
Psychologist

Report on Opinion - Case 97HDC5949

Complaint

The Commissioner received a complaint from a consumer as follows:

- *In 1991 the provider, a psychologist, assessed the consumer in relation to his suitability for flying duties. This assessment was at the request of the Civil Aviation Division of the Ministry of Transport (CAA).*
- *Following this assessment the provider wrote a report for CAA and concluded, “[the consumer] is assessed as having no obvious psychological difficulties prejudicial to his return to commercial licence status.”*
- *In mid-1996 the consumer approached the provider and asked him for a copy of the 1991 report. In mid-July 1996 the provider wrote to CAA and said “In the years since 1991 I have closely followed the literature and research findings on Cockpit Resource Management (CRM) and am now prepared to go on record as saying that, on the basis of my original assessment of [the consumer’s] interpersonal style, his behaviour would constitute a hazard to safe crewed commercial flight operations and I would need to re-assess [the consumer’s] behaviour before concluding otherwise. In short I would not support an application by [the consumer] to undertake a commercial flying role and, if asked, am prepared to advise [the consumer] to this effect.”*
- *This letter of July 1996 was unsolicited by the CAA and was written without a clinical assessment of [the consumer], other than the one done more than 5 years earlier.*

Investigation

The complaint was received by the Commissioner on 2 May 1997 and an investigation undertaken. Information was obtained from:

The Complainant
The Psychologist / Provider

The Commissioner obtained advice from an independent registered psychologist.

Continued on next page

Psychologist

Report on Opinion - Case 97HDC5949, continued

Details of Investigation

In 1991 the provider, a psychologist, assessed the consumer in relation to his suitability for flying duties. This assessment was undertaken at the request of CAA following the consumer's submission to CAA of two inaccurately completed medical forms. The way the forms were completed indicated that the consumer had never had his licence suspended when in fact he had. The earlier suspension was related to psychiatric/psychological problems experienced by the consumer following the break-up of his marriage. CAA became aware of the inaccuracy in the forms and asked for the assessment to be done.

The consumer arranged for the provider to undertake the assessment, which the consumer paid for. The consumer advised the Commissioner that there was no discussion at the time of the assessment as to whether the consumer was entitled to a copy of the report or whether the contents of the report were confidential to CAA. The provider advised the Commissioner the consumer would have been told that the report was confidential to CAA. However, contents of the report would have been disclosed by CAA if they had taken any action prejudicial to the consumer because of the information it contained.

After this assessment the provider wrote a report for CAA and forwarded it to them. The consumer did not receive a copy of the report. The report contained references to the consumer's interpersonal style and included the following comments:

"[the consumer] generally emerges as a self centered individual who has poor social skills and powerful need to control relationships... [The consumer] also emerges as a litigious individual who somehow always seems to aggravate others..."

The provider concluded his report as follows:

"[the consumer] is assessed as having no obvious psychological difficulties prejudicial to his return to commercial licence status."

Continued on next page

Psychologist

Report on Opinion - Case 97HDC5949, continued

**Details of
Investigation,
continued**

In mid-1996 the consumer approached the provider and asked for a copy of the 1991 report. The provider advised the consumer that he did not have authority to release the report to him as it was the property of CAA and he would need to obtain CAA permission before releasing it. At this point the provider re-read the report. He became concerned about his earlier recommendation that the consumer return to commercial licence status as the provider's reading over the preceding year had alerted him to the fact that poor social skills in crewed flight operations had been a significant factor in a number of major air accidents.

The provider considered that he was bound ethically and professionally to revise his earlier recommendation to CAA. He phoned the Principal Medical Officer of CAA, and told him of the consumer's request for a copy of the report and also of his concerns about the consumer's suitability to fly aircraft commercially. The Principal Medical Officer invited the provider to put his comments in writing which the provider did by letter of July 1996, which contained the following paragraph:

"In the years since 1991 I have closely followed the literature and research findings on Cockpit Resource Management (CRM) and am now prepared to go on record as saying that, on the basis of my original assessment of [the consumer's] interpersonal style, his behaviour would constitute a hazard to safe crewed commercial flight operations and I would need to re-assess [the consumer's] behaviour before concluding otherwise. In short I would not support an application by [the consumer] to undertake a commercial flying role and, if asked, am prepared to advise [the consumer] to this effect.

This letter was written based on the provider's 1991 assessment of the consumer. The provider had no contact with or knowledge of the consumer in the period between 1991 and 1996, nor did he complete any further assessment.

Continued on next page

Psychologist

Report on Opinion - Case 97HDC5949, continued

**Details of
Investigation,
*continued***

Psychologist's Advice

The psychologist/advisor drew the Commissioner's attention to aspects of the New Zealand Psychological Society's Code of Ethics. The following discussion of the Code of Ethics is based upon advice from the psychologist.

Section 1.3 of the Code of Ethics states:

While taking account of their obligations under the law, psychologists who are practitioners hold the interests and welfare of clients to be of primary importance.

The client to whom the provider owed a primary responsibility in terms of section 1.3 of the Code of Ethics was the consumer, and not CAA.

Section 4 of the Code of Ethics states:

A psychologist does not disclose information obtained professionally to any third party without the informed consent of the client or research participant. There are certain exceptions to, and limitations of, that principle.

4.1 The major exceptions/limitations are...

- d) Client or public safety: *A psychologist who believes that non-disclosure may endanger a client or another person but is denied permission to disclose, exercises professional judgement, if necessary after consultation with senior colleagues, in deciding whether to breach confidentiality or not. In such circumstances, the psychologist is able to justify the decision made.*

In 1996 the provider became concerned about public safety should the consumer be flying commercially. However, under section 4.1(d) of the Code of Ethics the provider was first required to approach the consumer and seek his permission to disclose the new information in relation to him. Only upon refusal could any appropriate disclosure take place.

Continued on next page

Psychologist

Report on Opinion - Case 97HDC5949, continued

**Details of
Investigation,
continued**

Section 9.3 of the Code of Ethics states:

Psychologists obtain the informed consent of clients when undertaking psychological assessments. Informed consent means obtaining the consent of the client or, where the client is judged incapable of giving informed consent, the consent of those authorised to represent the interests of the client. Informed consent includes: ...

c) Being informed of the uses to which the data from assessments will be put and the person, organisations and/or agencies to whom the data and/or reports will be made available.

d) Being informed of the right to know the content of psychological assessment reports concerning them.

With reference to section 9.3(d) of the Code of Ethics the consumer was entitled to the contents of the letter of July 1996 from the provider to CAA which became a further assessment report. With reference to section 9.3(c) the consumer was entitled to know that the second report was to be made available to CAA before he made it available.

Section 9.4 states:

In reporting assessment findings to clients and to other professionals, psychologists endeavour to ensure that appropriate explanations of the findings and their interpretations are provided and that they are not misused. Any reservations concerning the validity or reliability of an assessment procedure, arising from its administration, norms or domain reference, should be made explicit in the report. Psychologists strive to prevent misuse of outdated assessment results.

The 1991 assessment of the consumer was outdated. The provider should have asked CAA to refer the consumer for another assessment. This would have avoided the provider relying on outdated findings when making his further report.

Continued on next page

Psychologist

Report on Opinion - Case 97HDC5949, continued

**Code of
Health and
Disability
Services
Consumers'
Rights**

The following Right in the Code of Health and Disability Services Consumers' Rights applies:

RIGHT 4

Right to Services of an Appropriate Standard

...

- 2) *Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*
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Jurisdiction

With reference to section 9.3(d) of the Code of Ethics the consumer appeared to be entitled to a copy of the contents of the original report. However, the assessment was undertaken in 1991 and the Code of Health and Disability Services Consumers' Rights came into effect on 1 July 1996. Matters occurring prior to this time are outside my jurisdiction and therefore I make no finding on this aspect of the complaint.

**Opinion:
Breach**

In my opinion, the provider breached Right 4(2) of the Code of Rights by failing to comply with the professional standards governing him. The professional standards which apply to the provider are contained in the New Zealand Psychological Society's Code of Ethics 1986 and were breached as follows:

- The provider did not comply with section 4.1(d) of the Code of Ethics when he disclosed information about the consumer to the CAA in 1996 without the consumer's consent.
 - The provider did not comply with section 9.3(c) of the Code of Ethics by not advising the consumer that the second report was to be made available to CAA.
 - The provider did not advise the consumer he was entitled to a copy of the second report, which he was required to do under section 9.3(d) of the Code of Ethics.
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Continued on next page

Psychologist

Report on Opinion - Case 97HDC5949, continued

**Opinion:
Breach,
*continued***

- The provider did not comply with section 9.4 of the Code of Ethics. Psychologists are to strive to prevent misuse of outdated assessment results yet the provider conveyed a new report to CAA using his new knowledge and relying on an outdated assessment.
- The provider acted contrary to the consumer's interests and did not comply with section 1.3 of the Code of Ethics by not reassessing the consumer and in not advising him of his new concerns, prior to contacting CAA.

In my opinion the consumer's interests were of primary importance. Had the consumer refused a new assessment the provider could have reconsidered any obligations to CAA and the public.

**Further
Actions**

I recommend that the provider apologise in writing to the consumer for his breach of the Code of Rights. This apology should be sent to the Commissioner's Office and will be forwarded to the consumer. A copy will be retained on the Commissioner's file.

A copy of this opinion will be sent to the New Zealand Psychologists Board and to the Civil Aviation Authority of New Zealand.
