

Chiropractor, Mr A

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

(Case 19HDC01074)

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Executive summary

1. This report relates to a sexual relationship that developed between a woman and a chiropractor after the woman sought treatment in 2016. The relationship spanned two and a half years. During this time, the chiropractor continued to provide chiropractic services to the woman and members of her family, and did not seek advice from either his colleagues or professional body about his professional and ethical obligations.
2. The Deputy Commissioner emphasises that the maintenance of professional boundaries is an integral part of the provision of health services, and its importance in the provider–consumer relationship cannot be stated strongly enough.

Findings

3. The Deputy Commissioner considered that by entering into and continuing a sexual relationship with the woman, while providing her with chiropractic treatment, the chiropractor failed to maintain appropriate professional boundaries and comply with the ethical standards set out in the Chiropractic Board Code of Ethics. Accordingly, the Deputy Commissioner found that the chiropractor breached Right 4(2) of the Code.

Recommendations

4. The Deputy Commissioner recommended that the chiropractor establish a six-month mentoring and continuing education plan with the New Zealand Chiropractic Board, in relation to its Code of Ethics and with an emphasis on professional boundaries.
5. The Deputy Commissioner recommended that the New Zealand Chiropractic Board consider this complaint and whether further action is warranted.
6. The chiropractor is to be referred to the Director of Proceedings.

Complaint and investigation

7. The Health and Disability Commissioner (HDC) received a complaint from Mrs B about the services provided by a registered chiropractor, Mr A. The following issue was identified for investigation:
 - *Whether Mr A provided Mrs B with an appropriate standard of care in 2016 to 2019.*
8. This report is the opinion of Rose Wall, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.
9. The parties directly involved in the investigation were:

Mrs B	Consumer/complainant
Mr A	Chiropractor/provider

10. Further information was received from the health clinic (the clinic) and the New Zealand Police.
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Information gathered during investigation

Background

11. This report discusses the development of a sexual relationship between a registered chiropractor, Mr A, and his patient, Mrs B, between 2016 and 2019.
12. Mr A is a qualified chiropractor.
13. In January 2016, Mrs B sought treatment from the clinic because she was experiencing nerve irritation in her throat as a result of an earlier incident. She told HDC that at this time she was emotionally vulnerable and was having trouble sleeping. She had her first consultation with Mr A on 23 January 2016.
14. Over the next two years, Mrs B had further appointments with Mr A about every two weeks, and a sexual relationship developed. The clinical notes record the last appointment as 30 October 2018. Mrs B provided evidence (bank statements) that shows that she made a final payment for treatment to the clinic in October 2018. However, Mrs B stated that Mr A saw her for eight further appointments,¹ and that he last treated her on 25 January 2019.² The appointments were conducted in rooms at the clinic.

Alleged sexual advances

15. Mrs B told HDC that the first four months of treatment with Mr A were professional and appropriate.
16. On 15 April 2016, Mrs B attended her sixth appointment with Mr A as she was having difficulty sleeping. Mrs B said that Mr A gave her a hug, which made her feel very uncomfortable because he held on for too long and she had to pull away. Mr A agrees that they did hug briefly, but said that this was initiated by Mrs B. He told HDC that Mrs B put her arms around him to thank him for the work he was doing. He said that it made him feel uncomfortable and he made light of the episode.
17. Mrs B said that in May 2016 there was a shift in the dynamic of the therapeutic relationship with Mr A. She stated that he had carried out a particular adjustment on her and told her that he liked this technique because it meant he could cuddle her. Mrs B said that Mr A told her that he should hand over her care to another colleague, but he wanted to keep her all to himself. Mrs B stated that later he told her that during this time, as part

¹ On 21/07/2018, 04/08/2018, 25/08/2018, 22/09/2018, 13/10/2018, 27/10/2018, 11/01/2019, and 25/01/2019.

² In response to the provisional opinion, Mrs B provided the records from her counselling psychologist dated January 2019, which state that she was a patient and receiving treatment from the clinic.

of his treatment, he had “tested if she was sexually attracted to him” by manipulation of the body.

18. Mr A denies that he tested Mrs B to see if she was sexually attracted to him. He refutes that he said he liked a particular technique because it meant he could cuddle her. Mr A stated that no discussion was had with Mrs B about transferring her care to a colleague, until just before they entered a relationship in November 2016.
19. Mrs B alleges that between July 2016 and October 2016 (inclusive), further intimate and sexually inappropriate acts occurred.
20. In one response to HDC, Mrs B reported that during an appointment, Mr A acknowledged that he was attracted to her. Mrs B also reported that he asked her if he was making her nervous and whether she was attracted to him. She alleges that he pulled her down the table and “ordered” her to stand up and then hugged her. She noticed that he had an erection.
21. In another response to HDC, Mrs B recollected that similar events occurred on 9 August 2016. Mrs B told HDC that towards the end of a treatment, Mr A swung her legs in the air from side to side and then asked if he made her nervous. She recalled that he had also done this at the previous six appointments, and she had told him that it did not make her nervous. Mrs B stated that on this occasion, however, she said that he did make her nervous, and he asked her why. She recalled replying: “[S]urely you must know.” Mrs B alleges that Mr A then pulled her down the table by her legs and hugged her, then “ordered” her to stand up and hugged her again. At this time, Mrs B reported that Mr A pushed his pelvis into her and she could feel his erect penis.
22. Mrs B reported that Mr A told her that he was attracted to her, and she responded that she was attracted to him too. She stated that in August 2016 they had a discussion about starting a sexual relationship, and Mr A suggested that they discuss this further on the next available Saturday clinic when there was no receptionist.
23. Mrs B said that she attended the clinic on Saturday, and alleges that during the consultation Mr A hugged her, ground his pelvis into her, and exposed himself to her. In response to the provisional opinion, Mrs B told HDC that Mr A asked to meet at the clinic on Saturday when no staff were present. Mrs B stated that Mr A felt that they needed to discuss what had happened on the previous appointment and the prospect of a future sexual relationship. Mrs B said that the discussion was had over a two-hour period.
24. Mrs B told HDC that on 30 August 2016, she attended an appointment with Mr A and he told her that he loved their time together on Saturday. Mrs B stated that he continued to grind himself into her.
25. Contrary to Mrs B’s recollection, Mr A stated that no sexual activity was entered into prior to several discussions in October 2016 around her desire to start a sexual relationship with him. He told HDC that in October 2016, Mrs B asked to speak with him about

continued care for herself, her husband, and her child. Mr A reported that at this meeting, he asked if there was anything else that was an issue, and Mrs B replied: “[S]urely [you] must know.” Mr A questioned Mrs B on this, and she told him that he was the most amazing man she had ever met and that she felt sexually aroused during treatments. Mr A told HDC that he asked her if she felt that there had been anything that he had done to encourage this or whether he had been inappropriate with her. He recollected that Mrs B had denied that he had.

26. Mrs B denies that this conversation took place at this time, but said that it occurred later on in the relationship. She also denies telling Mr A that she felt sexually aroused during his treatments, or that he asked her whether he had done anything to encourage her feelings or whether he had been inappropriate.
27. Mrs B reported that after the above encounters she became infatuated with Mr A and was flattered by his attention. Similarly, Mr A told HDC that he felt very flattered. He stated: “[W]ith disregard to my better judgment [I] agreed to talk further about her feelings for me.”
28. In September 2016, Mrs B saw Mr A again. She told HDC that she was very fragile at this time. On 12 September 2016, Mrs B saw Mr A for treatment of a phobia. Mrs B alleges that during this treatment, Mr A “digitally assaulted” her and jumped on top of her and kissed her very hard. She recollected telling Mr A that she did not think it was okay, and he apologised. As stated previously, Mr A asserts that no sexual activity was entered into prior to several discussions in October 2016 around Mrs B’s desire to start a sexual relationship with him. Mr A told HDC that he did not digitally assault Mrs B on 12 September 2016.
29. In response to the provisional opinion, Mrs B told HDC that her first sexual activity with Mr A was in November 2016. Mrs B stated that she met Mr A at a carpark and a sexual encounter occurred in his car.
30. Mr A also told HDC that there was an encounter with Mrs B in November 2016. He stated that he met Mrs B in a car park and she then got into his car, where they engaged in sexual activity. Mr A said that there was no hesitation from Mrs B, and that had she indicated unwillingness or hesitation he would have stopped.

Discussion about a relationship

31. As stated above, Mrs B said that discussions with Mr A about the possibility of entering a relationship began in August 2016. In contrast, Mr A admits that in October 2016, “with disregard to [his] better judgement”, he had discussions with Mrs B about the possibility of entering into a relationship.
32. Mr A told HDC:

“[Mrs B] continued with treatment for herself and her [child] at her insistence and due to her belief that I was the only person that could help them both. My requirement

that if there was to be a relationship between us she needed to get treatment from my associate or another clinic was rejected and she pleaded with me to continue treatment with her. She insisted that I charge her so that her husband could see that she was attending the clinic and paying.”

33. In October 2016, Mr A recorded in the clinical notes that he had had a discussion with Mrs B about seeing other practitioners, but that she wanted to continue to see him. Mr A documented: “[D]iscussion re: treatment + costs — unhappy w[ith] change to family care ... — wants ongoing maintenance w[ith] [Mr A].”
34. In response to the provisional opinion, Mrs B told HDC that Mr A told her that he had “made up” the clinical note to explain why she left during the appointment and was in tears. Mrs B stated that at no stage did Mr A say that he would not provide her treatment during their relationship. Mrs B also stated that in May 2016 Mr A told her that he should hand over her care to a colleague.
35. Mr A told HDC that he did not seek advice from colleagues or his peers about entering into a relationship with Mrs B and maintaining professional boundaries. He stated:

“I did not seek advice from anyone. I had never previously crossed professional boundaries in any way and was confused and embarrassed as to why I would allow myself to enter into this relationship.”

Relationship commenced

36. Mr A told HDC that by the end of November 2016, he had entered into a sexual relationship with Mrs B, which continued for over two years. During this time, Mr A continued to provide treatment to Mrs B and her family.
37. Mr A acknowledged that during his relationship with Mrs B he treated her child until October 2018. Mrs B said that in November 2016, Mr A had suggested that he take over her child’s care and that he felt a special connection with her child and treated the child from December 2016 until January 2019.
38. Mr A and his colleague treated Mrs B’s husband between 2015 and 2016. Mrs B said that following an appointment with Mr A in November 2016, he told her that he could not treat her husband as Mr A felt uncomfortable because of his sexual relationship with her. Mrs B stated that this conversation did not take place.
39. Mrs B said that she was besotted with Mr A and that they engaged in sexual activity in his clinical rooms. She stated that she attended an appointment with him on 13 February 2017, and that they had sex during this visit. In contrast, Mr A maintains that he was “not inappropriate” with Mrs B during any of her treatment at the clinic.

40. On 13 February 2017, Mr A documented that he had treated Mrs B, and clinic records show that payment for this treatment³ was made at 8.16am.
41. In response to the provisional opinion, Mrs B stated that Mr A treated her every day during November and December 2018 because her body could not handle the stress she was experiencing. Mrs B said that this had an enormous impact on her.
42. Mr A admitted to HDC that he had a sexual relationship with Mrs B, and said that he deeply regrets this both personally and professionally. He stated: "I do understand and was aware that from a professional perspective that this was a boundary cross." Mr A said that at the time of entering into a relationship with Mrs B, he was at a very low point in his life and was overwhelmed with stress, anxiety, and low self-esteem. He maintains that Mrs B convinced him to enter into a relationship.
43. In response to the provisional opinion, Mrs B denied that she convinced Mr A to enter into a relationship.
44. In early 2019, the relationship between Mr A and Mrs B ended.

Further information

Mrs B

45. In May 2019, Mrs B laid a formal complaint with the New Zealand Police alleging that she was "digitally assaulted" by Mr A. The New Zealand Police advised:

"After carefully considering all of the evidence we were unable to reach a threshold where the Crown Solicitors Guidelines for prosecution evidential test were met. This subsequently resulted in Police speaking with [Mr A] and filing the case without prosecution on the 6th of January 2020."

Mr A

46. Mr A maintains that despite this relationship, he did not compromise Mrs B's treatment at any time, and at all times attempted to help and support her.
47. Mr A stated:

"I have made significant changes to my practice, my work, my home environment and my life in general. Driven by my realisation as to the recklessness and inappropriateness of my affair with [Mrs B] and my desire to ensure that I never cross professional boundaries again."
48. Mr A told HDC that he has taken steps to ensure that he does not deviate from the highest standards of professionalism with his patients, colleagues, and employees. He stated that he has sought support from a psychologist to understand these events and the actions that he ought to take in a similar situation.

³ The clinic provided a statement of payments made by Mrs B for treatment.

Response to provisional decision

Mrs B

49. Mrs B told HDC that she has been “profoundly affected by the relationship and the abuse of trust”. She said that she was extremely stressed from this experience with Mr A and lost weight. She stated: “[T]he impact has been devastating. It has affected so many facets of my life and the relationships with people I care about.”

Mr A

50. Mr A was given the opportunity to respond to the provisional opinion. The information provided in his response is reflected above.

Relevant standards

New Zealand Chiropractic Board

Code of Ethics and Standards of Practice (adopted February 2013)

51. 1.4 All chiropractors have a duty to ensure that the care of patients is their first concern.
- 4.5 All chiropractors have a duty to ensure that their health status does not impede their ability to provide chiropractic care and maintain public safety.

2.1.4 Interactions with Patients — Sexual Misconduct

A chiropractor cannot have a sexual relationship with a patient unless that patient is the chiropractor’s spouse or partner. Sexual behaviour in a professional context is abusive. Sexual behaviour includes but is not limited to the following:

- 2.1.4.1.1 the use of language (whether written, electronic or spoken) of a sexual nature;
- 2.1.4.1.2 the use of visual material of a sexual nature;
- 2.1.4.1.3 physical behaviour of a sexual nature.

The Board condemns all forms of sexual misconduct in the chiropractor/patient relationship. The Board impresses on chiropractors the need for open and clear communication to avoid misinterpretations and misperceptions. The consent of a patient to sexual contact does not necessarily preclude a finding of misconduct against the chiropractor by the Board. The Board will use the following guide in determining whether, and to what extent sexual misconduct has occurred:

- a. **Sexual connection** means sexual activity between chiropractor and patient, whether or not initiated by the patient, including but not exclusively:
- any form of genital or other sexual connection;
 - masturbation or clitoral stimulation, involving the chiropractor and patient.

- b. **Sexual transgression** includes any touching of a patient that is of a sexual nature, other than behaviour described in sexual connection, including but not exclusively:
- inappropriate touching of breasts or genitals;
 - inappropriate touching of other parts of the body;
 - propositioning a patient.
- c. **Sexual impropriety** means any behaviour other than sexual touching such as gestures or expressions that are sexually demeaning to a patient or which demonstrate a lack of respect for the patient's privacy, including but not exclusively:
- propositioning a patient;
 - inappropriate disrobing or inadequate gowning practices;
 - inappropriate comments about, or to, the patient such as the making of sexual comments about a patient's body, or underclothing, or sexual orientation;
 - making inappropriate comments to a patient;
 - making comments about sexual performance during an examination or consultation (except where pertinent to professional issues of sexual function or dysfunction);
 - requesting details of sexual history or sexual preferences not relevant to the type of consultation;
 - any conversation regarding the sexual problems, preferences or fantasies of the chiropractor.
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Opinion: Mr A — breach

Introduction

52. Under Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), Mrs B had the right to have services provided that complied with professional and ethical standards. The Chiropractic Board Code of Ethics states that chiropractors have a responsibility to be familiar with the Board's Code and comply with its standards. It states that a chiropractor cannot have a sexual relationship with a patient unless that patient is the chiropractor's spouse or partner.
53. The maintenance of professional boundaries is an integral part of the provision of health services, and its importance in the provider–consumer relationship cannot be emphasised strongly enough. I consider that Mr A's conduct, specifically his entering into a sexual relationship with his patient, Mrs B, did not comply with his professional and ethical obligations and crossed professional boundaries and ethical standards.

Factual findings

54. Mrs B told HDC that sometime between July and September 2016 sexual advances were made by, and discussions were had with, Mr A about entering into a relationship. In contrast, Mr A denies that any sexual incidents occurred during this time, but acknowledged that in October 2016 discussions were had about entering into a sexual relationship. I note the conflicting accounts and I am unable to make a finding about who initiated sexual advances. However, on the information available, I find that by the end of October 2016, Mr A had had discussions with Mrs B about their attraction and entering into a sexual relationship. I also find that by November 2016, Mr A had entered into a sexual relationship with Mrs B, while continuing to provide her and her child with chiropractic treatment. This sexual relationship spanned over two years and ended sometime in early 2019.
55. Aspects of this complaint are disputed by the parties. This includes who initiated the relationship, whether sexual activity occurred at the clinic, whether Mr A made attempts to transfer Mrs B's care, whether inappropriate sexual acts including consent for sexual intercourse and an alleged digital assault occurred during treatment, and how the relationship ended. Given the seriousness of these allegations, the differing accounts, and the limited contemporaneous evidence, it is difficult for me to favour one account over the other. For the purposes of my discussion below, I have focused on what I consider to be the fundamental issue in this case. The undisputed fact is that a sexual relationship was entered into whilst Mr A provided a health service to Mrs B. The other disputed facts, such as whether sexual activity occurred during treatment, do not materially affect that finding.

Professional and ethical standards

56. The New Zealand Chiropractic Board Code of Ethics provides that “[a]ll chiropractors have a duty to ensure that the care of patients is their first concern”, and “[a]ll chiropractors have a duty to ensure that their health status does not impede their ability to provide chiropractic care and maintain public safety”.
57. Mr A has accepted that starting a sexual relationship with Mrs B was a “boundary cross”. He stated that he was at a very low time in his life, and was extremely stressed and uncertain about the choices he was making and why he entered into a relationship.
58. When Mr A commenced discussions about a sexual relationship with Mrs B, and then entered into a sexual relationship, it is questionable whether his chiropractic care of Mrs B still remained his first concern. Further, it concerns me that Mr A was at a low point in his life and was under stress at the time of these events, and that this appears to have impeded his ability to provide care to Mrs B in a professional manner.
59. The Chiropractic Board's Code of Ethics also states that “[a] chiropractor cannot have a sexual relationship with a patient unless that patient is the chiropractor's spouse or partner”, and that “the Board condemns all forms of sexual misconduct in the chiropractor/patient relationship”. Mr A has clearly failed to comply with the standard set by the Chiropractic Board's Code of Ethics not to have a sexual relationship with a patient.

60. By entering into and continuing a sexual relationship with Mrs B for more than two years, while providing her with chiropractic treatment, I consider that Mr A failed to maintain appropriate professional boundaries and also failed to comply with the ethical standards set out in the Chiropractic Board Code of Ethics. Accordingly, I find that Mr A breached Right 4(2) of the Code.⁴
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Recommendations

61. I recommend that Mr A establish a six-month mentoring and continuing education plan with the New Zealand Chiropractic Board, in relation to the Code of Ethics and with an emphasis on professional boundaries, and report to HDC on the substance of the plan and the arrangements made to ensure compliance with that plan, within three months of the date of this opinion.
62. I recommend that the New Zealand Chiropractic Board consider this complaint and whether further action is warranted, and report back to HDC on the outcome of the consideration.
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Follow-up actions

63. Mr A 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.
64. A copy of this report with details identifying the parties removed will be sent to the New Zealand Chiropractic Board, and it will be advised of Mr A's name.
65. A copy of this report with details identifying the parties removed will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.
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Addendum

66. The Director of Proceedings decided to institute a disciplinary proceeding in the Health Practitioners Disciplinary Tribunal

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