felt that Mr A was resilient; and

g. He wanted to return to work either with CAMHS or in some other capacity but volunteered to resign if requested.

RN B's response

36. RN B told HDC that the above messages sent during the COVID-19 lockdown were the only messages he sent to Mr A. RN B said that Mr A's Facebook profile appeared under the "people you may know" section, and so he decided to make contact through the Facebook messenger app.

37. RN B told HDC that during the time he was messaging Mr A, he had been suffering from burnout at work. RN B stated: "This was due to the constant high case load, averaging around 50 clients over the past few years. This led me to suffer from work place anxiety."

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38. RN B told HDC that prior to the COVID-19 lockdown in early 2020, he had booked four weeks' annual leave, which was cancelled by the trust board on "extremely short notice". RN B stated:

> "This led to an increase in my anxiety as well as having to continue to work though I was burn[t] out. Due to the above I now realise that I was not in [a good] headspace and should not have messaged [Mr A]."

39. RN B stated that apart from the Facebook messages, there was no other communication with Mr A in a personal capacity, including by telephone call or in person. RN B said that he has not had any further contact with Mr A since his dismissal from the mental health service/the trust board.

Further information

RN B

40. RN B told HDC that his level of oversight while working for the mental health service/the trust board was poor, and that the general manager "would often be late to meetings or reschedule them at short notice and at times be interrupted during [their] supervision meetings".

41. RN B also stated:

> "[W]hen speaking out or challenging management on their decisions that I perceived were not the best, I would be 'shot down' or not given satisfactory answers, I was not the only one to do this."

42. RN B said that he has no recollection of having received any training or orientation on policies in relation to maintenance of professional boundaries, use of social media, best practice policies, and code of conduct, other than booklets to read in his personal time.

Mental health service

43. The mental health service told HDC that the general manager was responsible for overseeing the services provided to Mr A, and had day-to-day responsibility for management of the team to which RN B belonged.

44. In response to the provisional opinion, the mental health service told HDC that in the six months prior to RN B leaving the organisation, his case load did not exceed 40, and where appropriate he was supported to reduce his case load. The mental health service also stated that RN B had indicated capacity to increase his current case load at that time. The mental health service said that its clinicians all carry a "mixed" case load, with both patients who need weekly contact, and patients who are being transitioned out to primary level services and need significantly less support.

45. The mental health service sent HDC copies of the "Real Skills" training completed by RN B. The list of RN B's current primary level competencies includes: "[C]an maintain appropriate boundaries in interactions with the infant, child, young person & their family/whānau." The

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mental health service also sent HDC a record of the courses completed by RN B, which include training on the Mental Health Act and "de-bunking mental health myths".

46. In addition, the mental health service sent HDC a copy of the summary sheet in relation to RN B's Duly Authorised Officer (DAO) workbook. The DAO workbook focuses on ensuring understanding of the statutory role of duly authorised officers under the Mental Health (Compulsory Assessment and Treatment) Act 1992. As part of the exercises to complete the workbook, RN B attended supervision sessions with a DAO member and used/ implemented the Mental Health Act on at least three occasions, under direct supervision of a DAO.

47. The mental health service told HDC that in addition to their standard training as registered health professionals, the mental health service expects its staff members to adhere to its Preventing and Reporting Abuse and Neglect Policy, which highlights appropriate behaviours and boundaries in patient interactions. The mental health service said that when RN B joined the organisation, he confirmed that he had read and understood key policy guidelines for the mental health service.

48. In addition, the mental health service told HDC that RN B was supported to complete a post-graduate certificate in child and adolescent mental health. The mental health service said that RN B facilitated an in-service training session to a nursing group on ethics, and this presentation was based on work completed as part of RN B's training course.

49. The mental health service disagreed with RN B's comments that he received a poor level of oversight at work. The mental health service told HDC that the general manager had fortnightly scheduled supervision meetings with RN B, and RN B was also supported through "wider team supervision, cultural supervision and clinical case management". The mental health service said that occasionally these would need to be rescheduled, but this did not occur often, and sessions were always made up at another time. The mental health service told HDC that during his employment, RN B never raised that he had an unsatisfactory level of supervision. The mental health service stated that during RN B's time at the mental health service, there was open dialogue for any questions to be raised with management, and RN B had two structured managed feedback sessions with the general manager on key issues he had raised.

50. In response to the provisional opinion, the mental health service told HDC that it acknowledges that there was one occasion on which, due to staff constraints, the mental health service asked RN B to take his leave at a different time or reduce the time off he had applied for. The mental health service said that this was the only instance it could find where this occurred.

Responses to provisional opinion

Mr A's mother

51. Mr A's mother was given an opportunity to comment on the "information gathered" section of the provisional report, and advised that she had no further comments to make.

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Mental health service

52. The mental health service was given the opportunity to respond to the relevant sections of the provisional report. Where appropriate, changes have been incorporated into the report.

RN B

53. RN B was given the opportunity to respond to the provisional report. He told HDC that currently he is considering leaving the nursing profession when his contract ends.

Opinion: RN B — breach

Introduction

54. As a healthcare provider, RN B was required to provide services to Mr A that complied with professional, ethical, and other relevant standards. In particular, RN B was required to comply with the Nursing Council of New Zealand's Code of Conduct, and Guidelines on Professional Boundaries.

55. The maintenance of professional boundaries is an integral part of the provision of health services. I consider that RN B's conduct, specifically sending personal messages to Mr A, contravened professional boundaries and ethical standards.

Therapeutic relationship

56. There is no dispute that there was a healthcare provider–consumer relationship between RN B and Mr A. RN B provided and coordinated mental health services for Mr A from July 2019 to March 2020 at the mental health service.

57. The NCNZ Code of Conduct (2012) (see Appendix A) outlines that nurses must maintain professional boundaries between themselves and health consumers.

58. An inherent power imbalance exists between a consumer and a healthcare provider. This arises from the nature of the relationship, and is more pronounced in contexts such as this, where the provider is privy to intimate details about a health consumer's life and their mental health. Trust is fundamental to the relationship, in ensuring that the consumer is assured that the provider is acting with the consumer's best interests in mind. It is critical that relationships between health professionals and their clients stay within the professional realm, to avoid any exploitation or abuse of power.

59. At the time of the events, RN B was aware that Mr A was vulnerable due to his age and his position as a patient receiving mental health services. RN B began providing mental health services to Mr A through a referral from his high school, and they had their first face-to-face meeting on school grounds. RN B had detailed knowledge of Mr A's personal health and wellbeing, which he had a duty to utilise professionally and for the benefit of Mr A, and was aware of the appropriate professional conduct he needed to uphold to ensure that the therapeutic relationship was of benefit for Mr A.

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Inappropriate communication

60. In early 2020, RN B initiated personal contact with Mr A via Facebook, and sent Facebook messages of a suggestive nature to Mr A. The content of the messages was personal in nature, and included RN B asking Mr A to send photographs in his pyjamas and running gear.

61. The NCNZ Guidelines on Professional Boundaries (see Appendix B) states that nurses must avoid online relationships with current or former healthcare consumers. The Guidelines state that social media or electronic communication should not be used to build or pursue relationships with healthcare consumers. The Guidelines also outline the need for nurses to be aware that in all relationships with healthcare consumers, nurses have greater power because of their position as a health professional, their knowledge, their access to information about the consumer, and their role in supporting the consumer when the consumer is receiving care.

62. The NCNZ Guidelines on Professional Boundaries also state:

> "Nurses must be aware of professional boundaries and ensure that communication via text[8] is not misinterpreted by the health consumer or used to build or pursue personal relationships."

63. I am unable to make a finding on the exact date of the messages between RN B and Mr A. However, it appears that the messages were sent in March or April 2020, during the first COVID-19 lockdown, either close to the end of, or immediately after the end of, the therapeutic relationship. I consider that it is irrelevant whether Mr A was a current or former healthcare consumer at the time of the messages, as the NCNZ guidelines apply to both current and former consumers. The power imbalance between RN B and Mr A persisted beyond the termination of the therapeutic relationship, given RN B's knowledge of Mr A's personal circumstances and mental health.

64. The messages from RN B to Mr A are clearly inappropriate. RN B initiated contact through social media, asked Mr A to send him photos, and attempted to initiate suggestive discussions about what Mr A was wearing. RN B denies that there was any sexual motivation behind his messages. However, the mental health service raised concerns that RN B may have been trying to groom or take advantage of Mr A, and I share these concerns. Despite RN B stating that the messages were not sent with sexual intent, I consider that the messages do carry a sexual undertone. Regardless, sexual intent does not need to be proved to confirm that the messages were inappropriate. RN B should not have been sending any messages that were personal in nature to a current or former patient, regardless of sexual intent.

65. RN B has told HDC that he can now recognise that he was experiencing burnout at the time of sending the messages, and that this incident has made him reflect on his use of social media, both in a professional setting and in his personal life.

[8] While this specifically refers to text message, I consider that online direct messaging, such as Facebook Messenger, serves the same communication connection, and therefore the same principles apply.

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66. RN B told HDC that he had limited supervision, and he has no recollection of any training in relation to maintaining professional boundaries. In contrast, the mental health service told HDC that RN B had fortnightly meetings with his supervisor and open channels of dialogue to raise any issues. Further, the mental health service stated that the Preventing and Reporting Abuse and Neglect Policy highlights appropriate boundaries and behaviours with patients, and that RN B told the mental health service when joining its staff that he understood the key policy guidelines. Therefore, I cannot see any evidence of lack of supervision and training. There are clear guidelines of what is expected of RN B in the standards of his profession. RN B, as both the professional and adult in these circumstances, ought to have known better, and I do not accept that the level of supervision or training he was provided with contributed to his actions.

Conclusion

67. In my opinion, RN B failed to adhere to the NCNZ Code of Conduct and the NCNZ Guidelines on Professional Boundaries by failing to maintain professional and ethical boundaries with Mr A while, or around the time, he was providing care for Mr A.

68. Accordingly, by initiating contact with Mr A outside of a professional setting, and sending messages of a personal nature, my view is that RN B breached his professional and ethical obligations as a registered nurse, and, accordingly, breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.[9]

Changes made since events

RN B

69. RN B stated that as a result of this incident, he has considered and implemented changes to his practice, including "becoming familiar with and remembering professional boundaries — going through the Code of Conduct, Code of Ethics and use of social media in healthcare". RN B stated:

> "[I recognise that] my interactions in all the various forms can impact on those I interact with be th[at] positive or negative. Seek appropriate support for any issues that arise from my actions. Communicate what is going for me at my employment to the appropriate person."

70. RN B told HDC that he is now able to recognise when he is becoming overwhelmed and burnt out, and previously he had not had any experience with the feeling.

71. RN B also stated that this incident has made him reflect on his use of social media, both in a professional setting and in his personal life. He said that it has also made him think about why he wants to be a nurse and if he should carry on in that career. RN B stated: "I am aware

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

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that I have broken the trust that I held as a nurse and with society and am aware that it will take time for me to earn this trust back."

Recommendations

72. I recommend that within three months of the date of this report, RN B undertake further training on identifying and maintaining professional boundaries, and report back to HDC once completed.

73. I recommend that the Nursing Council of New Zealand consider RN B's fitness to practise, and whether any reviews of his competence and/or conduct are required in light of this report.

74. I recommend that the mental health service undertake an audit of RN B's case load of previous clients as a safety measure to ensure that professional boundaries were maintained, and that access to appropriate additional support for patients can be facilitated if necessary. The mental health service supports this recommendation and has agreed to complete the audit.

Follow-up actions

75. RN B will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken. I have considered the views of the complainant on this matter, but will proceed to refer RN B to the Director of Proceedings as I remain concerned that:

    a) RN B has demonstrated a lack of reflection into the substance of the boundary breach and the needs of Mr A as a client;

    b) There is evidence that RN B had extensive training and awareness of the ethical boundaries to be maintained, although he denied this; and

    c) The potential harm to a vulnerable young person by behaviour initiated by RN B was significant, and there is public interest in ensuring that such a risk is minimised.

76. A copy of this report will be sent to the mental health service.

77. A copy of this report with details identifying the parties removed will be sent to the Nursing Council of New Zealand, and it will be advised of RN B's name.

78. A copy of this report with details identifying the parties removed will be sent to the District Health Board, the Health Quality & Safety Commission, and the Director of Mental Health, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

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Addendum

79. The Director of Proceedings decided not to issue proceedings.

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Appendix A: Nursing Council of New Zealand Code of Conduct (2012)

"Principle 7.13: Maintain a professional boundary between yourself and the health consumer, and their partner and family, and other people nominated by the health consumer to be involved in their care."

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Appendix B: Nursing Council of New Zealand Guidelines: Professional Boundaries (2012)

"Nurses must be aware that in all their relationships with health consumers they have greater power because of their authority and influence as a health professional, their specialised knowledge, access to privileged information about the health consumer and their role in supporting health consumers … The health consumer does not have access to the same degree of information about the nurse as the nurse does about the health consumer, thereby increasing the power imbalance.

It is the nurse's responsibility … to maintain the appropriate professional boundary of the relationship. The nurse has the responsibility of knowing what constitutes appropriate professional practice and to maintain his or her professional and personal boundaries. The health consumer is in an unfamiliar situation and may be unaware of the boundaries of a professional relationship. It is the responsibility of the nurse to assist health consumers to understand the appropriate professional relationship. There is a professional onus on nurses to maintain a relationship based on care plans and goals that are therapeutic in intent and outcome.

[Nurses must] maintain professional boundaries in the use of social media … Do not use social media or electronic communication to build or pursue relationships with health consumers … Nurses must be aware of professional boundaries and ensure that communication via text is not misinterpreted by the health consumer or used to build or pursue personal relationships.

[Nurses] have the potential to harm the health consumer by increasing their vulnerability or dependence in the relationship with the nurse and could be detrimental to their health outcomes by compromising the nurse's objectivity and professional judgment.

Some warning signs that the boundaries of a professional relationship may be being crossed and that an inappropriate personal or sexual relationship is developing are … texting or using forms of social media to communicate in a way that is not clinically focused … the nurse participates in flirtatious communication, sexual innuendo or offensive language with a health consumer."

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