



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 325/05/127C
IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by the Complaints
Assessment Committee pursuant
to Section 93(1)(b) of the Act
against P medical practitioner of
xx.

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Miss S M Moran (Chair)
Ms J Courtney, Dr R J Fenwicke, Dr M Honeyman,
Dr A D Stewart (Members)
Mrs K L Davies (Legal Officer)
Ms K O'Brien (Stenographer)

Hearing held at xx on Monday 28 August through to and including
Thursday 31 August 2006

APPEARANCES: Ms K P McDonald QC and Ms K Feltham for Complaints
Assessment Committee

Mr S J Hembrow for Dr P.

Supplementary Decision

This decision is supplementary to the Tribunal's decision of 21 September 2006.

Introduction

1. Dr P (referred to as "the Doctor") was a registered medical practitioner of xx. On 28 September 1998 the Tribunal ordered that the Doctor's name be struck off the Medical Register; and on 23 December 1998 it determined that a period of three years had to elapse before he could apply to have his name restored. On 29 August 2002, the Doctor's name was restored to the register on a probationary basis (following his application). On 8 April 2005 the Complaints Assessment Committee ("CAC") determined that the present charge should be laid; and on 28 April 2005 it applied for interim suspension of the Doctor's registration. On 10 May 2005 the Doctor gave a written undertaking to both the Medical Council and the Tribunal that he would relinquish his practising certificate as from 1 June 2005 to await the determination by this Tribunal of the charge before it.

The Charge

2. The Doctor has been charged with disgraceful conduct pursuant to s93(1)(b) of the Medical Practitioners Act 1995 (the Act) for the period from 29 August 2002 (on which date he was granted probationary registration under the Act) until early 2004 in relation to B (referred to throughout as "Ms B"), a woman whom he knew was diagnosed as suffering from psychiatric disorders.

3. The charge sets out the particulars in which it is alleged that, if proved, either separately or cumulatively, the Doctor's conduct amounted to disgraceful conduct in a professional respect and/or in the alternative professional misconduct as follows:
- (a) Had sexual intercourse with Ms B who was at the time, or had been until recently, his patient; and/or
 - (b) Paid money in return for sexual services to Ms B who was at the time, or who had been until recently, his patient; and/or
 - (c) Provided prescription only drugs to Ms B without prescription, and without proper medical reasons or justification for doing so and at the time when he was not Ms B's medical practitioner and/or when he was not in a treating role with her; and/or
 - (d) Gave Ms B advice on how to prepare a lethal dose of medication for her to use as a suicide tool; and/or
 - (e) Following a complaint being made against him by Ms Diane Louise Sargent to the Health and Disability Commissioner in or about 2003 concerning his treatment of Ms B, paid to Ms B a sum of money in return for her not attending a planned interview she was to have with investigators from the Health and Disability Commissioner's office in September 2003; and/or
 - (f) Telephoned Ms B on the morning of the Complaint Assessment Committee's interview of her (2 November 2004) in relation to the complaint made against him by Dr A, psychiatrist (referred to as "the Psychiatrist"), and attempted to dissuade Ms B from meeting with the Complaints Assessment Committee in relation to that complaint.

Name Suppression Orders and Witnesses

4. The CAC called six witnesses and tendered written evidence for a seventh witness:
- (a) The complainant, Dr A, a consultant psychiatrist in xx. She has a permanent suppression order in her favour prohibiting publication of her name or any details which might lead to her identification. Dr A is referred to throughout this decision as the "Psychiatrist".
 - (b) Ms B is the subject of the complaint. She has a permanent suppression order

in her favour prohibiting publication of her name or any details which might lead to her identification. At the hearing a further order was made on an interim basis that details of Ms B's medical and psychiatric history and any personal details which might identify her or members of her family were to be the subject of an interim suppression order. The Tribunal directs that the interim order be made permanent except to the extent that it may be necessary to refer to some of that in generic terms in order to give sense to this decision.

- (c) C, a registered clinical psychologist of xx. Ms C was not able to attend the hearing but her written statement of evidence was put before the Tribunal by consent. Ms C has a permanent suppression order in her favour prohibiting publication of her name or any details which might lead to her identification. She is referred to throughout this decision as the "Therapist".
- (d) Diane Louise Sargent, the Clinical Manager for the Stepping Stone Trust in xx.
- (e) Donna Maree Moot, a nurse who is employed in the Adult Residential Service at Stepping Stone Trust in xx.
- (f) D who is employed as a Residential Support Worker at Stepping Stone Trust in xx.
- (g) Margaret Kim Sutton who is the Clinical Resource Manager for Stepping Stone Trust in xx.

5. The following evidence was given for the Doctor:

- (a) P gave evidence on his own behalf. An interim suppression order is in place in favour of Dr P who can be referred to as a general practitioner who has previously practised in xx or as "the Doctor". He is referred to throughout this decision as "the Doctor. The Tribunal proposes to discharge the interim order once it has given its decision on penalty. However, there shall be a permanent suppression order prohibiting publication of details of the illness and disability suffered by his younger daughter.
- (b) June Swindells who was the Manager of the practice where the Doctor was employed at the relevant times.

6. While the Tribunal in reaching its decision has given full and careful consideration to all of the evidence presented to it together with the documents produced and the submissions of Counsel, for the sake of brevity it has not made reference to all or every aspect of them in this decision.

Legal principles

Onus of Proof

7. The onus of proof is on the CAC. Counsel for the CAC accepted that it was for it to produce the evidence which proves the facts upon which the charge is based and to establish that the Doctor is guilty of the charge, that is, disgraceful conduct in a professional respect and/or in the alternative, professional misconduct.

Standard of Proof

8. As to the standard of proof, the Tribunal must be satisfied that the relevant facts are proved on the balance of probabilities. The standard of proof varies according to the gravity of the allegations and the level of the charge. If the charge against the practitioner is grave then the elements of the charge must be proved to a standard commensurate with the gravity of what is alleged.

Disgraceful Conduct in a professional respect

9. In *Allison v General Council of Medical Education & Registration* [1894] 1QB 750, 763, the Court of Appeal held that the test for “disgraceful conduct in a professional respect” was met:

“If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency ...”.

10. It is an objective test to be judged by the standards of the profession at the relevant time.
11. In *Brake v PPC* [1997] 1 NZLR 71 at p77, the High Court set out in its judgment the test laid down in *Allison*. It stated the test is an objective one, to be judged by the

standards of the profession at the relevant time. The Court specifically rejected a submission that the test for disgraceful conduct required fraud, dishonesty or moral turpitude to be proved. The Court stated at p.77:

“In considering whether conduct falls within that category, regard should be had to the three levels of misconduct referred to in the Act, namely disgraceful conduct in a professional respect, s58(1)(b); professional misconduct, s43(2); and unbecoming conduct, s42B(2). Obviously, for conduct to be disgraceful, it must be considered significantly more culpable than professional misconduct, that is, conduct that would reasonably be regarded by a practitioner’s colleagues as constituting unprofessional conduct, or as it was put in Pillai v Messiter (No. 2) (1989) 16 NSWLR 197, 200, a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner.”

12. The test expressed by the New South Wales Court of Appeal in *Pillai v Messiter* (1989) 16 NSWLR 197, 200 (referred to above) related to “*misconduct in a professional respect*” contained in the Medical Practitioners Act 1938 of that State. The President of the Court (Kirby P) stated that while the Court must bear in mind that the consequences of an affirmative finding are drastic for the practitioner, the purpose of providing such drastic consequences is not punishment of the practitioner but protection of the public. He observed at p.201:

“The public needs to be protected from delinquents and wrong-doers within professions. It also needs to be protected from serious incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements”.

13. Clinical acts or omissions can amount to disgraceful conduct, if they are of a sufficiently serious nature. In this regard, see *Tizard v Medical Council of New Zealand* (unreported, High Court (Barker (presiding), Thorp and Smellie JJ), M.No. 2390/91, 10/12/1992).
14. The High Court recently re-stated the test for disgraceful conduct. In *The Director of Proceedings v Parry and MPDT* (Auckland High Court, AP 61-SW01, 15 October 2001) Paterson J stated (para. 44):

*“... There is more than one way of describing the test for “disgraceful conduct in a professional respect.” The full Court in **Brake** [above] determined that such conduct could include “serious negligence as, although not deliberate, to*

portray indifference and an abuse of the privileges which accompany registration as a medical practitioner.” Although a single act of mere negligence could never, in my view, constitute disgraceful conduct, I see no reason for departing from the full Court’s view that serious negligence of a non-deliberate nature can in appropriate cases constitute disgraceful conduct. It is not difficult to envisage cases where this could be so, or cases where only one act of serious negligence can amount to disgraceful conduct.”

15. Disgraceful conduct is very serious misconduct, whether deliberate or not-deliberate. When deciding whether conduct is disgraceful in a professional respect, the Tribunal must have regard to all three levels of misconduct in the Act which include, as well, professional misconduct and conduct unbecoming.

Professional Misconduct

16. The starting point for defining professional misconduct is to be found in the judgement of Jefferies J in *Ongley v Medical Council of New Zealand* (above) when he posed the test in the following way:

“Has the practitioner so behaved in a professional capacity that the established acts under scrutiny would be reasonably regarded by his colleagues as constituting professional misconduct? ... The test is objective and seeks to gauge the given conduct by measurement against the judgment of professional brethren of acknowledged good repute and competency, bearing in mind the position of the Tribunal which examined the conduct.”

17. In *B v The Medical Council* (unreported HC Auckland, HC11/96, 8 July 1996) Elias J said in relation to a charge of “conduct unbecoming” that:

“... it needs to be recognised conduct which attracts professional discipline, even at the lower end of the scale, must be conduct which departs from acceptable professional standards.”

Her Honour then proceeded to state:

“That departure must be significant enough to attract a sanction for the purposes of protecting the public. Such protection is a basis upon which registration under the Act, with its privileges, is available. I accept the submission of Mr Waalkens that a finding of unbecoming is not required in every case where error is shown. To require the wisdom available with hindsight would impose a standard which is unfair to impose. The question is not whether the error was made but whether the

practitioner's conduct was an acceptable discharge of his or her professional obligation."

Her Honour also stressed the role of the Tribunal and made the following invaluable observations:

"The inclusion of lay representatives in the disciplinary process and the right of appeal to this Court indicates the usual professional practice while significant, may not always be determinative: the reasonableness of the standards applied must ultimately be for the Court to determine, taking into account all the circumstances including not only usual practice, but patient interest and community expectations, including the expectation that professional standards are not to be permitted to lag. The disciplinary process in part is one of setting standards."

18. In the Tribunal's view, the test as to what constitutes professional misconduct has changed since Jefferies J delivered his judgement in *Ongley*. In the Tribunal's opinion the following are the two crucial considerations when determining whether or not conduct constitutes professional misconduct:

- (a) There needs to be an objective evaluation of the evidence and answer to the question, that is, has the doctor so behaved in a professional capacity that the established acts and/or omissions under scrutiny would be reasonably regarded by the doctor's colleagues and representatives of the community as constituting professional misconduct?
- (b) If the established conduct falls below the standard expected of a doctor, is the departure significant enough to attract a disciplinary sanction for the purposes of protecting the public and/or maintaining professional standards, and/or punishing the doctor?

19. In the High Court case of *McKenzie v MPDT and Director of Proceedings* (unreported High Court Auckland, CIV 2002-404-153-02, 12 June 2003), Venning J endorsed the two question approach taken by this Tribunal when considering whether or not a doctor's acts/omissions constitute professional misconduct. He stated at para 71 of his judgement:

"[71] In summary, the test for whether a disciplinary finding is merited is a two-stage test based on first, an objective assessment of whether the practitioner departed from acceptable professional standards and secondly, whether the departure was significant enough to attract sanction for the

purposes of protecting the public. However, even at that second stage it is not for the Disciplinary Tribunal or the Court to become engaged in a consideration of or to take into account subjective consideration of the personal circumstances or knowledge of the particular practitioner. The purpose of the disciplinary procedure is the protection of the public by the maintenance of professional standards. That object could not be met if in every case the Tribunal and the Court was required to take into account subjective considerations relating to the practitioner.”

The Evidence

Ms B’s Psychiatric History

20. **[Paragraph suppressed by order of the Tribunal].** This paragraph set out in some detail the complex psychiatric history of the patient.
21. The mainstay in Ms B’s treatment in the community has involved therapy with psychologists and that over the two years prior to this hearing she had been with the Therapist who had seen Ms B about twice a week for therapy over which time she had made substantial progress in terms of managing her symptoms and interpersonal relationships. Since 1998 Ms B’s treatment has included medication which has included anti-depressants, anti-psychotic, and anti-anxiety agents. She had taken frequent overdoses of medication of various types including both prescribed and non-prescribed medications. At times she had abused alcohol and cannabis but this was not a current problem; and at the time of this hearing, she had moved back into respite care with Stepping Stone Trust due to her suicide risk because of the hearing.

Ms B’s Evidence Regarding her Relationship with the Doctor

22. Ms B told the Tribunal she first met the Doctor in 1991 when he was her general practitioner and when she was xx years old and still at high school. He treated her for depression. Due to some family problems she had also started to suffer from anorexia. She saw him twice a week for counselling and he was the first person to whom she confided that she had suffered [personal and family issues].
23. The Doctor left the practice where he was working around 1992 and moved to another practice where Ms B and her family transferred.

24. One of Ms B's siblings subsequently died from a drug overdose. Ms B became very depressed and her anorexia very severe. She also had some ongoing issues about family [issues], details of which were given to the Tribunal. The Doctor was also undertaking counselling at a private Trust in xx and around 1996/1997 Ms B started seeing the Doctor for counselling as well about once a week. He was acting in a dual role as both her general practitioner and her counsellor. The Doctor was also the GP for Ms B's mother and another sibling. Ms B said she felt comfortable with and trusted the Doctor who was aware of her family circumstances. She felt able to confide in him about the very sensitive and intimate issues which were troubling her at that time.
25. On one occasion when she went to see him for counselling she was told that he had gone to jail. This was the first she knew of it, but the following day read in the newspaper that he had been sentenced to imprisonment for fraud charges. About two months after his imprisonment the Trust held a public meeting in his support. Ms B and her sibling attended as did members of the Doctor's family. One of the purposes of the meeting was to ask for donations for his family to which Ms B and her sibling contributed \$50. At the end of the meeting, Ms B said she believed he was innocent and had been wrongly convicted.
26. Ms B was an inpatient at a Psychiatric Hospital (formerly known as xx) from 1998 until April 2001 when she was discharged. During this period she left the hospital from time to time living in one of the houses run by the Stepping Stone Trust and then returning to a Psychiatric Hospital. While at a Psychiatric Hospital, she was very unwell and on heavy medication but she remembered one particular day when she was visited at the hospital by the Doctor who was accompanied by a woman called Christine, who he introduced as his support person. She recalled this woman did not stay for the entire visit but left while the Doctor stayed on.
27. Other than one visit from the Doctor at that time, Ms B said she did not see the Doctor until around early May 2002 when she saw him at a local supermarket with a woman. She approached him and said he did not seem to recognise her which she thought may have been due to her having put on quite a lot of weight, but he remembered her after she introduced herself. She said they had a chat; he told her he was doing counselling; she indicated she would like to go back to counselling;

that he asked for her phone number; told her he would call her; and she gave him her contact details. She thought he was very professional in the way he spoke to her on that occasion and said that within a couple of days he telephoned her at the Stepping Stone Trust residence where she was then living in Aylmer Street around 8.30 one morning, saying he wanted to meet with her for coffee in a café. She said they agreed to meet at a café now called “Sophie’s” in Colombo Street and was excited that a doctor wanted to take her out for coffee. She told D, her then Case Manager at Stepping Stone.

28. When they met at the café they found it was closed so then went in the Doctor’s car to another café. Ms B said it was “The Cup” on Cashmere Hill and the Doctor said it was “Coffee Culture” on Cashmere Road. She said they chatted for about one and a half hours including such matters as her family and what had happened in the years since she had last seen him; and it was then that the Doctor told her that he was not doing counselling but did not explain why. He drove her back to Aylmer Street and, at her invitation, he agreed to go inside and meet Ms D to whom he introduced himself and, after a brief chat, left. Around this time Ms B said she recalled buying the Doctor lunch at Mona Vale following which they went for a walk together in the gardens there.
29. About a week later he telephoned her at Aylmer Street around 9am inviting her to his home that evening, explaining where he lived and how to get there, but as she was still not sure exactly where it was he said he would stand outside the gates to the apartments and wait for her. Ms B told Stepping Stone staff about his invitation but felt they were not supportive, as a result of which she spoke to one of the other residents who had answered the phone that morning and he encouraged her to visit the Doctor sharing her excitement about the invitation. She drove to his apartment, arriving around 9pm. He was waiting outside the gates and, on her arrival, waved her down. She parked her car and he then escorted her through the gates. She explained how they gained entry to his apartment and that he was very “hush hush” as he did not want them to wake anybody.
30. She remembered there were xx and that on each occasion she went to his flat she had to push a No. xx button because his flat was No. xx and there was an intercom, following which the gates would open for her and she would walk through the gates

and up some stairs. On the first occasion he came out to meet her but on subsequent occasions he did not do so. She would buzz him on the intercom and he would let her through. There was also an underground carpark with numbers on individual carparks. She thought there were probably about 20 flats or more in the complex and that his flat was just around to the side.

31. She described the interior of the flat. It had one bedroom with a double bed in it; a kitchen that was open plan and that the lounge and living area were all in one room. There was a pull out sofa/bed of double bed size in the living area; a dining table and chairs; a video and a computer.
32. On the first occasion she said that the Doctor's two children were asleep in the double bed in the bedroom and that he slept on the fold out couch in the lounge. She did not meet the children on this or any subsequent occasion and, if they were at his flat, were always in bed asleep in the bedroom when she got there.
33. During the first visit Ms B said the Doctor made her a coffee; they talked for about one hour to one and a half hours about what had happened to her while he had been in jail; she asked him a lot of questions about what life was like in jail and that sort of thing; they had another coffee; at one stage he said he was going to bed; his bed was the sofa which he pulled out in the lounge; she stood up to go; he then hugged her and started kissing her; then they were lying down on the sofa/bed; "kissing etc."; after a while he gave her a kiss and said he would be in touch at which point she left and drove back to Aylmer Street. She remembered talking to Ms Moot at Stepping Stone about this because Ms Moot was on night duty and it was late when she returned.
34. From then on, Ms B said she would have gone to the Doctor's apartment about once a week. He would either call her by telephone early in the morning before 9am and invite her to his apartment that evening; or, sometimes rather than phone, he would text her (by mobile phone) to make the arrangement. After a short time she said he decided to call himself "David" whenever he telephoned Stepping Stone so that when a call came for her from him the residents would say that "David" was on the phone.

35. Ms B was very open with Stepping Stone Staff about her association with the Doctor and told them when she was going to visit him. She recalled a particular evening when the Doctor dropped her off in his xx coloured xx motor car after they had been for a drive in it, when a staff member commented that she had seen the Doctor drop her off.
36. She explained that on the first few occasions she went to his flat he would just hug and kiss her, but then later asked her for oral sex; and that after a few weeks they started having sex at his apartment which was always on the pull out sofa/bed in the lounge.
37. Ms B frequently had difficulty sleeping at nights and when she returned from her visits to the Doctor's flat she would tell the staff about her encounters with him, particularly Ms D, her Case Manager, and Ms Moot who was the night nurse and who was the first member of staff Ms B told when she first had sex with the Doctor.
38. Ms B recalled an occasion when she decided to have a few drinks at the Doctor's flat. After a while she told him she would stay the night and went to phone the Stepping Stone staff to tell them she would not be back until the morning but he told her not to do that as it was not a good idea and then made her drive back to Aylmer Street. She said she would clearly have been over the blood alcohol limit and, from that day on, became angry as it was obvious to her that he did not want her to stay over but that all he wanted was to get what he wanted and then tell her to go but that she did not tell him how she was feeling.
39. After a while she said she became wary of him and started to feel like she was being used for sex. At times she became angry and confused. She said a pattern emerged that he would invite her to his flat, she would go to his flat, he would have sex with her, then he would rush her out; and that on each occasion he would say that he had something to go to and needed to be at the place at a certain time. It got to the stage that on each occasion she went to his flat she was never there for more than about 45 minutes. On the occasions they had sex he would put a cover over his bed and a dining room table chair against the front door.

40. She said that throughout their relationship he told her she should never leave a text message he had sent her on her mobile phone and that she should wipe every trace of all of them. She commented that it became apparent to her he was “paranoid” that she would show these messages to someone.
41. She remembered talking to Ms Moot and Ms D about her relationship with the Doctor and about her anger towards him and her confusion about what he thought of her. Although she was feeling used and, at times, angry with him, she kept on seeing him because every time she went to his flat he would say nice things to her such as “Oh, you’ve lost weight”. She confirmed she did lose a lot of weight around the time she was seeing him. She said that to an anorexic like her this was music to her ears; and that throughout their relationship he was always very pleasant and polite and nice to her; and that even although she knew he was probably using her, he was charming and she never felt threatened by him.
42. On six or seven occasions when she was at his flat, Ms B said that the Doctor gave her drugs always being clonazepam or temazepam; the former being one of the medications she was on. She said he would give her about six to eight tablets at a time and would make her take the medication at his flat saying it would relax her. During one particular evening at his flat, she said he took her down to his carpark underneath the apartments. He had to swipe a card to open the gates and she remembered having to walk up quite a few steps to get back to his apartment. She said he did not say from where he had got the drugs.
43. Ms B described occasions when she and the Doctor had gone out shopping for lingerie at Farmers in Riccarton Mall. She bought him some underwear and on about three occasions he bought her some, in particular, g-strings. She recalled telling Stepping Stone staff he had bought her lingerie and that he had said he would not buy her lingerie unless he could see her in it so that when she saw him after that she would wear the lingerie he had bought her. She said he then started saying he wanted her to wear white trousers as he liked them and made quite a thing about it. This stood out in her mind and at one stage he told her that if she could not wear them then he had someone else who would. When he started telling her to buy white trousers, which she did, he also told her which g-string to wear underneath.

44. By the end of September 2002, Ms B moved to another Stepping Stone house in Palatine Terrace where no staff members lived but did check on the residents several times each day and would go there to give Ms B her medications at night. She said the Doctor would call her at Palatine Terrace and that they decided between themselves that even though staff members were not always around at that particular house, he would still call himself "David" whenever he telephoned. She recalled telling another resident, N, to write David in the book whenever the Doctor telephoned. She believed the Stepping Stone staff were checking the book and she did not want them to know about the phone calls she was getting from the Doctor.
45. She recalled an evening when the Doctor collected her from Palatine Terrace as he wanted to go out. On that occasion another resident there (RJ) met the Doctor that evening. Ms B recalled and referred to the conversation between them. Afterwards, she said the Doctor drove into town in his xx and parked across from the Oxford Terrace restaurants, known as "The Strip". They went to a bar where she drank alcohol. She said the Doctor gave her some clonazepam tranquillisers which she took. She did not remember getting home that evening or how she got home or got into her pyjamas. She thought it strange she had no memory because she had taken clonazepam many times in the past and had never lost her memory and thought that he must have spiked her drink.
46. Around early October 2002 the Doctor went for a job interview in xx. She said he drove to the interview in his xx motor car, taking her with him; that he parked a small distance away and walked the rest of the way to the interview. Ms B said she remained in the car; that he returned about an hour later and told her he had got the job.
47. Around the time he started working there, Ms B started work at a restaurant and during her first day of work the Doctor called her and invited her to go to his practice, which she did.
48. Also around this time she got a severe kidney infection, having had a history of them. As she had already visited the Doctor at his rooms, she decided to go and see him in order to get a prescription for some antibiotics. Although she arrived at the surgery without an appointment he saw her and said he would get her some

antibiotics from his medicine cupboard for her kidney infection but Ms B said she insisted on wanting a script and that the reason she made a point of wanting a script was because she could not take any medication at Stepping Stone without the staff having a copy of the script. She said he then wrote her a script on his computer and typed in his notes that she had seen him; and that before they left his room he gave her a kiss. When they went out to reception he told the receptionist that he wanted her notes transferred to his practice. She said they had not discussed this in his room but she was quite happy for that to be done and she then drove back to Stepping Stone and gave the script to one of the staff members. She recalled one of staff commenting that it was unethical for the Doctor to have given her a script following which she telephoned him and told him that Stepping Stone staff were getting suspicious. She visited his surgery a couple of weeks later for a follow up.

49. During this time Ms B said she was still having sex with the Doctor at his apartment about once a week. However, by then, she believed she had started telling staff at Stepping Stone that she was still seeing the Doctor but only as a friend and only every two weeks or so. Although they were still having sex she said she was worried that staff were going to do something about her relationship with him and complain about him and she did not want to get him into trouble. Around this time she felt that the Stepping Stone staff were starting to interfere in her relationship with the Doctor which caused her to consider leaving Stepping Stone and moving into a friend's flat. In January 2003 she met a tourist through her job at the restaurant and stayed with him for ten days until he returned to his homeland.
50. During January 2003 Ms B said that Stepping Stone staff, namely, Ms Sargent and Ms Sutton, told her they were going to make a complaint to the Health and Disability Commissioner about the Doctor, saying he was being unethical, that he was using her and that it was their role to make a complaint. She said this made her very angry because she did not want to get the Doctor into trouble and told them she would have nothing to do with their complaint and would deny it all.
51. She reported this to the Doctor one evening about 11pm (after she had finished work) when she drove to the hospital to see him where he was staying with his sick child. When she told him that the staff were going to make a complaint she said his response was that they would deny everything.

52. Some time later Ms B said the Doctor told her that Ms Sargent had sent him a letter informing him she was going to make a complaint; and that he threatened to commit suicide if the Trust made a complaint about him or if he found out that Ms B had told the staff what was going on, because of his children. Ms B reported this to Ms Sargent.
53. At the end of January 2003 Ms B was admitted to hospital after an overdose and went back to Palatine Terrace where she stayed for a couple of days. She had become depressed again and was suicidal and was thinking a lot about her dead sibling. She was also worrying that she was putting on weight; and in early March 2003 she overdosed again spending another night in hospital. She could not recall whether she had told the Doctor about these particular overdoses.
54. She said the Doctor was texting her and telephoning her most days and that after the complaint had been made by Ms Sargent she thought she saw him every day for a while. She believed he wanted to keep in good with her because of the complaint which was making her angry. After a while she said they went back to seeing each other about once a week and were still having sex. On one particular day they went out for a coffee when he raised with her Ms Sargent's complaint. She told him she did not want any involvement in it.
55. In March 2003 Ms B prepared to leave the Trust and go flatting. While she consulted the staff about this and managing her medications, she said the Doctor kept telling her that she did not need the support of the staff and encouraged her to move out.
56. During this period she received a letter from the Health & Disability Commissioner's Office asking her to make a statement about the Doctor. She had decided that she did not want any involvement in it and had spoken to the Doctor about it.
57. One particular evening, before leaving the Trust, she said she had sex with the Doctor in her bedroom at Palatine Terrace which they had planned. She felt nervous about doing this in a Stepping Stone house but believed all the other residents were asleep at the time.

58. In early April 2003 Ms B moved out of Stepping Stone and went flatting in xx. A community worker from the Trust would visit her at her flat and would take her out for coffee twice a week to see how she was getting on. At this time, she was also under an outpatient service when she started to consult the Psychiatrist and the Therapist. She saw them regularly and was still seeing them at the time of this hearing.
59. On 10 April 2003, Ms B wrote to the Health & Disability Commissioner's office informing them that she did not have any complaint about the Doctor; that he had always acted professionally towards her; and that she did not agree with anything which Ms Sargent had said in her letter of complaint. She said the Doctor told her what to write in this letter.
60. From around the time she left Stepping Stone in early April 2003 until early 2004, Ms B said her relationship with the Doctor continued but on those occasions when she had sex with him he paid her for it at his insistence. She believed he wanted to keep her onside because of the complaint Ms Sargent had made but said she needed the money and although she knew what was happening with him was wrong she did not want to get him into trouble.
61. On each occasion she said he would pay her about \$30 cash and told her she had to keep quiet about their having sex otherwise she would not receive any more money; and that when he started to pay her for sex she initiated some of the times that they had it. On those occasions they would have sex either at the Doctor's apartment or sometimes at a flat she had moved into in Percival Street later in 2003 but that whenever he went to her flat he parked his car a few streets away. On those occasions when he went to her flat, he would say he had to be somewhere else by a certain time, they would have sex, he would pay her and then he would leave.
62. On one of those occasions, when they were in bed at his flat, Ms B said she asked him "what drugs would kill you". During this period she said she was suicidal and had been overdosing quite often on anti-depressant medication. She said she told him she wanted to commit suicide and he then told her what combination of drugs and alcohol to take which would kill her and what would not. She said this was the

only occasion that he told her how to do it but, because he had, she believed that he wanted her dead.

63. Around the middle of 2003 Ms B was admitted to hospital again as she was suicidal and when she left she was using more alcohol than usual partly because she was feeling used by the Doctor. She was still seeing her Therapist twice a week and was seeing her Psychiatrist about once a month. She started to tell them about the Doctor and that he was paying her to have sex with him.
64. In August 2003 the Health & Disability Commissioner's Office contacted her again and asked her for an interview as they were investigating Ms Sargent's complaint. She told them she would be interviewed. She said she had started seeing through the Doctor and knew what he was doing was wrong but when she told him about the proposed interview he told her not to meet them or say anything about the matters in the complaint and arranged for her to meet him on a day close to when she was to be interviewed.
65. Ms B said she met the Doctor at the Piranha Café in Riccarton Road; that when there he got out his briefcase and helped her draft a letter to the Health & Disability Commissioner's Office saying she did not want to be interviewed; that she wrote down what he was dictating; that she told him she would post the letter but he insisted that he would post it himself. She referred to the letter which was produced in evidence and said that the words in it used would not be ones she would normally use.
66. Ms B said the Doctor paid her \$100 in cash to leave xx on the day that she was supposed to be interviewed by the Health & Disability Commissioner's Office and told her that if she brought back the receipt of the motel she stayed in on the day of the interview, he would give her another \$100 in cash; and did give her another \$100 about a week later although she did not produce a receipt. She had rung him and assured him that she had been out of xx on the day of the interview and that she had not met the investigator.
67. Ms B said that the Doctor continued to pay her for sex until early 2004 when she sent him a text message around March or April 2004 saying that she wanted to stop

it. She was mad with him and said she no longer wanted his business. She said that one day “it just hit me, I thought “you B*****, I don’t need your services”.”

68. As she had been quite open with the Stepping Stone staff (particularly at the earlier stages) about her relationship with the Doctor, Ms B was similarly open with her Therapist and her Psychiatrist. She believed she told them about the sexual nature of her relationship with the Doctor and other associated events.
69. Around April 2004, her Psychiatrist told her she was going to make a complaint about the Doctor and later told Ms B she had made one. Ms B said by that time she had had enough of the Doctor and was happy to support this complaint.
70. Then around mid 2004 she said she started to worry about what she would do if the Doctor contacted her about this complaint and offered her money to keep her quiet. She discussed this with her Therapist who advised her what to do. Following this she overdosed and was admitted to hospital.
71. Around October 2004, the CAC wrote to her and asked her for an interview. She started to worry that the Doctor might kill himself if she supported this complaint and told the Tribunal that to this very day, she still worries about that, but she agreed she would be interviewed as she was thinking that she did not want anyone else to be treated the way she had been. Her Therapist agreed to be her support person at the interview.
72. The meeting with the CAC was set to take place on 2 November 2004. She was to see her Therapist the day before. However, before she could see the Therapist she received a telephone call in the morning from a woman called Christine who asked her questions about the Doctor. She described it as a “really weird conversation” which did not make sense to her and believed that the person called Christine was the same person who had visited her along with the Doctor when she was a patient at a Psychiatric Hospital in 1998. She believed Christine was trying to get information from her for the Doctor to use at his interview with the CAC. Ms B terminated the call.

73. Ms B said she felt threatened by the call which worked her up to the point where she was determined to tell the CAC everything. By this time she feared that the Doctor or his friends might try and harm her because he knew her address and still felt at risk at her flat because of this. She therefore asked her Therapist if she could arrange respite for her so she could be in a safe place.
74. The evening before the interview was to take place, Ms B stayed at Pathways Respite. The following morning (2 November 2004) while still at Pathways she said she received a call on her mobile phone from the Doctor who asked her whether she was still at Stepping Stone and whether she had had contact with the staff there. She said she was not. She said he asked her if she were going to the CAC interview. She said she was and that she had to be honest. She said he tried to persuade her not to meet the Committee and asked her to consider that he might lose his licence to practise as a doctor and asked her to think of his family and his children and that his children might not have a working father. She said she told him that he had done the wrong thing involving Christine because now she had her telephone number and told him that she would be telling the Committee everything to which he replied that he did not know about Christine and the call ended.
75. She said he rang her back about five minutes later and told her that Christine had only telephoned her because she was doing a survey and asked her to promise not to tell the Committee he had rung her that morning.
76. Ms B told the Tribunal she had not had any further telephone or personal contact with the Doctor since 2 November 2004 following the meeting with the CAC. The only contact after that was on 19 June 2005 when she sent him a text message after she had seen him at a local supermarket but did not talk to him although he had noticed her. At that time, because he appeared so upset, it made her want to withdraw from being involved with the Psychiatrist's complaint but after a while she reassured herself that she had to be involved for the sake of other people and because of this she sent him a text (his number being programmed into her mobile phone). She wrote in her text "*i'm sorry to hurt you (using a shortened version of the Doctor's name) but I had to tell the truth I had no choice*". She said the message was still on her mobile phone late last year when it was stolen.

77. Ms B said her health had improved over the past year or so, seeing her Psychiatrist and her Therapist regularly and she has been able to see and understand why the Doctor's relationship with her was inappropriate for a doctor. She said she would not wish anyone else to be placed in the same situation with him as she was.

Stepping Stone staff evidence

Diane Louise Sargent

78. Ms Sargent is the Clinical Manager for the Stepping Stone Trust in xx where she has been employed for 9½ years. Ms Sargent explained about the Trust which is a psychiatric rehabilitation service providing, among other things, residential service and rest-like services. Those in the residential care of the Trust are at the top end of clients requiring psychiatric support. Most of the 110 staff are health professionals. Ms Sargent's role as Clinical Manager involves overseeing the six services and, in particular, the clinical professional side of the Adult Residential service which is classified as a sub-acute recovery facility for up to 22 adults who require 24 hour professional support to live in the community.
79. Ms Sargent confirmed that Ms B resided in the Stepping Stone Trust Adult Residential home from November 1998 to September 1999. At that time she became so unwell she returned to the Acute Ward at xx Hospital where she remained from September 1999 until April 2001 when she returned to live at Stepping Stone. Her Case Manager was D.
80. As the Clinical Manager, Ms Sargent had access to reports about Ms B's diagnoses and psychiatric history which included her having difficulty in maintaining boundaries and exhibited passivity in interpersonal relationships making her vulnerable to continuing victimisation. Around mid 2002 some of her staff, in particular Ms Sutton, Ms D, and Ms Moot, were reporting to her as the person who held overall accountability, that Ms B had been talking to them about an ongoing relationship she was having with the Doctor who had been her childhood general practitioner and with whom she had reconnected. They were reporting to her what Ms B had been disclosing to them about her relationship with the Doctor and the significant role he had had in her life during her adolescence; and that during June and July 2002 those members of staff reported to her a number of disclosures which

Ms B had recently made to them to the effect that her relationship with the Doctor had become a sexual one. The staff reported disclosures by Ms B that the Doctor had purchased lingerie for her and that in October 2002 she had consulted him at his practice as a patient. By December 2002 these same members of staff were reporting their concerns to her on a regular basis. In December 2002 Ms Sargent reviewed Ms B's case notes which the staff had made and which contained records of Ms B's disclosures to the effect that she had been doing things with the Doctor that she did not want to do but that she was not expressing that to him.

81. In late December 2002 Ms Sargent raised with Ms Sutton and Ms D whether she should write to the Health & Disability Commissioner about their concerns regarding the ethics of the Doctor's contacts with Ms B. They agreed they had an obligation to do so but decided to meet with Ms B first and advise her of their intentions before a letter was sent. It was also agreed that Ms Sargent would write to the Doctor to advise him of the staff's concerns and to inform him that they intended to request that he be investigated. A letter of this nature was sent on 13 January 2003 to the Doctor in which Ms Sargent outlined the issues she was intending to write about to the Health & Disability Commissioner as she considered it a matter of professional courtesy that he be advised directly by her. The following day she met with Ms Sutton and Ms B.
82. Between 14 and 17 January 2003 she prepared a draft letter and on 17 January she and Ms Sutton met with Ms B and read the letter she intended to send which they talked about at length. She repeatedly told Ms B she did not have to be part of the complaint if she did not want to be as she wanted to assure her she had power in the process and told her she wanted to advocate for her but that the things Ms B had been disclosing were incredibly serious and needed to be looked into. Ms B told them she did not want to be involved and was both concerned and distressed that the Doctor would suicide if the letter were sent and that in the previous few days she had had a conversation with him during which he had told her that if a letter were sent he would kill himself. Given the seriousness of that matter, Ms Sargent asked Ms B whether she could report what she had told her about the Doctor's suicidality to his employer to which Ms B agreed. Ms Sargent did contact the Doctor's employer but was assured he was "safe".

83. On 4 April 2003 Ms B left the Adult Residential Service in order to go flatting and has been supported by a community support worker from the Trust since then down to the present time who visits Ms B once or twice a week.
84. On a number of occasions throughout 2003 Ms B, with her community support worker, visited the Stepping Stone office where Ms Sargent worked. If Ms Sargent were around Ms B would talk with her about where the Commissioner's investigation process was up to. Ms Sargent inferred from what Ms B said during their brief conversations, that she was still maintaining a lot of contact with the Doctor and that he was paying her not to be a part of the investigation process.
85. On the Friday before Ms Sargent's scheduled interview on 1 September 2003 with the Health & Disability Commissioner's Office Ms B telephoned Ms Sargent saying she did not want to be part of the investigation and was going to decline to be interviewed but wanted to know how Ms Sargent's interview went. Ms B had said she did not feel she could be involved because of the money the Doctor had paid her. On 1 September 2003 Ms Sargent was interviewed.
86. On 19 December 2003 the Commissioner wrote advising he had decided to discontinue the investigation. He had concluded that because of Ms B's reluctance to be interviewed, her retraction of previous advice to Stepping Stone staff about her relationship with the Doctor and the Doctor's denial of any inappropriate or intimate relationship with her he could not take his investigation any further.

Ms Donna Moot

87. Until 1999 Ms Moot had worked for 21 years as a registered psychopaedic nurse in xx and since 2000 has worked with a nursing agency in various mental health and old people's health facilities. Since September 2000 she has been working at Stepping Stone Trust mostly on night shift. She has completed a certificate in mental health support work and recently completed a transition pathway to psychiatric nurse registration.
88. Ms Moot's first contact with Ms B was on 11 April 2001 when she moved into the Aylmer Street residence shortly after Ms Moot began working for the Service.

When a resident at the Trust's houses, Ms B would often get up at night and need to talk and that generally Ms Moot was the person to whom Ms B spoke at night at length or in detail about what was happening with her at any particular time. She believed over time Ms B developed a trusting relationship with her and spoke very openly to her about incidents that had happened to her. In or around May 2002 when the Doctor came on the scene, and thereafter, Ms B talked to her about matters that were happening with him and other matters happening in her life.

89. After her discussions with Ms B, Ms Moot always wrote very full notes in which she recorded her observations and the things that Ms B had told her and which had enabled Ms Moot to remember specific times Ms B spoke to her about matters relating to the Doctor when preparing her written evidence.
90. In her evidence Ms Moot traversed in detail the disclosures and confidences which Ms B had made to her regarding Ms B's relationship with the Doctor. She explained how early on in her contacts with the Doctor, Ms B was positive about the relationship she was developing with him and confiding that he was the first person to whom she had disclosed family [issues]. She said Ms B spoke of him very highly and recounted in detail the discussions which Ms B had with Ms Moot including the early period whenever the Doctor phoned, Ms B would literally run and would put aside anything else she was doing to go and see him.
91. She said Ms B often received lunchtime phone calls and evening calls from the Doctor. She knew this because that information was handed onto her from other staff if she were not on shift and, if she were on shift, she would ask Ms B where she was off to, reminding her that there was to be a group meeting soon but Ms B would decline and say that she was going out to see the Doctor. This was also recorded in Ms B's notes by other staff members. Ms B talked about meals and coffee and then about going to his apartment.
92. She referred in detail to a conversation she had with Ms B late on Sunday, 2 June 2002, going into the following morning. This was about three weeks after Ms B's first coffee meeting with the Doctor, when Ms B returned from seeing him at his apartment. On 10 June 2002 she had another lengthy discussion with Ms B when she went to her for her night medications. She referred to having gone to his

apartment that day. It is implicit from what Ms B told her that Ms B performed a sexual activity on the Doctor. On Saturday, 22 June 2002, during Ms Moot's afternoon shift Ms B initiated a conversation with her about having gone to the Doctor's apartment the previous evening. This was the first disclosure that she had made to Ms Moot that she had actually had sexual intercourse with him. On 7 July 2002 Ms B expressed to Ms Moot her confusion over her relationship with the Doctor and said she believed that he only wanted her for one thing and that was sex. On 20 July 2002 Ms B spoke with Ms Moot about the issues she was having with the Doctor when they discussed her ongoing confusion about the relationship. On 27 July 2002 Ms B spoke to Ms Moot about her feelings regarding the Doctor who was using her for "*just one thing*".

93. As time went by Ms B started to tell her that the Doctor had been purchasing things for her which included alcohol and lingerie. She gave an example when Ms B told her on 5 August 2002 that she had been to The Warehouse with the Doctor because he had wanted to buy her some lingerie and that she had spent the afternoon at his apartment doing the "*usual thing*" and wearing the g-strings that he had bought for her. After this, Ms Moot started noticing in Ms B's washing that there were g-strings and above her clothing could see the g-strings she had not noticed prior to this. Previously she had observed the type of underwear Ms B always seemed to have which was ordinary, old and conservative. In other conversations with Ms Moot, Ms B referred to the Doctor asking her to wear the lingerie he had bought for her while she performed oral sex on him.
94. On 28 September 2002 Ms B moved to Palatine Terrace, a Stepping Stone residence. It was around that time or earlier that she thought Ms B started to become more secretive with her regarding matters with the Doctor. At the time of a conversation with Ms B on 19 October 2002 Ms Moot was aware she was unwell with a kidney infection and that Ms B had already been to see the Doctor about it and that he had prescribed antibiotics for her. On 28 October 2002 Ms B disclosed the Doctor had advised her about zenical and clozapine. Ms Moot said her concerns grew over this period that the Doctor may be in a treating role with her. She discussed her concerns with Ms Sargent, with Ms B's key worker, Ms D, and with Ms Sutton.

95. At 11.15pm on 30 December 2002 when on duty she received a call from Ms B from her parents' home. She told her she was having a panic attack, and expressed concern that the Stepping Stone staff were interfering in her personal life with regard to the Doctor. Ms Moot was aware that a management decision was being made about whether to make a complaint against the Doctor and that Ms B was not happy that the complaint had been made and told her that she had trusted them and had talked to them in confidence and they had gone behind her back.
96. On 20 January 2003 during Ms Moot's night shift, Ms B initiated a conversation saying that the Doctor had said he was going to kill himself if Ms B said anything (regarding Ms Sargent's complaint).
97. In April 2003 Ms B moved out of Stepping Stone but before doing so had spoken very positively and confidently to Ms Moot about a number of issues including the Doctor. After that, Ms Moot had limited contact with Ms B. On 1 September 2003 Ms Moot was interviewed by the Health & Disability Commissioner's Office.

Ms D

98. Ms D is employed as a residential support worker at Stepping Stone Trust at xx. She has a Diploma in teaching and a Certificate in counselling. She works alongside the residents in the Adult Service to set goals and to develop life skills to assist them to readjust from psychiatric inpatient services to community living. She also works with residents to support them when they are facing a crisis and which involves helping them to find ways to manage stressful situations or events. She has been Ms B's key worker since April 2001, being involved with her care and support. Her role was to meet with Ms B once a week for at least an hour but the nature of her work involved catching up more casually with Ms B at different times of the week as well; and on most shifts that she worked she met with Ms B.
99. Like Ms Moot, Ms D made extensive notes of her discussions with and observations of Ms B during the relevant times, that is, in May through to December 2002, and in January 2003, late February 2003 to early April 2003, when Ms B left the Stepping Stone Residential Service.

100. In the early weeks of Ms B's disclosures, Ms D stated it was obvious that Ms B was keen for contact with the Doctor and on several occasions she noted that she took extra pride in her appearance and her makeup. She commented on Ms B's behaviour and moods regarding disclosures relating to the Doctor.
101. On 6 May 2002 she was aware that Ms B had met the Doctor for a coffee following which she brought him to the Stepping Stone office at Aylmer Street where he introduced himself as Ms B's "supportive friend". She recorded those words in Ms B's case notes. She had no recollection of the Doctor giving her his contact details such as telephone or cellphone numbers or email or address or anything of that nature. She believed that if he had done so she would have recorded them in her case notes as well.
102. In the early weeks Ms D stated it was obvious Ms B was keen for there to be contact between her and the Doctor and on several occasions she noted that she took extra pride in her appearance. The Doctor was making contact with Ms B by telephone as she had given him her number. However, as she did not have his phone number and she did not have any way of contacting him, she noticed it caused Ms B some frustration as she would have to wait around for telephone calls from him to confirm arrangements and times.
103. Ms D's notes for 30 May 2002 record Ms B initiating a conversation with her about the Doctor acknowledging her confusion and a depth of feeling for him but was uncertain what she meant to him. She was apprehensive about letting staff know when she met him because she feared she may be forbidden to do so. The following day, Ms D noted Ms B went shopping for clothes and was ready at 5pm for "a date" and felt nervous about an invitation to visit the Doctor at his apartment.
104. Over time Ms B told Ms D about the Doctor's apartment and his children and observed her getting in her car to go and meet the Doctor. During June 2002 Ms D made four entries of conversations she had with Ms B, when she disclosed information about her relationship with the Doctor. Those records, among other things, included her fear that she might let the Doctor down; that she accepted that she was giving mixed messages; that she was wondering whether to discuss her iron medications with him; some frustration and concern about her friendship with him;

not knowing what was going on and realising that she had been changing her plans in response to his calls; acknowledging feeling confused and controlled; and hesitant about communicating that to him; that when telephoning he had been calling himself “David” to stop others knowing of their friendship; and expressing the uncertainty remaining around her friendship with the Doctor.

105. By the time of her discussion with Ms B on 27 June, Ms D was aware from Ms Moot that Ms B had disclosed she had had sex with the Doctor; Ms B told Ms D she did not feel she was in an abusive situation and that she was consenting; she acknowledged feelings of embarrassment and thought she was doing something quite wrong; she was concerned about what others thought of the relationship; she was wanting a “talking and relating friendship” with the Doctor and expressed concern that if she told him what she thought of him she would lose his friendship.
106. Ms D then referred to discussions Ms B had with her on other occasions between July and early September 2002 including one on 31 July 2002; and on 9 August 2002 when Ms B said she was now less willing to drop everything and run whenever the Doctor phoned her; that he had started to pay for things when they were together which differed from their earlier contacts in June and July when she had paid for things; and when Ms B acknowledged she did not know what the future would hold with her relationship with the Doctor. Ms B told her she felt very settled at Stepping Stone and the most happy she had ever been.
107. On 10 September 2002 Ms D had a discussion with Ms B who told her she was being used sexually by the Doctor and that she would not allow that to happen with him again. Then on 13 September 2002 Ms B raised further concerns about her relationship with the Doctor including the fact that she had not seen him for a few weeks and that she was giving him an indirect message that she did not want to continue the sexual side of the relationship. Ms D observed that other than mentioning that there had been a sexual side to the relationship Ms B was never explicit with her about the details. On this occasion, Ms D recorded that Ms B had told her that the Doctor was encouraging her to sign on as a patient at his practice because it was only going to cost her \$5 a visit and stated that a negative associated with her going to see him at his practice would be his professional and personal boundaries.

108. Ms B moved to Palatine Terrace on 28 September 2002. Ms D realised that Ms B was probably still in regular contact with the Doctor but was choosing not to keep staff informed. This caused her concern and contributed to her discomfort about the relationship between them. She was aware that on 15 October 2002 Ms B consulted the Doctor for treatment for a kidney infection. She discussed this with Ms B. Ms D was concerned about the potential boundary breaches mainly because of Ms B's vulnerability and her extensive psychiatric history that was known to the Doctor and because Ms B responded to someone who showed an interest in her.
109. As a team, the Stepping Stone staff discussed with each other the progress, concerns and interventions that related to each resident and this was done with regard to Ms B.
110. Ms D had a further discussion with Ms B on 2 December 2002 who said she and the Doctor were just friends. On 4 December 2002 Ms D recorded that Ms B had reported the Doctor told her that the bruising on her legs was the result of a protein deficiency and which signalled to her he was still providing her with medical advice. On 12 December 2002 Ms B told her the Doctor's daughter had been unwell and that had meant that he had less time for her and that there was currently no sexual involvement between them. It was around this time that staff were considering making a complaint about the Doctor or requesting that he be investigated. On 13 December 2002 Ms D spoke to Ms B who responded that staff did not need to know about her friendship with the Doctor. When Ms D reminded her that staff were responding to Ms B's own comments in the past where she had indicated she felt vulnerable and uncertain of his attentions, Ms B said that he had changed.
111. On 20 December 2002 Ms B made reference to the Doctor referring to him as a "sort of boyfriend" because she did not see a future in the relationship and wondered if he was still using her. When Ms D asked Ms B if she was still involved sexually, Ms B said she felt uncomfortable answering that but the inference which Ms D drew was that Ms B was involved intimately with him. During the conversation Ms B made further observations including that she could not trust the Doctor; that she thought he was "manipulative and deceptive"; that long term she would never know if he would cheat on her; that she remained in a relationship with him because he spoke to her nicely and she liked to know she had someone special in her life. They talked

about Ms B's inability to say no in various situations which she faced. Ms B indicated that as far as the Doctor was concerned it was his responsibility if he faced any consequences for being involved with an ex-patient. She said if he were caught that was his problem and that although she had been deeply affected by him having gone to jail on fraud charges she did not feel responsible or herself to blame. She said it was difficult for her to meet men although she acknowledged that "*with [the Doctor] in the wings*" she might not meet somebody and then expressed uncertainty about terminating their relationship. Ms B said she had not wanted to let staff know who she was seeing because she felt that staff put him down and had been against him and that she had asked her flatmates to lie for her as to her whereabouts if necessary. She said the only people who knew everything about her relationship with him were Stepping Stone staff and her mother; and that if the Stepping Stone Trust "*took things further*" she would feel very betrayed and she would kill herself. She said she did not want people doing things behind her back and that it was up to her to resolve if she chose to. Ms D reminded her that as staff they had a high level of concern professionally and ethically and that she needed to be aware of that. Ms B then indicated it sounded like the staff were doing something about the situation. Ms D acknowledged the dilemma staff were in, given that the relationship between her and the Doctor was not appropriate professionally.

112. Sometime after that lengthy discussion with Ms B, Ms D was told by another staff member, which was reported in the notes, that Ms B had said she felt very negative towards Ms D and that she was considering leaving Stepping Stone Trust and going flatting.
113. In January 2003 a letter of complaint was sent by Ms Sargent. In the period immediately after that Ms B became quite distressed by a number of events going on in her life. On 31 January 2003 she overdosed and was admitted to hospital and on her discharge back to the Trust there were many concerns around medication and her struggle to keep herself safe.
114. On 21 February 2003 Ms D recorded that Ms B told her the Doctor phoned her and asked her to go to his place and that Ms B expressed anger that the Doctor wanted to "*keep in good with*" her; that she had been to his place twice since Ms Sargent's

letter of complaint had been sent but that she was “*sick of his contact*” because she believed it was based solely on him protecting his own interests.

115. During the evening of 21 March 2003 Ms B disclosed that she had spoken to the Doctor since a letter had arrived from the Health & Disability Commissioner. She said she did not want to be interviewed and that she intended to make no comment in order to avoid telling lies. The impression which Ms D got was that Ms B and the Doctor had talked about the complaint and the investigation and they had reached an agreement that neither of them would participate in the process or give evidence.
116. In other conversations she had with Ms B around that time Ms B made reference to the fact that the Doctor was making renewed and regular contact with her on a daily basis and that she felt that was because he was scared about the consequences of the complaint.
117. In April 2003 Ms B left the Stepping Stone Residential Service and went flatting in the community. She was supported by a community support worker from Stepping Stone. On 1 September 2003 Ms D gave an interview to the Health & Disability Commissioner’s Office.

Ms Margaret Sutton

118. Ms Sutton is the Clinical Resource Manager for Stepping Stone Trust. She is a registered comprehensive nurse with a Post Graduate Diploma in mental health and is currently completing her Masters in mental health. Her previous work history includes working in physical health at hospitals. She has been employed by Stepping Stone for the past nine years having worked first as a Case Manager, Senior and then as Team Leader of the Adult Residential Service. This latter role involved the management of staff and, like Ms D, the recovery programme of the residents.
119. She has known Ms B for approximately seven years and was the Case Manager assigned to work with her when she was discharged from a Psychiatric Hospital in December 1998 and again for a period in 1999 when she returned to one of the Trust homes. During those two earlier periods there were long periods of lead up in terms

of Ms Sutton trying to build a relationship with Ms B who she described as a very damaged young woman. By the time of Ms B's third stay at the Trust from April 2001 Ms Sutton's role had changed as she was by then the Team Leader but was still someone Ms B could go and talk to when she was distressed.

120. She described how Stepping Stone runs a "no secrets" process of communication which means that staff discuss and record in each resident's notes, conversations which the resident may have had with each of the staff. These discussions generally occur in hand-overs between shifts, at staff meetings and during supervision. Every resident is reviewed every eight hours and any issues of significance are discussed, acted upon and outcomes recorded in the notes.
121. In her role as Team Leader Ms Sutton was informed of all relevant communications between residents and staff and what she knew of the Doctor's and Ms B's relationship came not only from her own conversations with Ms B about him, but also from the conversations she had with her staff members relating to disclosures Ms B had made to them. Additionally, she explained that they all write comprehensive clinical notes in respect of each of the residents and every effort is made to ensure that relevant important disclosures made by a resident to a staff member are in the written notes. She made such notes concerning Ms B covering the period May 2002 to April 2003.
122. Ms Sutton recalled one evening when Ms B was getting dressed up to go out and meet the Doctor. She said her alarm bells rang at that stage, partly because of what her staff had been discussing with her. She was also aware that Ms B was incredibly vulnerable with men. She referred to her specific discussions with Ms B about the Doctor starting with the initial meeting Ms B had with him in May 2002 in the supermarket. Thereafter she was aware from that time on Ms B spent time with the Doctor on several occasions and that his name had started to come up in discussions she had with Ms B where she would refer to the Doctor by a shortened version of his name and her having gone to meet him. As time went on, that is mid to late 2002, she had a number of conversations with Ms B and also with Ms D and Ms Moot about disclosures Ms B had made that she was in a sexual relationship with the Doctor. Initially, Ms B appeared excited about that but then started to say things like "*he just wants me for sex, he's just using me*". At one stage Ms B started to

liken the Doctor to a member of her family who had **[not for publication by order of the Tribunal]**. Ms Sutton thought it was sometime later in 2002 when Ms B mentioned to her that the Doctor was not prepared to be seen with her in public and that he only wanted her to go to his place which Ms Sutton took to be his home. She remembered on occasions Ms B telling her that the Doctor had not been able to see her because his daughter was not well and he had to look after her.

123. Ms Sutton explained that as time went by Ms B tended to swing between stating that there was a sexual component to the relationship and at other times she would say “*we’re just friends*”. She believed the reason for that was Ms B’s ambivalence regarding feeling used by the Doctor and yet being flattered that a doctor would pay her attention.
124. Around 15 October 2002 Ms B was unwell with a kidney infection and had got a prescription from the Doctor. Ms B waited some six hours for Ms Sutton to come on duty after 5pm so she could give her the prescription. She said that Ms B could have presented the prescription to the chemist and not given Stepping Stone a copy. She did not have to disclose it to her. Her general view was that at the time Ms B was very much struggling with a huge ambivalence with one side of her wanting the Doctor’s contacts with her to be disclosed and the other side feeling scared about the possible consequences of him being exposed.
125. Ms Sutton, like the other members of staff, shared a concern that the Doctor might be breaching professional boundaries if he were treating Ms B as well as being in a relationship with her. They were concerned he had treated her when she was a teenager; that he knew she had an extensive psychiatric history; and that recently he had prescribed medication for her. Given Ms B’s disclosures of a sexual relationship they were very concerned. They discussed the matter among themselves and concluded they were under an obligation to report matters to the Health & Disability Commissioner’s Office. She and Ms Sargent decided they would meet with Ms B to advise her of their intentions because they wanted to make sure she was given every opportunity to discuss the matter with them before a letter was sent. The intended purpose for that was to empower Ms B and to tell her that she was worthwhile and that it was not acceptable for people to behave in the way she had told them the Doctor was behaving towards her. They also wanted to advise

her that ethically they were obliged to do something about the situation and Ms Sargent said that in the meantime Ms Sargent would write to the Doctor and advise him of her intention to write to the Health & Disability Commissioner. She wrote to the Doctor on 13 January 2003.

126. Ms Sutton and Ms Sargent attended a meeting on 14 January 2003 where they discussed with Ms B the contents of Ms Sargent's letter which she had sent to the Doctor and that they were working towards sending a letter to the Commissioner about their ethical concerns. They made it clear to Ms B that their letter would not all be based on the information which she had disclosed to them about her relationship with him but also on the prescription he had presented in October 2002; the fact that he had been introduced to Ms D as Ms B's "supportive friend"; and because of the fact that staff were aware of phone calls that the Doctor had been making to Ms B at Palatine Terrace. Ms B said she was relieved that the letter was not all going to be based on what she had said.
127. The following morning, 15 January 2003, Ms Sutton had a discussion with Ms B who told her that she had received a text from the Doctor inviting her for lunch the following day. Ms Sutton noted that Ms B was quiet and subdued although she did respond to her questions. Ms B said that the Doctor had not received the letter from Stepping Stone as he was not at work but was going to try and find it; and that he had told Ms B to keep away from Stepping Stone staff and had asked her to tell him what she had disclosed to them. She said the Doctor was intending to contact his lawyer and that he wanted Ms B to attend with him, and then added that neither of them had done anything wrong.
128. On 17 January 2003 Ms Sutton and Ms Sargent attended another meeting with Ms B to discuss the draft letter to the Commissioner's office. Their purpose in meeting with Ms B was to discuss her thoughts and feelings about the letter and to make sure she felt supported and able to express her views. Ms B was very distressed at the prospect of the letter being sent and said the Doctor had told her if the letter were sent he would kill himself. She said she felt responsible for her sibling having overdosed and that she felt she could be "*guilty and responsible*" for the Doctor. They had a discussion with her concerning the fact that the Doctor might be preying on her vulnerability and then discussed her concerns that the Doctor would suicide if

a complaint were made against him. Ms B agreed that Ms Sargent could telephone the Doctor's employer and disclose the concerns about his suicidality to them. The letter to the Commissioner was sent soon after this.

129. From the time the letter was sent, Ms Sutton was aware there were risks with Ms B and she was part of managing that risk process very intensively and to ensure that Ms B was monitored and the care she needed was being provided. Ms B was always a high risk resident and any added stress, particularly the potential loss of a relationship, was significant to her and would mean an increase in monitoring was required. Once the letter was sent she observed extremes of reactions in Ms B being incredibly angry and feeling betrayed. She made comments about the Doctor such as him being "*really nice to me*" and said they had agreed to lie so that "*nobody could ever prove anything*"; but at other times she stated that the Doctor would "*get what he deserved*".
130. On 5 March 2003 Ms B told Ms Sutton she was considering moving out of Palatine Terrace as she felt she was being pressured to move out and that one of those people who were pressuring her was the Doctor. Ms Sutton discussed with Ms B the possible motives those people might have which might not necessarily be in her interests.
131. On 19 March 2003 Ms Sutton gave Ms B a copy of Ms Sargent's letter to the Commissioner. Ms B disclosed she had seen the Doctor every day since he had first heard about Ms Sargent's letter although she said she was now only seeing him weekly. Ms B said she had been out for coffee with him the previous week and her belief that he was only keeping in touch with her to "*grease*"; but she did not want to be any part of the complaint nor to be interviewed about it. Ms Sutton also gave an interview to the Health & Disability Commissioner's Office on 1 September 2003.

The Psychiatrist

132. The Psychiatrist who is the complainant in this proceeding is an experienced and well-qualified consultant, in which capacity she has clinical responsibility for patients in the outpatient service. These responsibilities involve her in co-ordinating

and directing the management of patients under her care. Their treatment is individually tailored but involves a Case Manager (the Therapist) who sees the person regularly and clinical reviews by the Psychiatrist at intervals dependent upon the particular case.

133. The Psychiatrist has been the responsible clinician for Ms B since April 2003 when she took over her care from her previous psychiatrist and at which time Ms B had just moved out of Stepping Stone Trust's residential care to live independently in a flat. This independent living has continued to the present time. During this period Ms B has been treated primarily as an outpatient which has involved Ms B seeing the Therapist approximately twice a week for therapy, with reviews by the Psychiatrist approximately every four to six weeks. During that period Ms B has had frequent admissions to respite facilities and crisis admissions to a Psychiatric Hospital at times of increased suicide risk. She had a two month admission between April and June 2004 due to a marked increase in suicidality. At the time of this hearing Ms B was in respite care as they anticipated this would be a stressful time for her. The Psychiatrist's involvement with Ms B's care has been to co-ordinate and oversee her treatment plan. Her clinical reviews have involved reviewing the current situation and prescribing medication. Ms B's psychiatric history and current problems were explained by the Psychiatrist and are referred to above.
134. On or about 31 July 2003 or shortly thereafter the Psychiatrist became aware from the Therapist that Ms B had reported to the latter that a doctor was paying her for what she implied were sexual services. Around that time the Psychiatrist became aware of the previous complaint made by Stepping Stone.
135. On 22 August 2003 the Psychiatrist reviewed Ms B in her outpatient clinic with the Therapist. Ms B told her that the Doctor had been prescribing benzodiazepines for her and paying her for sex. She mentioned, as well, the meeting scheduled with the Health & Disability Commissioner's Office for 1 September 2003. She said she was meeting with the doctor on the Sunday prior to the scheduled meeting to discuss what she should say and that she should write a letter. The Psychiatrist advised her to tell the Health & Disability Commissioner what was happening but Ms B said she would not tell "*the half of it*" as the doctor would get into "*such trouble*". That day Ms B appeared to be intoxicated although the Psychiatrist noted in her progress note

that she was able to talk quite expansively for the first time whereas in previous consultations she had said very little, often answering in a quiet voice with monosyllabic responses. Ms B reported she had been drinking one bottle of absinthe a day for the past five days and admitted to drinking on the day of the consultation. The Psychiatrist said Ms B's increased alcohol intake was relatively recent, since July 2003, and was in the context of stressors relating to the anniversary of her sibling's death and living independently.

136. In her outpatient clinic on 14 April 2004 with the Therapist, Ms B told the Psychiatrist that she had been continuing to see the Doctor over some years and that he had been paying her for sexual services. She reported that this was until very recently and that three weeks previously she had sent him a text message saying she wanted nothing more to do with him. She told the Psychiatrist that he had given her medication which he had in his car. At this consultation, Ms B was not under the influence of alcohol and appeared much more clear headed than she had been on previous occasions. She was able to speak clearly and articulate the significant stress she was feeling related to family events. The Psychiatrist recorded in her progress note that Ms B was in a "*relatively calm and rational state*".
137. On 14 May 2004 the Psychiatrist made a written complaint to the Health & Disability Commissioner expressing her serious concern that Ms B was an extremely vulnerable patient and that she (the Psychiatrist) was extremely worried about the alleged behaviour of the Doctor and requested further investigation. Although she made telephone contact with Ms Sargent on 16 April 2004, and had received a copy of Ms Sargent's letter to the Health & Disability Commissioner, the Psychiatrist said those documents did not influence her decision to complain. It was based on the information Ms B had disclosed to her which, because of its serious nature, she believed warranted further investigation.
138. The Psychiatrist said that in the lead up to Ms B's interview with the CAC in early November 2004, Ms B had discussed the matter with her. Ms B had told her that she wanted to tell the truth. At the CAC meeting on 2 November 2004 she said Ms B was in a calm state; she was not dissociating; she was not experiencing hallucinations; and she had not taken any substances. Ms B was alone when interviewed by the CAC but she and the Therapist sat with her before she went into

the interview room. They did this because Ms B had told them she wanted support but did not want to involve anyone else in the matter at that stage.

The Therapist

139. The Therapist is a registered clinical psychologist in xx. She was not able to attend the hearing but her written statement was produced in evidence with the consent of the Doctor's counsel. The Therapist is well-qualified and experienced.
140. The Therapist is Ms B's therapist and case manager which involves developing and maintaining a therapeutic alliance and working on issues that impact on Ms B's current adjustment as well as working on the developmental issues that shaped her personality functioning; and case management which involves regular follow-up appointments, crisis management, consultation with the consultant psychiatrist and the team regarding Ms B's care, and liaising with other care providers. She has been seeing Ms B since February 2003 when she was assigned as her case manager. She has seen her on a regular basis from then down to the present time.
141. When preparing her written statement of evidence she referred to the clinical notes she had made in relation to her contacts with Ms B and, in particular, the notes she made of the consultations she had with her during which Ms B made certain disclosures to her about her relationship with the Doctor. The Therapist stated she did not record in her notes every detail that Ms B discussed with her about the Doctor but recorded the significant aspects of the discussions. In particular, she referred to disclosures which Ms B had made to her at consultations on 31 July, 22 August, 27 August 2003, and on 12 May, 22 July, 27 July, 27 October and 1 November 2004; and made a contemporaneous written record of these disclosures. Her clinical notes were produced to the Tribunal by consent.
142. The Therapist has been continuing to see Ms B on a twice weekly basis since November 2004 down to the time of this hearing and observed Ms B has made good progress and has remained relatively stable in her mental state despite experiencing major stressors this year. Her written record accords with the evidence of the previous witnesses regarding Ms B's disclosures relating to the nature of her relationship with the Doctor.

The Doctor

143. The Doctor is now in his 40s having graduated from Otago Medical School when he was about 23 years old, and married the following year until separating in 1999. There are two daughters of that marriage. The Doctor was employed at a practice in xx from 29 August 2002 to 27 May 2005.
144. He confirmed that he met Ms B about 1991 when he was a general practitioner at another practice in xx. At that time she was a school student. He stated that it became evident to him that there were troubles for her at home and difficulties in her mental health as well as with her physical health and he felt she had the beginnings of anorexia nervosa at that time. In 1992 he left that practice and took up a position at another practice in xx. He confirmed that Ms B and her family transferred to that practice shortly afterwards. He did not recall exact dates for the next series of events but was aware that a few years later one of Ms B's siblings died of a drug overdose, as a result of which she developed depression and severe anorexia nervosa and was sent to a counsellor with whom she refused to discuss any matters at all. However, she saw the Doctor at a particular Trust which was an organisation that had been set up to provide an affordable counselling service. He said he was the Director of Counselling Services there at the relevant times. He stated that during the counselling process it became evident to him that in addition to the grief which Ms B was suffering as a result of her sibling's death, there were also [family] issues; and that as a result of her counselling she found the strength to move from home at one stage but had to return due to concerns about [family issues]. **[Sentence deleted by order of the Tribunal].**
145. In 1997 the Doctor was convicted of a number of charges of fraud and other related charges following a trial, and was ultimately sentenced to imprisonment for 12 months of which he served six months. He said on leaving jail he returned to the Trust as a counsellor and saw Ms B on one occasion in about July 1998 when she was noted to be depressed and possibly suicidal. He arranged for her admission to a Psychiatric Hospital where she remained a committed patient [for a significant period]. He visited her while there on one occasion in about 1999 but said visitors were being discouraged as Ms B was deemed to be very unstable. He did not see her again until about April or May 2002 when he was at a local supermarket with his

then partner. He was approached by Ms B, but he did not recognise her as she had gained weight. He said she told him she was staying at the Stepping Stone Trust and that the friends she was with were also from there. The Doctor said Ms B asked him if she could meet him at some stage to tell him what had happened to her in the intervening years and that as he was still the Director of Counselling at the Trust, he thought that would be appropriate. He had not practised medicine following his deregistration in December 1997; and when he started having contact with Ms B in May 2002, he was not registered as a medical practitioner.

146. He said Ms B gave him her residential phone number and he contacted her a day or two later but did not give her his home number as she had told him she still had it on her cellphone recorded somewhere which had not changed since 1995. This number was apparently the after-hours contact number for patients of the Trust and it was therefore, he said, not at all unusual for her to have this number. He said she asked him if they could meet away from her residence as she had some concerns she wished to ask his opinion about and that they met at Coffee Culture on Cashmere Road for coffee and not “The Cup” on Cashmere Hill (as Ms B had stated). He said Ms B expressed some concerns about her committal status and that the staff at the Trust were telling her she was still a committed patient whereas she did not think she was; and expressed some other concerns at some aspects of her care including difficulties with some residents, her lack of freedom, the effects of her medications, and some problems relating to her family. Their discussion lasted about 45 minutes, following which he suggested he should meet the staff at Stepping Stone to confirm that he would not be interfering with the processes there but would be available as a support person. He went with Ms B back to Aylmer Street and met Ms D who, he said, he advised that he recognised that Stepping Stone had its own counsellors and felt it was important not to confuse issues by being involved at that level. He said he gave Ms D his home and cellphone numbers as well as his email address so that she could contact him if desired. He said she did not air any concern about his contact with Ms B at that meeting or at any subsequent time; and nor did any other member of staff from Stepping Stone do so either.

147. The Doctor said his assessment of Ms B at that time was that she was struggling with some issues to do with Stepping Stone and had no-one to voice those concerns to, so that in his social services role at the time he felt it entirely appropriate to have

contact with her either in person or by telephone from time to time to provide support. Over the course of a few months, perhaps May to July 2002, he said he saw Ms B on a few occasions in a setting like the one in the coffee shop and that discussions they had were in relation to matters at Stepping Stone and other personal matters but that they did not discuss matters to do with past [family] issues as he felt that was a matter for Stepping Stone and its counsellors.

148. The Doctor said that he had never dated Ms B and had never had a sexual relationship with her; he had never purchased items such as lingerie for her; and had never given her money.
149. He said that in August 2002 after he obtained probationary registration and employment as a medical practitioner Ms B told him she would likely become a patient of the practice when she next needed medical attention; and that according to the practice records she had attended the surgery twice, that is, on 14 October and on 1 November 2002. She was given a prescription for antibiotics on the first attendance and none on the follow up attendance. The Doctor stated that around this time she obtained a part time position at a restaurant and told him of her intention to leave Stepping Stone and move into a friend's flat.
150. The Doctor recalled Ms B telephoning him at the practice and leaving messages for him to telephone her at Aylmer Street. He thought it was about September 2002 when she moved to Palatine Terrace and recalled her leaving messages for him to call her at that number. The Doctor said he did call her back on all of those occasions although he could not say for sure when because he received many messages (from others) each day and dealt with some immediately and others later in the day. He said Ms B told him that she left Stepping Stone for a time but it did not work out as her room at the new flat was too small and she did not get on with one of the flatmates so she moved back to Palatine Terrace. While he could not be sure of the last telephone contact he had with Ms B at the practice he thought he spoke to her during his last week of work there prior to his holidays in December 2002.
151. He said his next definite contact with her was on Wednesday 15 January 2003 when she telephoned to say she had returned to Palatine Terrace after being away for ten

days and had apparently met a South African tourist through her job and had been staying with him until he left New Zealand. It was on her return that she was told that the staff at Stepping Stone were not happy with some things that had apparently been going on and that they were going to make a complaint against him. The Doctor said Ms B was upset during this telephone conversation as she explained what she had been told by staff and Ms Sargent at a meeting that day which was to the effect that she and the Doctor had been seeing each other in the form of some sort of relationship other than on a doctor/patient basis and was told that this was evidenced by phone calls he had made, by staff having seen him visit her and by the prescription he had written for her antibiotics.

152. He said Ms B told him that she had until Wednesday the following week (22 January 2003) to decide if she wanted to make a complaint herself to go with the complaint that Stepping Stone were going to send to the Medical Council and that she had told the people at the meeting that she did not have any relationship with him other than a professional one and that she had no complaints about his behaviour or actions; and expressed concerns that a complaint was being sent without consulting him.
153. He said that since that particular telephone call Ms B had telephoned him on Thursday 16 January and Friday 17 January 2003 and that on both occasions she confirmed she felt under pressure to make some sort of written statement about these matters. She told him she had had a meeting with Ms Sargent at 11.00am during which she was told that if she were not going to make any statement then there was no need for the meeting scheduled for 22 January 2003.
154. The Doctor stated that all the meetings he had with Ms B were in his role as a support person and were prior to his re-registration as a medical practitioner in late August 2002.
155. He said that at the relevant time he was in a relationship with his then partner with whom he lived in a flat which had two bedrooms but that for the sake of convenience he retained his single bedroom apartment for out of town visitors, including his relatives and hers so they had somewhere to stay without being cramped. He said that he and his then partner did most things together having similar interests; that they were both on their second relationships and did not spend

much time apart during the evenings; that if he made a phone call his partner would know about it; and similarly if he received a phone call she would be in the vicinity and would know about it; that he had several other patients who were frequent callers at various hours including prior to work hours and in the evenings and on weekends; and that he tolerated this as all those patients had been longstanding and loyal with complicated medical problems. With regard to his children he said that they lived with his former wife but when he had access to them which was usually at weekends on a fortnightly basis they stayed at the flat he shared with his then partner.

156. The Doctor then referred to specific matters raised by Ms B with which he took issue. With regard to the person called Christine, he said she was a support worker at a Psychiatric Hospital but since that time he had had very little contact with her. He believed it was Ms B who identified herself as his patient to Christine and that he telephoned Christine after Ms B had been interviewed by the Complaints Assessment Committee and was told that she had made a phone call or someone called Christine had made a phone call but that he had not had any contact with her in his professional practice or socially.
157. With regard to Ms B's assertion that he telephoned her at Aylmer Street house one morning a couple of days after she saw him in the supermarket (in May 2002), he stated he had already made clear to her that he was a volunteer support worker at the Trust and was only working as a community support person, having handed over the role of Director of Counselling to another person in January or February 2002.
158. He did not recall having lunch at Mona Vale with Ms B around that time as she had stated. With regard to Ms B's assertion that he telephoned her at Aylmer Street about a week later, he stated he may have done so on the receipt of a message from her. He said when he telephoned Aylmer Street one of the residents would answer and he would ask for Ms B by her Christian name or a variation of it; and that due to telephoning there on a few occasions he got to know a few of the residents via the telephone. While he had no knowledge of what others were recording in the Trust's books, he said he always identified himself by a shortened version of his name and had never used the name "David". He said he did not recall ever going to Palatine Terrace when Ms B was living there but may have met one of the female residents at

Aylmer Street but could not recall. He thought that she may have taken phone messages from him but he did not know; and added that he never went to The Strip with Ms B and never went out at night with her.

159. He said that Ms B had never been to his apartment or flat as a result of an invitation from him; that the apartment complex has a number of units and that Ms B may well have been in one of the other units at some stage; that they are all similar; and that he believed she could have got his address from Counselling Services as they had it.
160. With regard to Ms B's assertion that when she went to his flat on the first occasion his children were asleep in the bedroom but she did not see them, he said it would be impossible to avoid disturbing them. He said his daughters did not share a bed but slept in separate beds. One of them slept in the lounge and the other in the single bedroom and that he shared whichever bed his sick daughter slept on as she used to wake often. He said it was only on a few occasions that the children and he stayed at that apartment between 2002 and 2004 and they only did so if his family were visiting from out of town.
161. With regard to Ms B's claimed attendances at his apartment where she said sexual contact took place on a number of occasions, the Doctor said he completely denied that she was ever at his apartment or that any of the matters which she referred to happened.
162. With regard to Ms B's assertion that she recalled him dropping her off at the Stepping Stone house one evening in his xx motor car he had just bought and in which they had been for a drive, he stated that he did have a xx car but it was owned by his parents and it was stored at his apartment where he used it from time to time. He confirmed it was [the colour] and stated it was possible he may have dropped Ms B back to her residence in it. He added orally that he had since checked the records and established through the insurers that it was purchased in August 2002.
163. He said he and Ms B had never had alcohol together but only coffee and that was not at his apartment but was at cafés; and that it was completely incorrect that she watched pornographic videos with him at his apartment or was shown similar material on his computer there. He was emphatic that he and Ms B were never at his

apartment together and added he was the only one who had a set of keys to it and queried why he would put a chair against the front door.

164. He denied ever telling Ms B what to do with text messages; and that if he did send a text to Ms B it would be a reply to a text or a telephone message from her.
165. With regard to Ms B's assertion that on six or seven occasions when she was at his apartment he gave her drugs which were always either clonazepam or temazepam he stated this was completely incorrect and that he had no access to those drugs. He assumed that the period to which she was referring was when he was not registered and he could not have written a script for those drugs even if he had wanted to. He stated he had never supplied her with any drugs other than the script for antibiotics when she attended his surgery in October 2002 after he was re-registered. He added he never kept drugs in his car other than Ventolin for his personal use.
166. He denied ever having purchased lingerie for Ms B or anything else other than coffee and had never made comments about white trousers; and nor had he commented on her weight.
167. The Doctor said when he went for his job interview in July 2002 he drove there in his xx motor car to meet with his new employers. He said he had a particularly clear memory of that day as it was a very significant one for him being a re-start of his medical career. He denied Ms B accompanied him to that interview or to any interview.
168. When he saw Ms B at his rooms on 15 October 2002 he gave her a script for antibiotics for her kidney infection but denied suggesting that he take tablets from the medical practitioners' supply order. He said, in any event, very often there are no antibiotics to suit in stock. He said he did not give her a kiss and never has. And again he denied having sex with Ms B on any occasion and said he had no idea what or with whom she discussed matters.

June Swindells

169. Ms Swindells stated that she was the Practice Manager (where the Doctor was employed in September 2002) and that she was effectively the Doctor's employer and he was answerable to her.
170. One of the conditions of his employment (set by the Medical Council) was that he was not to undertake any counselling and that he did not do so when he was in their employment. Initially he was employed by the practice from 9am to 5pm but subsequently due to other personal commitments this was reduced to 3pm. She said home visits were extremely rare in the practice and if they were carried out by the Doctor it would have been with a nurse. She referred to her perception of him as a committed doctor; extremely thorough with his patients, going through old files with them; that sometimes this caused difficulties with the practice because he would take so long with each patient; that he would spend up to an hour with them explaining their previous files, their treatment, and all related aspects; and that he was extremely appreciated by his patients for this. She said she noticed the Doctor was meticulous in following up matters of patients and would make sure there was follow up for them if they were referred to the hospital for tests and the like and appeared to be very dedicated. She said if he had a fault then it was he was almost too caring and too available for his patients. She said he was not a person who could be rude to people or off-hand and if they had a problem they wanted to talk about he would invariably be available to listen. He appeared to her to be a person who could empathise easily with people.
171. She said that she was aware from the medical records of the practice that Ms B was seen on two occasions as a patient by the Doctor and was aware that antibiotics had been prescribed.
172. She said she became aware that there were very regular telephone calls by Ms B to the practice in an effort to get the Doctor to talk to her. She became aware of this from a receptionist. Ms Swindells said she was annoyed by constant phone calls and in the office area could overhear the receptionist talking to Ms B from time to time who had expressed a desire to have counselling with the Doctor when it was

explained to her this was not possible. She referred to a general strategy taken to put Ms B off from the large number of phone calls she was making.

173. Ms Swindells said she met Ms B on two occasions and that as a result of this and the number of phone calls she made and her insistence in trying to contact the Doctor, she formed the view that she was very much wanting a friendship with the Doctor and was very needy.

Submissions of Counsel

174. Counsel for the CAC submitted that the issues in this case were essentially credibility issues and that while it was not appropriate for counsel for either party to suggest who the Tribunal should believe, there were some pieces of evidence which she wished to highlight.
175. Ms McDonald submitted that Ms B gave extremely and strikingly detailed evidenced with striking consistency from the outset down to the date of and throughout the hearing. She further submitted that Ms B was prepared to make a number of concessions which she did not have to and which may not necessarily have been to her advantage or put her in a good light but that it was a demonstration of her honesty. She said that Ms B had said she had welcomed the relationship and friendship at the beginning when she thought of the Doctor highly and held him in high regard and that those were not the sorts of things a woman would say who was acting in a vindictive way or deliberately lying to set up someone. She submitted that Ms B was fundamentally an extremely kind person who did not want to hurt the Doctor with whom she had an ambivalent relationship and that an example of this was the text message which she sent him in June last year which stated "*i'm sorry to hurt you [name] but i had to tell the truth i had no choice*". She also referred to it as an example of Ms B's credibility. Ms McDonald stated that while the Doctor in his written evidence in response to this had stated that he did get a text message from Ms B about this time it was not until he was cross-examined that he admitted he had and that it said exactly what Ms B had said it said and was not something which the Doctor had volunteered in his evidence-in-chief.

176. Counsel referred to evidence of the witnesses from the Stepping Stone Trust as well as the evidence from the psychiatrist and the therapist, all of which, she submitted, had the “ring of truth” about it. Where there were some inconsistencies between Ms B and the Doctor’s evidence, Counsel submitted that when analysed they did not take the matter any further one way or the other and did not reflect adversely on Ms B’s credibility and overall honesty.
177. Ms McDonald referred to many instances of detailed information which Ms B gave regarding the Doctor and personal matters relating to him including his apartment, his motor vehicles, his furniture, his children and other matters. She submitted that by contrast the Doctor’s evidence in many places was confused and contradictory.
178. She referred to the fact that in answer to questions from the Tribunal the Doctor made mention of there being clinical notes from his medical practice for 2003, this being the first occasion she or the CAC knew of their existence. She commented that a professional person such as the Doctor facing a matter such as this and having already been through a CAC process, and having had details of the complaint for a long time, and having had the briefs of evidence of the prosecution witnesses, surely would have referred to his practice notes for 2003 but did not do so except when questioned by the Tribunal.
179. Mr Hembrow similarly submitted that this was a matter which came down to findings of credibility. He referred to Ms McDonald’s submission that Ms B was not “tripped up” when giving her evidence or being cross examined and therefore drew the conclusion that this was because she was telling the truth but that there was nothing “*to trip her up on*” because she “*she probably [was] telling what [was] the truth for her*”. He submitted that for whatever reason Ms B had initially formed this attachment to the Doctor and turned what was “excited behaviour” to something that it was not.
180. He referred to the letter the Doctor wrote to the Health & Disability Commissioner (on 4 April 2003) as being consistent throughout.
181. Mr Hembrow referred to counsel for the CAC’s comment that it is the nature of illicit affairs that they are kept secret and that is why no-one knows about them. He

submitted that here, according to Ms B's evidence, sexual contact between them was not always at the Doctor's apartment but that it had happened at Palatine Terrace, xx Street and [two] other flats where she had stated she was on her own although there were other people around but that there was no evidence of anyone seeing the Doctor at those places nor evidence from anyone who had answered the phone at Aylmer Street in response to telephone calls from the Doctor.

182. He said the only evidence the Tribunal had of Ms B and the Doctor being seen together was once at Aylmer Street when he took her back there after coffee when he introduced himself to Ms D and gave her his contact details. He submitted that was not the sort of thing someone would do who had a plan of seduction.
183. Mr Hembrow submitted that from the very first time the Doctor was questioned he had been consistent in his denials and in his explanations and was consistent before the Tribunal under what he described as a "*strong and powerful and organised cross-examination*" by counsel for the CAC.

Evaluation of Evidence

184. This case is essentially about credibility.
185. The assertions made by Ms B regarding the nature of her relationship with the Doctor were denied by him; and other than Ms D who met the Doctor on 6 May 2002, no other person gave evidence who observed them together. Further, the evidence given by the Stepping Stone staff, the Psychiatrist and the Therapist were all relying on what Ms B had reported to them as well as their observations of her mood, conduct, and interaction with others at Stepping Stone.
186. All members of the Tribunal were acutely conscious of the credibility issues and listened to and observed each witness as they gave their evidence with particular care, as well as scrutinising the documentary evidence which included records made contemporaneously by a number of the witnesses; as well as having regard to the submissions of counsel.

Ms B

187. It is not in contention that Ms B had a long therapeutic relationship with the Doctor from the age of xx years onward. She, along with other members of her family, were patients of the Doctor as her family's general practitioner, and he was the first person to whom she disclosed [personal and family issues]. The Doctor was in a position of exceptional trust. As Ms B stated, she felt safe with him.
188. The Tribunal found Ms B a truthful witness. It was impressed with the way in which she gave her evidence-in-chief, answered questions under cross-examination from the Doctor's counsel and answered questions from the Tribunal. Ms B gave her evidence in a composed, clear and unembellished manner. Where she was uncertain she made appropriate concessions. Her explanations were rational and consistent. The way in which she related her history and the history of her relationship with the Doctor and the way in which it is recorded in the notes, made by both Stepping Stone staff and her psychiatrist and therapist, is entirely consistent and has sustained that consistency over time. The Tribunal did not detect any indication of fabrication. Ms B's emotional responses, as observed and recorded at the time by both Stepping Stone staff and health professionals, are also consistent with her reported experiences with the Doctor.
189. Ms B was asked if she had ever noticed anything distinctive about the [doctor's body]. [**Sentence not for publication for order of Tribunal**]. Mr Hembrow put it to her that the Doctor suffered from a [particular] medical condition [**not for publication by order of the Tribunal**] and asked her if she had seen anything like that. She said she had, [but not on that part of the doctor's body, but on a different part], which she said she told to the CAC when interviewed. Mr Hembrow then showed her a photograph of the [particular part of the doctor's body]. Mr Hembrow put it to Ms B that if she had seen the Doctor naked then she would have noticed this. Ms B answered that it did not worry her and that she did not look at the Doctor "*like that*" and confirmed when questioned further that she had no recollection of seeing it.
190. In his evidence, the Doctor stated that he had the condition during the period in which Ms B said she was having a relationship with him. He said he did not have it

on [the particular part of his body which she said he had]. Mr Hembrow stated that the Doctor was willing to undergo a medical examination if asked to.

191. This is not a matter which the Tribunal can take any further but took it into account when evaluating the evidence and was unanimous that it did not affect the Tribunal's view of Ms B's credibility.

The Stepping Stone Witnesses

192. The Tribunal was impressed with all of the Stepping Stone witnesses, that is, Ms Sargent, Ms Moot, Ms D and Ms Sutton. They all kept contemporaneous records of what Ms B reported to them at the time and their observations of her and her medications. They were all concerned to protect Ms B and to keep her fully informed about their concerns. The Tribunal did not get any impression that they had any agenda other than to record what they were being told and what they observed; and to act in accord with their professional and ethical obligations. All of them entertained whether there were any other reasons or explanations for Ms B's disclosures. Their actions were appropriate and responsible. All of them came from a range of disciplines; all are well qualified; and all of them keep exceptionally good written records. All of them gave their evidence in a professional, clear and objective manner.

Ms Sargent

193. As Clinical Manager of the Trust, Ms B's disclosures were not made to her but by members of her staff (to whom the disclosures had been made) to her. In the Tribunal's view she responded in a responsible and professional manner to concerns of her staff, and took the appropriate steps.
194. When asked by a member of the Tribunal whether at any time she or the other staff involved ever questioned the truth of Ms B's reports about her relationship with the Doctor, Ms Sargent replied that if she were being asked whether they believed Ms B then yes, they did.
195. The Tribunal found Ms Sargent to be a credible and reliable witness and accepts her evidence.

Ms Moot

196. Ms Moot stated that initially when the Doctor telephoned Ms B at Stepping Stone he would telephone her on the house phone at Aylmer Street. She said that on a number of occasions she heard other flatmates in the house hearing the phone ringing and saying “*Oh [doctor’s name] on the phone for you [Ms B’s name]*”; and that the residents would say this before anyone had actually answered the phone. It appeared to be related to the frequency of his calls. She said that happened on a number of occasions, that the phone would start to ring and it was an assumption from the residents (or flatmates) that it would be the Doctor for Ms B.
197. Ms Moot described an occasion when Ms B talked about seeing spiders and was asked how she would compare the disclosures on those occasions with the accounts she was giving Ms Moot about her relationship with the Doctor. Ms Moot stated that on the occasions when Ms B saw spiders in her room she would often be at times quite unaware that Ms Moot was even in the room with her. She would be looking at the ceiling, at the walls, and seeing spiders. On those occasions she was afraid, very vigilant, and very distressed, crying and often unable to answer when she was spoken to and it was a matter of just spending time with her and calming her to the point when she was able to accept the reality that the spiders were not there. By comparison, on the occasions when she spoke about the Doctor it were as if she was in a normal conversation between two people and on those occasions she would be sad and sometimes she could be a little tearful but she was very clear in a conversation that they were having with each other.
198. Ms Moot stated there was never any doubt in her mind that Ms B was having a sexual relationship with the Doctor. She said she based this on having spent a lot of time with Ms B and hearing her talk about her relationships with the people at Stepping Stone, staff, work, and members of her family.
199. She said there were times when Ms B was crying and distressed when she was disclosing these matters to her or where she appeared to be struggling to talk about something and then was not able to. However, when she spoke about her relationship with the Doctor she often spoke in a quiet, clear, calm voice and in a

manner which was consistent with Ms Moot's experience of other people disclosing [personal issues].

200. Ms Moot made a contemporaneous and detailed record of her discussions with Ms B. It is readily apparent from both her written record and the evidence which she gave before the Tribunal that in her discussions with Ms B she did not probe or lead Ms B in any way.
201. The Tribunal found Ms Moot to be a credible and reliable witness and accepts her evidence.

Ms D

202. Ms D stated that there has never been any doubt in her mind that there was some level of intimacy between the Doctor and Ms B, but that it would be fair to say she did not know who initiated that intimacy and commented that Ms B clearly longed for a close relationship with somebody.
203. She made observations about Ms B throughout the course of the relationship with the Doctor which Ms B was reporting to her, noticing that Ms B's behaviour changed as the relationship progressed. In the initial phases she was quite excited but as time went on Ms D gained the impression that Ms B felt that there were some mixed messages being given by the Doctor and there were times when she was clearly frustrated.
204. Ms D recalled having conversations with Ms B when she appeared to have gained some insight that a lot of her life seemed to be revolving around waiting for a call from the Doctor and doing things that were going to fit in with the Doctor's schedule and that Ms B would drop everything and go. That approach moved from there to her making some decisions about not being as willing to do that. Ms D gave as an example a time when she recalled the Doctor telephoned Ms B to make an arrangement to meet him, and when Ms B told him she had something else to do. Ms D said she encouraged Ms B to do that because she felt it was strengthening and empowering her and that tended to work with Ms B in those ways in trying to assist her to communicate more clearly, openly and assertively with the Doctor.

205. She confirmed that the conversations she had with Ms B when they talked about her involvement with the Doctor at any one time indicated that Ms B had a high level of confusion about what the relationship was about and where it was going.
206. Where there is any conflict between Ms D's evidence and the Doctor's regarding their meeting on 6 May 2002, the Tribunal prefers hers. The Tribunal is satisfied that had the Doctor given her any contact details she would have recorded them in her notes. The Tribunal finds that he did not give her any contact details. When he did say that he was a "supportive friend" she recorded this in her notes and put quotation marks around it. The Tribunal was impressed with the way in which Ms D recorded her contemporaneous notes and finds they are an accurate record of what she was told, did and observed at the time.
207. The Tribunal found Ms D to be a credible and reliable witness and accepts her evidence.

Ms Sutton

208. At the time of the hearing Ms Sutton had known Ms B for seven years. It was put to her by a member of the Tribunal that she and some of her colleagues had a practice at Stepping Stone of having an attitude of empowerment and affirmation for the residents with whom they were working and whether in that context there was any scope for her to question whether Ms B's description of her relationship with the Doctor was accurate or truthful and whether that was ever a consideration for her and her colleagues. Ms Sutton replied that it definitely was. She explained that they work with people with mental illnesses and there was also that awareness of whether this was part of the illness, or was it reality. She said they were always supporting and encouraging people to ensure that what they were dealing with was a reality.
209. With regard to this response, Ms Sutton was asked what her view was regarding Ms B and her account of this particular relationship. Ms Sutton said in her view it was too ongoing and with the amount of medication Ms B was taking she did not think she could have concocted a complex thing like this and stuck to it in a way that felt so consistent. She felt there was too much different information for it not to be true and spoken too consistently across a number of people.

210. The Tribunal found Ms Sutton to be a reliable and credible witness and accepts her evidence.

The Psychiatrist

211. The Psychiatrist stated that in her opinion, based on her knowledge of Ms B's case over the time she had managed her care, she thought that what Ms B had told her about the Doctor had happened. She said her judgment, in that regard, was based on several factors. On the two occasions that Ms B spoke with her about what had happened with the doctor her story had been very consistent. On both occasions she had not been in a particularly distressed state and was not dissociating. At the appointment on 14 April 2004, Ms B was not obviously under the influence of substances and the Psychiatrist did not believe that her reports about the doctor were hallucinatory in nature due to their consistency, their content, and their context. She elaborated on what she meant by this which was although Ms B had had hallucinations at times, particularly about seeing things or hearing things, they had been on occasions when she was in a very distressed state or very depressed. She described the difference between how Ms B was on the different kinds of occasions.
212. The Psychiatrist also commented on the medications which Ms B was taking, the effects of them and the impact they might have on her presentation. The particular point which she was making was that she did not believe the medications could explain the complaints Ms B had made about the Doctor. She did not think those complaints were evidence of short or long term recall problems and she did not believe they could be explained by benzodiazepines causing confusion. This was because, in an acutely confused state, people are disorientated, cannot concentrate and present with usually changeable concerns and hallucinations. She said that Ms B did not present in that way and her complaints had been very consistent and detailed. Additionally, she noted that Ms B had also taken frequent overdoses of all her prescribed medications (and of some non-prescribed medications) both as suicide attempts and as a way of blotting out distressing feelings. While this could have resulted in memory problems she did not believe they could explain the consistency of Ms B's reports of what she maintained happened with the Doctor.

213. The Tribunal refers to oral evidence in chief given by the Psychiatrist in answer to a question by counsel for the CAC to comment on how frank Ms B generally was about matters that were not in her best interests. The Psychiatrist replied that this was a very important point. In her experience, she found Ms B generally always to have been remarkably honest about telling her what medication she was taking when she had overdosed at times, what she was drinking or substances she was using. She stated that Ms B had always been very honest in all the interactions that she had had with her.
214. The Psychiatrist was questioned carefully by counsel for the Doctor. It was put to her that she would not know whether what Ms B had told her about her relationship with the Doctor was true or not. The Psychiatrist replied that she was reporting what Ms B had told her. She felt that she knew Ms B quite well and was very aware of the serious allegations and the process that would ensue as a result of her complaint. She said that she carefully weighed those factors and discussed the matter in a peer supervision group which, she explained, was an informal way of raising difficult issues. She carefully thought about it and concluded that from her knowledge of Ms B and from her own management of cases of this kind that although one could hypothesise that many different things were going on, in her opinion she thought that what Ms B was saying warranted further investigation; and she herself believed Ms B. She said she did not make the complaint lightly and did consider other explanations which could be used to explain the matter.
215. It was put to the Psychiatrist by a Tribunal member that she saw Ms B in August 2003 when she initially mentioned being paid for sex and other matters to do with “the Doctor” and then the Psychiatrist’s next clinical note (mentioning the Doctor) was in April 2004. She was asked whether that meant that those issues did not come up for discussion or that there were bigger issues going on as it seemed quite a significant break in time. The Psychiatrist stated it was both reasons. She said that July 2003 was a relatively early period in her knowing Ms B who was a very damaged person and that building up a trusting relationship was a key to a therapeutic relationship. She said often, in interviews, Ms B would hardly say a word for many months and that the disclosure that was made in July 2003 was quite out of the ordinary. She said it did not come up again and as there was so much else going on in Ms B’s life that she was not fixated about the matter of the Doctor being

a major part of her life. She said there were other crises which overtook this. She said she felt it was better to wait and see if the Doctor matter did come up again before making a further note about it or a complaint. She said the next time it did come up was in 2004 at which time she felt she had to do something about it. This evidence impressed the Tribunal that the Psychiatrist was not overly or unduly focused on the Doctor.

216. When asked by a Tribunal member, when referring to one of the consultations when Ms B had been drinking alcohol over a period of days, what effect that would have given the other medications, the Psychiatrist stated it can be very variable. On that particular occasion (July 2003) she reported that Ms B was clearly under the influence of alcohol. She added that on most other occasions during their consultations, Ms B had not been under the influence of alcohol and that this stuck in her mind as being unusual. She thought it would probably also explain why, on that occasion, Ms B talked quite freely with her which was the first time she had done so. She said it was as if she was less inhibited.
217. The Tribunal noted that the Psychiatrist was concerned about the disclosures which Ms B had made. She thought they should be investigated by the appropriate authority. She entertained the possibility of other explanations. She checked her own perceptions with her professional peer group to get some feedback on the possibility of bias on her part or a mistaken diagnosis. She considered a range of possible explanations and reasons for the disclosures including psychosis, obsession and fixation. She discarded those because of the consistency, context and content of the disclosures. She also considered whether the medications Ms B was taking could have interfered with her thought processes and concluded that they would not have. She referred to the reports of the psychologist, Mr Bath. She was aware of the Stepping Stone issues and checked those for consistency.
218. The Psychiatrist did not paint Ms B to be anything other than what Ms B was. She referred to the occasion when Ms B consulted her in a drunken state; the \$5,000 cash in her pocket for sexual services from another; the family issues and the suicidality. She put Ms B's reports about the Doctor in the context of Ms B's psychopathology and, as a clinician, she did not overly focus on it herself. As much as these things were a side issue for Ms B, they were similarly a side issue for the Psychiatrist. The

Tribunal finds that the Psychiatrist's concerns were not some personal vendetta by her against the Doctor, but rather her concerns were to treat Ms B.

219. The Tribunal found the Psychiatrist to be a credible and reliable witness and accepts her evidence.

The Therapist

220. The Therapist was not able to give evidence due to an unexpected family matter. However, her written statement was admitted by consent, as were her relevant clinical notes of her consultations with Ms B covering the period 31 July 2003 to November 2004.
221. The Tribunal finds the Therapist made very good notes which are an accurate record of what she was told and what she observed. The Tribunal accepts her evidence which was not subject to challenge and which is consistent with the evidence of the other prosecution witnesses.

The Doctor

222. The Tribunal found the Doctor an unreliable witness, lacking in credibility. The Tribunal was left with the distinct impression that many of his answers were made up as he went along and were neither a truthful nor accurate record of what actually happened.
223. The Doctor was not able to explain in any logical or coherent way the nature of his relationship with Ms B. He had been her general practitioner and counsellor at an earlier time. He was seeking re-registration in 2002; and he transferred her files to his practice following her attendance there on 15 October 2002. When the Doctor was re-registered on 29 August 2002 one of the conditions which was imposed by the Medical Council was that he was not to act in a counselling role. However, the Doctor's evidence left much to be desired about what a counselling role constitutes. He was cross-examined at some length on this subject. His evidence was confused and lacked any clarity. His explanations and understanding of the therapeutic relationship, and of ethical and professional boundaries and issues was entirely unsatisfactory. His understanding of the difference between professional and

personal relationships was poor and he had no knowledge of basic counselling concepts. He lacked supervision and did not belong to any professional body of counsellors. The Tribunal formed the conclusion that he had considerable confusion about the appreciation of his role.

224. As stated above, he was ordered by the Medical Council not to give counselling, yet when giving evidence before the Tribunal he tried to obfuscate what he was doing in his role with his patients, once re-registered, whom he said he met at various cafés in the city to discuss their problems.

225. The Doctor stated that his assessment at the time, following his initial meeting with Ms B in May 2002, was that she was struggling with some issues to do with Stepping Stone and had no-one to voice those concerns to and in that regard and in his social services role at the time he felt it entirely appropriate to have contact with her either in person or by phone from time to time to provide support. Even on his own evidence he was seeing himself as having a professional role with Ms B. He was assessing her when she had therapeutic relationships with her psychiatrist, her psychologist, and Stepping Stone staff. His evidence indicated that he had no concept or understanding that this was or might be interfering with her relationship with her psychiatrist, her therapist or her key carer.

226. The Tribunal does not accept his denials about the nature of his intimate and sexual relationship with Ms B.

Ms Swindells

227. The Tribunal did not find Ms Swindells to be a reliable or credible witness.

228. When questioned about the amount of calls Ms B had allegedly made, Ms Swindells had to concede that she herself had only ever spoken to Ms B once on the telephone. She told the Tribunal she was aware of patients who took ownership of health professionals so that it was not out of order for them to telephone wanting to speak to their doctors. The strategy which she referred to in her brief was not to put off Ms B in particular, but that it was “across the board”. She stated it was inappropriate for a patient to telephone the doctor when he was on duty which she

said was general policy. When questioned further about what discussion, if any, she had with the Doctor about this, she was unsure and said that he left it up to her and he told her that she could do what was appropriate but there was nothing definite. She did not make any contact with any of the Stepping Stone staff and was not aware whether the Doctor had done so.

229. When it was put to Ms Swindells that if Ms B was telephoning frequently that would not be unusual if there were more than a doctor/patient relationship, Ms Swindells said that never entered her head and that Ms B was not “*the only patient who phones up*”. In answer to questions from the Tribunal, Ms Swindells could not say when the alleged five telephone calls were made stating that there were three part time receptionists and she could not be absolutely sure how many there were. All she did know was that when the amount of calls got to a certain stage it was referred to her. When asked whether Ms B was telephoning as a patient or on a personal matter, she was not clear. The inappropriate conclusions which she drew in her evidence was because Ms B was said to have made a number of telephone calls but Ms Swindells took only one call from Ms B and reprimanded her.

230. In terms of a medical practice, it is inappropriate for a person in Ms Swindells’ position to form a clinical view of a patient. The Tribunal is not aware that Ms Swindells has any clinical training in this area to substantiate the conclusions which she drew. She was an office person tending to make a clinical decision which she should not have been doing. In her written brief of evidence, Ms Swindells had stated that a general strategy had been taken to put Ms B off from the large number of phone calls. However, in view of the information which was elicited during cross examination by the CAC and from questions by the Tribunal members, there did not appear to be any proper basis for this assertion.

The Decision

231. In arriving at its decision the Tribunal was keenly aware of the seriousness of the charge and the particularised allegations.

232. The Tribunal remained at all times conscious of the standard of proof which was required in a case such as this. As stated above, the standard varies according to the

gravity of the allegations and the level of the charge. Accordingly, the Tribunal applied in this case the highest standard. Where there was a reasonable doubt, the Tribunal gave the Doctor the benefit of that doubt.

233. In reaching its decision on matters affecting credibility, the Tribunal had regard to the evidence of the four Stepping Stone staff, the Psychiatrist and the Therapist, all of whom were well qualified and had no hidden agendas. It observed with care the way in which Ms B and the Doctor gave their evidence and answered questions. It had regard to the character reference which Ms Swindells gave the Doctor. It took into account all the relevant records and correspondence which were produced. However, in fairness to the Doctor, the Tribunal did not allow itself to be influenced by the convictions for fraud nor the decision in 1998 when the Doctor was struck off the Register, nor the letter of 15 April 2004 from the Medical Council to the Doctor, even though those documents were produced by consent. The Tribunal confined itself to the matter presently before it relating to the charge as particularised.

Particular 1

The Doctor had sexual intercourse with Ms B who was at the time, or had been until recently, his patient.

234. The Tribunal accepts Ms B's account of what occurred. The Tribunal finds that following their chance meeting at the supermarket in May 2002, the Doctor telephoned Ms B at the Aylmer Street residence requesting to meet her, and that they travelled in the Doctor's car to a coffee house in Cashmere. There was some dispute in the evidence whether it was at The Cup at Cashmere Hill or Coffee Culture on Cashmere Road. The Tribunal does not make any finding in regard to which coffee house the parties went and does not accept that if one or other made a mistake about that, that it affects, in the Tribunal's view, Ms B's overall truthfulness and honesty.
235. The Tribunal has already found that when the Doctor returned with Ms B to Aylmer Street and introduced himself to Ms D as Ms B's "supportive friend" he did not give Ms D his contact details. In his submission, counsel for the Doctor stated that Ms Sutton in her written brief of evidence had stated that Ms D had reported to her, among other things, that he had given Ms D his contact details. The Doctor's

counsel stated that he accepted that honest witnesses could be mistaken and that the mere fact that one makes a mistake does not mean that one is dishonest but that it goes both ways and that it should go for his client as well as for all the other witnesses. The Tribunal accepts that this was a fair submission to make. It finds that Ms Sutton made an honest mistake about this.

236. The Tribunal finds that Ms B bought the Doctor lunch at Mona Vale around that time and went for a walk in the gardens. It finds that about a week later the Doctor telephoned her at Aylmer house during the morning; that he invited her to go to his apartment that evening; that he identified the address; that he explained to her how to get there; that Ms B accepted the invitation arriving there about 9pm that evening; that he was waiting for her outside the gates when she arrived in her car; that he let her through the gates; that he did so quietly so as not to disturb others; and that they went into his apartment.
237. The Tribunal accepts Ms B's account of what occurred when in the apartment; the nature of the conversation that they had; that the Doctor told her he was going to bed which was a sofa/bed which he pulled out; that she stood up to go; that he hugged her and started kissing her; that the next thing they were lying down on the sofa/bed and kissing; and that he told her that he would be in touch following which she returned to Aylmer Street.
238. The Tribunal finds from that time onwards Ms B went to the Doctor's apartment about once a week; that the Doctor would usually call her early in the morning and invite her to his apartment that evening; that from time to time he would send her text messages with invitations to go to his apartments; and that after a short time he started to call himself "David" whenever he telephoned the Stepping Stone residences.
239. The Tribunal further finds that if the Doctor's children were at his apartment they were always in bed asleep when Ms B was there and she never met them.
240. The Tribunal finds that on the first few occasions when Ms B went to the Doctor's apartment they would just hug and kiss but that on later occasions the Doctor asked her for oral sex which then occurred.

241. On 22 June 2002 (a Saturday) Ms Moot's notes record that Ms B initiated a conversation about the Doctor. She said they had gone out "to tea" the previous evening, then to a bottle store (at the Doctor's suggestion) and had bought beer and then to the Doctor's apartment where she had drunk eight bottles "quickly to relax" and had "got drunk" because it lets her "inhibitions" down and that the Doctor had "[taken] advantage" of her. She said she could never go to church again because she had "sinned" and that they had gone "all the way" and "actually done it". Ms B told Ms Moot this was the first time they had "gone all the way and that when she had visited the Doctor at other times she had done things to him but not the same as last night". The Tribunal accepts that this is an accurate record of what Ms B told Ms Moot on this occasion and Ms Moot confirmed this was the first occasion Ms B had disclosed to her that she had actually had sexual intercourse with the Doctor. The Tribunal finds that 21 June 2002 was the first occasion when full sexual intercourse took place between the Doctor and Ms B. The Tribunal finds that previously oral sex had occurred. The Tribunal further finds that after 21 June 2002 a full sexual relationship continued between the Doctor and Ms B until approximately two to three weeks prior to 14 April 2004 when Ms B consulted her Psychiatrist.
242. The Tribunal accepts Ms B's evidence and finds that on the later occasions when Ms B went to the Doctor's apartment, they would have sex and then after about 45 minutes he would give some explanation that he needed to be elsewhere and she would have to leave.
243. The Tribunal accepts Ms B's evidence regarding the emotional effect that the Doctor's conduct had on her and the ambivalent feelings she was developing towards him. It also accepts her evidence that he told her that if he sent her a text message on her mobile phone she should wipe them.
244. The Tribunal finds that while Ms B felt used by the Doctor, and at times angry with him, she kept going to his apartment because he would say nice things to her such as telling her she had lost weight which, as Ms B described it, for an anorexic like her was "music" to her ears. It accepts that throughout their relationship the Doctor was always very pleasant and polite and nice towards her and that while she knew he

was probably using her, she thought he was charming and never felt threatened by him.

245. The Tribunal finds that Ms B and the Doctor went shopping for lingerie which they bought for each other and with him buying her lingerie on about three occasions, including some g-strings; and then later asking her to wear white trousers, which she did, and then started telling her which g-string she should wear underneath. While the Doctor denied ever buying Ms B lingerie, it finds he did so; and while there was some challenge to Ms B as to the store it was bought from, this did not affect the Tribunal's finding, having carefully considered all of the evidence.
246. On 29 August 2002 the Doctor was given probationary registration. The Tribunal accepts Ms B's evidence and finds that the day he went for an interview for a position she accompanied him in his motor vehicle and waited in it while he went for the interview.
247. The Tribunal finds that in early October 2002 when Ms B had started her first day at work at a particular restaurant, the Doctor called her and asked her to go to his rooms at the practice; and that when she contracted a severe kidney infection later that month, she decided to go and see him at his practice to get a script for some antibiotics, which he prescribed. The Tribunal accepts Ms B's account of what occurred when in his rooms at the practice including kissing her, and that he told his receptionist that he wanted her notes transferred to his practice although he had not discussed that when in his rooms but that, nevertheless, Ms B was happy for that to happen.
248. The Tribunal accepts Ms B's evidence and finds that during this period of time she was still having sex with the Doctor at his apartment about once a week but that she was telling staff at Stepping Stone that she was still seeing him but on fewer occasions and only as a friend. The Tribunal accepts that she was worried that staff might intervene and complain about him regarding their relationship and that she did not want to get him into trouble. It accepts that she felt that the Stepping Stone staff were starting to interfere in her relationship with the Doctor as a result of which she considered leaving the Stepping Stone residence and moving to a friend's flat.

249. The evidence is undisputed that both Ms Sargent and Ms Sutton informed Ms B in January 2003 that they were going to make a complaint about the Doctor to the Health & Disability Commissioner's Office but that Ms B wanted nothing to do with it. Ms B told the Tribunal that she informed the Doctor about this. She was aware that he was at the hospital where his younger child was sick and that after working until 10pm one evening she drove to the hospital, arriving there about 11pm, and told him about the proposed complaint and that he told her to deny everything. The Doctor denied this. There was some discrepancy about the date that this occurred. The Doctor said his daughter was in hospital from late November 2002 until she was discharged on 20 December 2002. He said he had never been at the hospital with Ms B. The Doctor said that Ms B had never seen him at the hospital. With regard to her attending there late at night he believed the hospital had a restriction on who could see patients after about 8pm and that his ex-wife was with their younger daughter at the hospital "*constantly*" and "*the entire time*" and when he went there it was just to be there in addition to his former wife so that his younger daughter had both parents with her. He added there was not an occasion where his former wife was not with their daughter except perhaps to go to the bathroom or to have a wash. While the Tribunal finds Ms B did discuss with the Doctor about Ms Sargent's complaint, it has some uncertainty regarding Ms B's evidence about the hospital visit and makes no finding as to whether a visit took place at the hospital or not.
250. The Tribunal accepts Ms B's evidence and finds that the Doctor did say to Ms B that if the Stepping Stone staff made a complaint about him and, if he found out that she had told the staff what was going on, he would commit suicide because of his children. While the Tribunal accepts the Doctor's evidence that he had no intention of committing suicide, the Tribunal does find, contrary to his denial, that he did say this to Ms B.
251. The Tribunal finds that one evening before Ms B left Stepping Stone (which was in early April 2003) that she had sex with the Doctor in her bedroom at Palatine Terrace, following which he left. The Tribunal further finds that sexual relations mostly took place at the Doctor's apartment.
252. The Tribunal does not accept the Doctor's denial that Ms B had ever been to his apartment or that they had sex; and nor does the Tribunal believe his claims that she

could have learned details of his private life and the interior of his apartment by other means. Ms B gave her evidence without any rancour or any hint of vindictiveness. On the contrary, she stated, and the Tribunal accepted, that she still cared about what happened to him.

253. Ms B had a significant amount of information about the Doctor and his living arrangements which, the Tribunal finds, she learned not only from her discussions with the Doctor but her overall association with him and her attendances at his apartment. Some of the detail of Ms B's evidence included her knowledge of the make and colour of his motor vehicles; that his apartment had xx at the front; that one had to push a buzzer for his apartment; that it was number xx; that there was an underground carpark; that there were numbers on the individual carparks; how one got to his apartment once one went through the gates; that his apartment was a one bedroom unit; that there was a double bed in the bedroom; that there was a pull out sofa/bed in the dining room; that there was a dining table and chairs in the apartment as well as a video and a computer; the name of his partner; that he had children; that one of them was ill and spent time in hospital; that he had a mobile phone; that he sent text messages to her mobile phone and received them from her on his; that he had coffee with her at different places; all of which the Doctor had to admit was correct information.
254. When it was put to him in cross-examination that it was a remarkable amount of detail that Ms B had for someone who had never been as intimately involved in his life as he claimed, the Doctor said he was not sure really. Even on his own evidence, the Doctor confirmed that he and Ms B were having contact, were meeting at cafés, and were exchanging text messages.
255. The Tribunal was unanimously of the view that there was a clear relationship of doctor and patient between the Doctor and Ms B from when she was xx years old. In addition to all of the evidence which confirms this, Ms B herself thought of him as her doctor. From her perception he was her doctor from which his responsibility flows.
256. Throughout the notes the Stepping Stone staff made when recording Ms B's disclosures to them, Ms B had raised issues about whether it was ethically correct

for her to have a relationship with the Doctor. She understood about causing him professional problems. She referred to him as her doctor and the family's doctor from when she was a teenager, and also referred to the counselling role he had with her.

257. The Tribunal acknowledges that while it has found the Doctor had a sexual relationship with Ms B, as between May 2002 and 29 August 2002 he was not registered. Nevertheless, the Tribunal considers the relationship to be entirely inappropriate in view of Ms B's past, and her complex and ongoing psychiatric history of which the Doctor was aware.
258. The Tribunal agrees with Ms Sargent's understanding as set out in her letter of 13 January 2003 to the Doctor that the ethics which guide medical practice state that doctors are not to have a personal relationship with patients who (a) they treated as a child, (b) have a psychiatric history, (c) they are currently treating (have a current doctor/patient relationship with). Ms Sargent was concerned that the Doctor had crossed all three of those boundaries. The Tribunal finds that he did.
259. The records show that Ms B's files were transferred to the Doctor's practice in October 2002 when he became her general practitioner again, and when he transferred her files to his practice at the first available opportunity.
260. The Tribunal finds this particular proved.

Particular 2

The Doctor paid money in return for sexual services to Ms B who was at the time, or had been until recently, his patient.

261. Ms B said from around the time she left Stepping Stone, (in April 2003) and maybe a little before then, until early 2004 her relationship with the Doctor continued but that each time she had sex with him he paid for it, "about \$30 each time, always in cash". She said she was poor and needed the money and although she knew what was happening with him was wrong she "still really" did not want to get him in trouble.

262. The records reveal that Ms B was working as a prostitute from time to time, during the period she was having a relationship with the Doctor.
263. In early April 2003 Ms B moved out of Stepping Stone and went flatting in xx Street where she had a Community Support Worker (CSW) who would provide support including visits to her flat and taking her out for coffee on a regular basis. She still has a CSW. The relevant CSW notes were produced in evidence. The entry for 14 January 2004 covers Ms B's mood and wellbeing, risk assessment and issues. Under "issues" the case workers has recorded among other things the following:
- "[Ms B] also shared that [the Doctor] told her last night that he had been cleared of the investigation into his conduct.*
- [Ms B] was disappointed for two reasons –*
- (a) that he got away with his behaviour, and*
 - (b) that he might not need to keep tabs on her regularly and pay her \$30 a fortnight for a personal massage.*
- [Ms B] thought [the Doctor] might not need to see her to control her anymore because he had been cleared but acknowledged she needed him for the money.*
- [Ms B] believes [the Doctor] was cleared because she withdrew the complaint.*
- [Ms B] said [the Doctor] paid her \$200 to withdraw the complaint and dictated the letter she wrote.*
- [Ms B] was considering reinstating the complaint with the Health & Disability Commissioner so she could continue her hold over [the Doctor] and get more money out of him.*
- [Ms B] also acknowledged having a feeling of shame."*
264. On 22 August 2003 Ms B disclosed to her Psychiatrist the Doctor had been paying her "for sex".
265. On 14 April 2004 Ms B disclosed to her Psychiatrist that the Doctor had been continuing to see her and paying her "for sex".
266. Ms B was frank with her Psychiatrist about receiving money from a man (not the Doctor on this occasion) for sex which had amounted to \$5,000 in cash and which

she showed to her when she consulted her on 22 July 2004. The Psychiatrist confirmed this when questioned about it by the Tribunal.

267. Ms B was interviewed by the Complaints Assessment Committee on 2 November 2004. The CAC notes record what Ms B told them. Those notes record (among other things):

“Subsequently each sex encounter was given \$40-50. Told to keep it quiet otherwise wouldn’t get money. Mostly he initiated their visits, after payments occurred she would initiate it. Never met children at his place. Always secretive – got her texts wiped. Rang on undisclosed ph. No.”

268. The Doctor denied he had ever had sex with Ms B or paid her money for it.
269. The Tribunal prefers and accepts the evidence of Ms B; and has had regard to the evidence of the other prosecution witnesses as well as the documented records. The Tribunal did not believe the Doctor’s denials. The Tribunal finds that during the period from around the time she left Stepping Stone in April 2003 until April 2004 the Doctor paid Ms B for sex and that it was about \$30 on each occasion and was paid in cash. The Tribunal also finds that in the initial period the Doctor initiated sexual relations between them but that when he started paying Ms B, she too initiated it on occasions. The Tribunal further finds that during this time the doctor/patient relationship endured.
270. The Tribunal finds this particular proved.

Particular 3

The Doctor provided prescription only drugs to Ms B without prescription and without proper medical reasons or justification for doing so and at the time when he was not Ms B’s medical practitioner and/or when he was not in a treating role with her

271. The prosecution did not advance evidence as to how the Doctor could have got the drugs or what access he had to them.
272. The Doctor denied he had any access to the particular drugs Ms B identified (when he was unregistered); that he never kept drugs in his car (other than Ventolin for himself) and only gave her prescribed antibiotics on 15 October 2002.

273. The Tribunal was also aware from the evidence that over a period of some years Ms B, from time to time, would stockpile drugs in order to facilitate overdoses at other times.
274. Because of this, the Tribunal found it difficult to evaluate the description given by Ms B around the acquisition of drugs from the Doctor. Further, as stated earlier, the standard of proof must be very high for an allegation of this nature and while Ms B's account is not inconsistent with the rest of her evidence, for the Tribunal it did not quite cross that high threshold of proof and, accordingly, the Tribunal has given the benefit of the doubt to The Doctor.
275. The Tribunal did not find this particular proved.

Particular 4

The Doctor gave Ms B advice on how to prepare a lethal dose of medication for her to use as a suicide tool.

276. In addition to Ms B's evidence, the Tribunal refers to an entry in the Therapist's clinical notes for 12 May 2004 when Ms B reported that she had more than one plan to suicide and that "*her Doctor 'friend'*" had told her what would be the effective way of committing suicide by a combination of alcohol and certain drugs. She told her Therapist that the Doctor "*probably wanted her to die so that he could escape being prosecuted for professional misconduct*".
277. The Doctor denied that he had ever told Ms B how to commit suicide. He also said that in any event, Ms B herself would know what constituted a lethal dose. The Tribunal accepts she would most likely know. He added that suicide was something which was alien to his religion and culture, and was unacceptable to him.
278. While the Tribunal accepts there could well have been a general discussion between Ms B and the Doctor about lethal doses of medication; the Tribunal is not satisfied that if there were such a discussion that the Doctor advised her on how to prepare a lethal dose for her to use as a suicide tool.

279. While Ms B may have drawn the inference that that was what the Doctor intended, the Tribunal accepts the Doctor's evidence that he would not, or did not advise Ms B how to suicide in that way.
280. The Tribunal finds this particular has not been proved.

Particular 5

Following a complaint being made against the Doctor by Ms Sargent to the Health and Disability Commissioner in or about 2003 concerning his treatment of Ms B, he paid to Ms B a sum of money in return for her not attending a planned interview she was to have with investigators from the Health and Disability Commissioner's office in September 2003.

281. On 21 August 2003 Ms B wrote to the Health & Disability Commissioner's Office declining to meet with the office, stating she did not want to be involved with or support Ms Sargent's complaint and asking that her letter be accepted as her "final word".
282. The Therapists notes for 22 August 2003 records that Ms B told her that day that she was to have a meeting with the Health & Disability Commissioner's Office on Monday 1 September and that the Doctor was meeting with her on the Sunday before to discuss what she should say and that she should write a letter.
283. Again on 27 August 2003 when Ms B had a further consultation with the Therapist she recorded that Ms B told her that she (Ms B) did not have to worry about the interview with people from the Health & Disability Commissioner's Office; and reported that she and the 'doctor friend' had met recently and that he had helped her draft a letter to the Health & Disability Commissioner and that he himself had posted it. The notes record that Ms B said that the Doctor was going to pay her for writing the letter. In her evidence-in-chief Ms B said the Doctor had insisted on posting it himself.
284. The Tribunal refers also to the notes of the Community Service worker dated 14 January 2004 (referred to at paragraph 264 above), where Ms B, when discussing her issues of concern said that the Doctor had paid her the sum of \$200 to withdraw the complaint and dictated the letter she wrote.

285. On 22 July 2004 when Ms B had a consultation with the Therapist, the clinical notes record that Ms B wanted to know the status of the complaint to the Health & Disability Commissioner about the Doctor which had been sent in May 2004 (by the Psychiatrist). Ms B had wondered what she should do if the Doctor contacted her and offered her money to keep quiet. She also told the Therapist that when the Doctor was being investigated by the Commissioner the previous year (2003) he made Ms B sign a letter denying the complaint and gave her money to stay in a motel so that the investigators would not be able to contact her.
286. On 2 November 2004 Ms B was interviewed by the Complaints Assessment Committee. The CAC notes recorded that Ms B “*told SS (Stepping Stone) what was happening “Jackie” (Ms D). Went on for over a yr. Heard about HDC complaint, against it, [therefore] left SSs. Didn’t want him in trouble. He dictated a letter for her to write (\$200) to HDC, told her to leave city on day of hearing (given extra \$100). ‘Got away with that’.” (emphasis CAC’s)*
287. The Doctor stated that from the time he became aware of Ms Sargent’s complaint in January 2003, he did not see Ms B. He said he did receive text messages from her and there may have been the odd phone call; and he did learn from her that she was writing to the Commissioner, his recollection being she told him about her letter after she had sent it. He said he never met her at the Piranha Café and as far as he was concerned she was a dangerous person making up allegations against him. The Tribunal did not believe the Doctor’s explanation.
288. While the Tribunal acknowledges that Ms B did not want to go ahead with this complaint, four members of the Tribunal accept Ms B’s evidence that in August 2003 she met the Doctor at the Piranha Café in Riccarton Road where he helped her draft the letter of 25 August 2003 to the Commissioner’s office by making suggestions as to its composition and that he insisted on posting it himself, and did so. One member of the Tribunal thought Ms B was intellectually capable and had an educational background which could be consistent with the composition of the letter. However, all members of the Tribunal find that the Doctor paid Ms B \$100 to leave xx on the day she was to be interviewed (1 September 2003) by the Health & Disability Commissioner’s Office and that he would pay her a further \$100 if she

produced the receipt for the motel she stayed at on that day, but that he paid it anyway about a week later even though she did not have the receipt.

289. There was a strong incentive for the Doctor to do what he did as he was still on probationary registration.
290. The Tribunal does not make any finding regarding the earlier letter of 10 April 2003 which Ms B wrote to the Commissioner.
291. The Tribunal finds this particular proved.

Particular 6

The Doctor telephoned Ms B on the morning of the Complaint Assessment Committee's interview of her (2 November 2004) in relation to the complaint made against him by (the Psychiatrist), and attempted to dissuade Ms B from meeting with the Complaints Assessment Committee in relation to that complaint.

292. The Doctor denied he had attempted to dissuade Ms B from meeting with the Complaints Assessment Committee but the Tribunal prefers and accepts the evidence of Ms B. Her evidence is consistent with her reports of events around this time.
293. The Tribunal refers to Ms B's evidence. The Tribunal also refers to the notes of the community support worker "Ailla" dated 1 and 8 November 2004. Under the heading of "issues" for 1 November 2004 the community support worker has referred to Ms B's "anxiety over her indecision concerning (the Doctor) with the Medical Council and the Commissioner tomorrow at 11am". During the consultation, Ms B received a cellphone call from a woman called Christine whom she had met some time ago at a Psychiatric Hospital when they were both in there as clients. The notes record that Ms B ended the conversation when she realised that the woman called Christine was questioning her about the Doctor. The community support worker recorded in her notes that she herself was able to hear the conversation as she and Ms B were in the car and she could hear both Ms B and Christine on the cellphone. Ms B told the community support worker that Christine was the Doctor's support person and she could not have known Ms B's cellphone number as it was restricted and that the Doctor must have given it to her. Both the

community support worker and Ms B took a note of the cellphone number and the time.

294. On 8 November 2004 the community support worker recorded that Ms B had been interviewed (by the CAC) regarding the Doctor and that her psychiatrist and therapist were interviewed for an hour each and then it was Ms B's turn. She told her community support worker that the Doctor had telephoned her twice on her cellphone on the morning she was to be interviewed by the CAC and that she had reported this to the CAC.

295. The Tribunal refers to the CAC's interview notes of 2 November 2004 which record that Ms B told them of the Doctor's calls that morning. The notes record:

Rang her this morn "lose licence, children won't have working father". Hasn't threatened suicide. "Don't tell them I rang". (Christine [surname] (illegible word) ph. from woman. "Still your GP?", other questions. Reason for call unsure.

296. When cross-examined about this issue the Psychiatrist stated that Ms B had told her about the phone calls which she said she had received while travelling to the CAC meeting.

297. When interviewed by the CAC on 2 November 2004 the Therapist told the CAC (as recorded in its notes) that Ms B had told her that she had received a phone call from Christine [surname] who was a friend of the Doctor's. There was some uncertainty whether Christine was a psychiatric patient or a support person but Ms B felt threatened. The CAC notes record: *..B told KI she had a phone call from Christine [surname] (friend of the Doctor) ?Psych. Patient - ?support person. Felt threatened. Ms B said [the Doctor] phoned her today x 2 " – might lose registration, not to tell CAC he had called." He was nice to her.*

298. With regard to the call by Christine, the Tribunal accepts Ms B's evidence. It was overheard by the community service support worker who was in the car with Ms B at the time.

299. The Tribunal finds that the Doctor did telephone Ms B on 2 November 2004 during the morning prior to her interview with the Complaints Assessment Committee in an

attempt to dissuade her from meeting with the Committee regarding the complaint which the Psychiatrist had made against him.

300. The Doctor admitted he knew the woman, Christine, but denied he had caused her to make the phone calls to Ms B. He said the only contact he had had with her was very little. It was in 2004 and related to a “subsequent matter”. While the Tribunal cannot be satisfied to a very high standard that the calls from Christine were carried out at the Doctor’s instigation there did appear to be no other credible reason why this woman should phone Ms B at this particular time.
301. The Tribunal finds this particular proved.

Sexual Boundaries in the Doctor-Patient Relationship

302. While neither counsel specifically addressed the Tribunal on sexual boundaries in the doctor-patient relationship, it has had regard to the statements and guidelines promulgated among members of the medical profession by the Medical Council of New Zealand which were in force at the relevant times and which remain in force.
303. The Medical Council has a clear position on doctors who breach sexual boundaries with a current patient. The Tribunal rejects the view that changing social standards require a less stringent approach. Only the highest standard is acceptable and the professional doctor-patient relationship must be one of absolute confidence and trust.
304. It is the doctor’s responsibility to maintain sexual boundaries with their patients because:
- (a) A breach of sexual boundaries in the relationship has proved to be harmful to patients and may cause emotional and/or physical harm to both patient and the doctor.
 - (b) Trust in the doctor-patient relationship is the basis of the professional relationship and a breach of boundaries is a breach of trust.
 - (c) The doctor-patient relationship is not equal. Doctors can influence and possibly manipulate some patients, so even if a patient has consented to a sexual relationship this is not a sufficient excuse and it is still considered a

breach of sexual boundaries.

(d) Sexual involvement with a patient impairs clinical judgment.

305. A breach of sexual boundaries can comprise any words, behaviour or actions designed or intended to arouse, or gratify sexual desires. It is not limited to genital or physical behaviour. It incorporates any words, actions or behaviour that could reasonably be interpreted as sexually inappropriate or unprofessional.

306. The ethical doctor-patient relationship depends upon the doctor creating an environment of mutual respect and trust in which the patient can have confidence and safety.

307. The onus is on the doctor to behave in a professional manner. Total integrity of doctors is the proper expectation of the community and of the profession. The community must be confident that personal boundaries will be maintained and that as patients they will not be at risk.

308. A sexual relationship between a doctor and a former patient is never acceptable if:

- (a) The doctor-patient relationship involved psychotherapy or long term counseling (whether informal or formal) or emotional support.
- (b) The patient has had, or has, a condition or impairment likely to confuse his or her judgment or thinking about what he or she may want to do.
- (c) The patient has been sexually abused in the past.
- (d) The doctor-patient relationship is ended for the sole purpose of initiating a sexual relationship.

309. A sexual relationship between a doctor and a former patient will always be regarded as unethical if it can be shown that the doctor has used any power imbalance, knowledge or influence obtained while he was the patient's doctor.

Did the Doctor's Relationship with Ms B amount to Disgraceful Conduct in a Professional Respect or Professional Misconduct?

310. Ms B first met the Doctor in 1991 when he was her general practitioner at a practice in xx. At the time she was a xx year old school girl. The Doctor was treating her for

depression. She was seeing him for counselling twice a week. During that time she was having problems at home and began to suffer from anorexia nervosa. The Doctor was the first person to whom she disclosed [her family issues]. When the Doctor left that particular practice and moved to another practice, Ms B and her family transferred to the new medical practice and continued to consult the Doctor. Approximately four years later one of Ms B's siblings died from a drug overdose. Ms B became very depressed and her anorexia nervosa worsened. She also had continuing [family] issues. The Doctor was still Ms B's doctor at the time of her sibling's death. At that time, as well as practising at the new practice, the Doctor was providing counselling for a particular Trust in xx. After her sibling's death, Ms B began to see the Doctor for counselling once a week. Her mother and sister continued to consult the Doctor at his practice.

311. Ms B stated in evidence that the Doctor knew about her family circumstances and because she trusted him she felt comfortable telling him, during the counselling sessions, about the grief she was suffering from her sibling's death and about her anorexia. When Ms B was an inpatient at a Psychiatric Hospital between 1998 and 2000 the Doctor visited her. She did not see him again until she saw him by chance in a local supermarket in early May 2002.
312. Following their chance meeting the Doctor was made aware by Ms B that she was residing at the Stepping Stone Trust, a psychiatric rehabilitation service. Following their first outing together at a café on 6 May 2002 the Doctor returned with Ms B to her residence at Stepping Stone where he introduced himself to her Case Manager as a "supportive friend".
313. The Doctor was aware of Ms B's past and ongoing complex psychiatric history.
314. On the Doctor's own evidence Ms B revealed to him during their subsequent meetings her concerns about her committal status and that the Stepping Stone staff were (according to the Doctor's evidence) apparently telling Ms B she was still a committed patient whereas she did not think she was; and that she also disclosed to him that she was not happy with some other aspects of her care such as lack of freedom, having to attend daytime courses that she thought were not relevant to her, and other minor matters. The Doctor said that Ms B's biggest concern was that she

was being told that she was not allowed to “go flatting” as she was a committed patient and that she was also worried that her medications were sedating her at times and that she was not being given enough input into her care and so had lost control over her life. She also mentioned, according to the Doctor, difficulties with some of the other residents at Stepping Stone, and further disclosed to him that although the problems at her parents’ home had been discussed and a family meeting arranged nothing had been resolved. He said she also disclosed to him issues concerning [members of her family] who also had psychiatric problems.

315. Following his re-registration on a probationary basis to the Medical Register on 29 August 2002 the Doctor commenced practice as a general practitioner in xx but was not permitted to engage in any counselling which was a condition imposed by the Medical Council.
316. On 15 October 2002 Ms B consulted the Doctor regarding a kidney infection for which he prescribed antibiotics and following which he arranged for her files to be transferred to his practice as her general practitioner. She saw him for a follow-up appointment in November 2002.
317. On the evidence before it, the Tribunal is satisfied that as at 15 October 2002 the Doctor resumed his role as her General Practitioner and thereafter Ms B was a patient of the Doctor.
318. The Tribunal also finds that even on the Doctor’s own evidence, despite his denials and inability to explain his role regarding Ms B, that he was providing a form of counselling to her from May 2002 onwards.
319. The Tribunal considered, as it must, whether the Doctor’s conduct came within one of the three tiers of conduct warranting sanction, that is, disgraceful conduct in a professional respect, professional misconduct or conduct unbecoming. The Tribunal had no hesitation in finding that the Doctor’s conduct in this case amounted to disgraceful conduct in a professional respect.
320. The starting point is the Medical Practitioners Act, the principal purpose of which is to protect the health and safety of members of the public by prescribing or providing

for mechanisms to ensure that medical practitioners are competent to practise medicine. The competence required is not confined to technical or clinical competence. It embraces all aspects of a medical practitioner's responsibilities and obligations including ethical ones.

321. As the President of the Court of Appeal stated in *Pillai v Messiter* (above) that while a Court must bear in mind that the consequences of an affirmative finding are drastic for the practitioner, the purpose of providing such drastic consequences is not punishment of the practitioner but protection of the public. As he observed, the public needs to be protected "*from delinquents and wrongdoers within professions*".
322. The Doctor crossed all boundaries including the sexual relationship with a patient. Ms B was both a former patient and a current patient. As her psychiatrist observed, she was a very damaged and very vulnerable person. The Doctor had had a long-term therapeutic relationship with Ms B commencing at the age of xx years including in a dual role as both general practitioner and counsellor. She had a complex and ongoing psychiatric history of which he was aware and he was the first person to whom she had disclosed [family issues]. When they met again in May 2002, she was in 24 hour psychiatric care. He provided counselling and entered into a sexual relationship with her which continued after he was re-registered on a probationary basis. As the nature of the relationship changed he paid her for her sexual services; and when those professional persons who were responsible for her care and ongoing treatment became concerned and complained through the appropriate authorities (the Health & Disability Commissioner and later the Complaints Assessment Committee) he sought to dissuade her from attending interviews and providing the necessary information so that proper investigation could take place. In the case of the complaint to the Health & Disability Commissioner he also paid her money not to attend the interview.
323. Having carefully considered the relevant legal principles and/or levels of misconduct, and applying those principles to the proved facts, the Tribunal reached the view that the conduct amounted to disgraceful conduct in a professional respect and was at the high end of it.

Conclusion and Orders

Disgraceful Conduct

324. While the charge against the Doctor was laid in the alternative, that is, disgraceful conduct in a professional respect and/or in the alternative professional misconduct, the Tribunal finds that the Doctor is guilty of disgraceful conduct in a professional respect.
325. The Tribunal further finds that the conduct alleged in Particulars 1, 2, 5 and 6 either separately or cumulatively amount to disgraceful conduct.

Penalty

326. Counsel for the Complaints Assessment Committee is to lodge submissions as to penalty by **Thursday 8 February 2007**.
327. Submissions as to penalty on behalf of the Doctor are to be lodged no later than fourteen working days thereafter.

Name Suppression

328. There are already in place permanent orders pursuant to section 106(2)(d) of the Medical Practitioners Act 1995 prohibiting publication of the names of Ms B, the Psychiatrist who was the complainant, and the Therapist, and any other details which might identify them. These orders and the detail relating to them are set out at paragraph 4 above.
329. There is interim name suppression of the Doctor pending the determination of this Tribunal. It is Tribunal's view that this order should now be discharged but will continue the name suppression order until it delivers its decision on penalty at which time it proposes to discharge the order.

DATED at Wellington this 14th day of December 2006.

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Sandra Moran

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal