

**COMPLAINTS RESOLUTION PANEL
AOTEAROA NEW ZEALAND ASSOCIATION OF SOCIAL WORKERS**

IN THE MATTER OF

a complaint against
TAOTAHİ PIHAMA

Counsel: Kim Burkhart for Mr Pihama
Alastair Sherriff for ANZASW Convenor

Date of Hearing: 11 and 12 July 2011

Date of Decision: 29 November 2011

Panel: Leo Watson (chair), Dr Leland Ruwhiu, Louise Elia, Pene Frost and Laura Ashton

DECISION OF PANEL

*Tuia i runga, Tuia i raro, Tuia i roto, Tuia i waho,
Tuia kia kotahi te whakaaro, hei oranga pai mo nga whanau katoa.
Mauri Ora.*

1. The Aotearoa New Zealand Association of Social Workers received two separate complaints concerning social worker Mr Taotahi Pihama, and as a result, the Association initiated its disciplinary procedures pursuant to its Standing Orders.
2. The first complaint was dated 20 April 2010 and made by Ms Z. The complaint was expressed in the third person, signed by the complainant, and made through another social worker, and raised a wide range of concerns about Mr Pihama's practice. The second complaint was dated 20 May 2010 and made by Mr Y, a Practice Supervisor of Social Work in a District Health Board's Community Child Health and Disability Service, who was Mr Pihama's supervisor at the time Mr Pihama was involved with Ms Z and her whanau.
3. The Association's Acting Complaints Convenor, Mr Michael Doolan, reached a preliminary conclusion that if the allegations contained in the two complaints were admitted by Mr Pihama or found to be proven by a Complaints Hearing, then this would constitute professional misconduct

under clause 5.27.1 of the Standing Orders, being breaches of the Association's Code of Ethics.

4. The Association offers two approaches to complaint resolution through its Code of Ethics / Ko te Tauaki Tikanga. The first approach is referred to as the "Whakawatea" process, which is intended as a "mana enhancing" restorative process for both parties. It is for the complainant to choose this process, and if that is not accepted, then the Association is required to convene a Complaints Resolution Hearing Panel to determine the complaint.
5. In this instance, Ms Z was invited by the Acting Convenor to consider the Whakawatea process, but she did not wish to utilize that process. Mr Y advised that he would defer to the decision of Ms Z on that issue. As such, Mr Doolan wrote to Mr Pihama on 6 October 2010 to advise him of the nature of the complaints and that a Hearing Panel would be convened under article 5.8.14 of the Standing Orders.
6. Mr Pihama responded by way of letter dated 8 November 2010. The complaints, the response and Mr Doolan's recommendations were referred to the Panel. On 2 February 2011, in relation to both complaints, the Panel resolved that as Mr Pihama had neither admitted his conduct amounted to misconduct, nor consented to the Panel considering and determining the matter on the papers without the need for a hearing, the Panel would proceed to consider the matter by way of hearing. But in so doing, the Panel expressed our strong preference that an opportunity be again provided to the parties to engage in the "kanohi ki te kanohi" restorative process with particular focus on the principles of hohou te rongou, manaakitanga and whakamana i te tangata.
7. At a special meeting called for this purpose, the Acting Convenor invited both complainants and Mr Pihama to consider the use of that restorative process, but Ms Z declined, and Mr Y supported her choice. Therefore the Panel issued timetabling directions, and convened a hearing on 11 and 12 July 2011.

Complaints

8. As summarised by the Acting Convenor, Ms Z alleges that Mr Pihama:

- a. Acted inappropriately towards her, arriving unannounced at her home on several occasions; cleaning up her kitchen while she dressed; asked her about her social activities and subsequently queried why she had not attended a social venue as was her stated practice; told jokes that left her feeling uncomfortable; and invaded her personal space;
 - b. Took possession of her Whakapapa document and her daughter's original birth certificate and lost them, returning to her by way of her mailbox photocopies he had taken of them;
 - c. Provided her with documentation for applications to a College for her son and daughter but provided little assistance in completing these;
 - d. Provided Ms Z with a copy of someone else's completed application and said that she could re-use the form by twinkling out the personal details;
 - e. Took Ms Z and her family on what seemed to be an unscheduled tour of the College, negotiating entry with a cleaner;
 - f. Took possession, in September or October 2008, of the applications for the College including applications for scholarship funds, but failed to lodge them;
 - g. Failed to communicate with Ms Z; did not tell her applications were not lodged but rang her two days before the start of the school year, telling her not to panic but also advising her against attending the powhiri on opening day, and subsequently informed her that her applications had been lost.
9. Ms Z says that the impacts of these alleged deficiencies in Mr Pihama's social work practice were significant on her and her whanau, and in particular:
- a. A loss of opportunity for her son and daughter to attend the College, who were unwilling to go through a further re-application process;
 - b. Adverse academic consequences for her children;

- c. Exposure to suspicions from others that Ms Z and her children had misrepresented the situation about the College and was acting fraudulently;
 - d. A loss of trust in professional people;
 - e. Grief for the loss of her Whakapapa document.
10. Ms Z told us that she also incurred various costs associated with new uniforms and other items and needs money to help her children get back into good schools, which she alleges was a lost opportunity because of Mr Pihama's actions.
11. Mr Y was Mr Pihama's supervisor, and his complaint alleges that Mr Pihama:
- a. Agreed to send Ms Z a written apology and agreed to a draft with his supervisor, but that there is no copy on file of the final apology and no official indication that it has been sent;
 - b. Has not entered into the DHB's recording system any case notes relating to Mr Pihama's contacts or interventions with Ms Z and her children, in contravention of the recording requirements of social work practice.

Mr Pihama's Response

12. For Mr Pihama's part, his response to the allegations came by way of his written letter to the Acting Convenor dated 8 November 2010, his statement of evidence dated 24 June 2011, and his responses to questions at the hearing.
13. There are some considerable differences and inconsistencies in the two statements, and again in answers Mr Pihama gave to questions during the hearing. Counsel for Mr Pihama provided an overview of the key differences from her perspective as being whether Mr Pihama:
- a. Submitted the children's applications for the College, although Mr Pihama does acknowledge that due to the loss of documents in January 2009, he did not submit the funding application for Ms Z's daughter;
 - b. Made electronic case notes of his involvement with the Z family;

- c. Kept Ms Z informed of progress with the applications.
14. Rather than summarising those responses here, we will consider Mr Pihama's position as we address each of the six alleged breaches of the Code of Ethics.

Evidential Standards

15. We accept the submissions for the Association that these are professional disciplinary proceedings, and are not criminal proceedings. The objective is to protect the public, and to maintain the integrity of the social work profession. In circumstances where we are faced with discrepancies in the evidence, the test we apply to our consideration of the evidence is based on the balance of probabilities, rather than the criminal standard of beyond reasonable doubt. So we accept that we assess the evidential differences on an objective test, as to whether or not something was more likely to have happened in a particular way or not.
16. Both counsel submitted that there was in effect a two-stage process involved. Firstly, we assess whether Mr Pihama breached professional standards as set out in the Code of Ethics. If so, we consider whether the acts or omissions were significant enough to warrant sanction.
17. We also made evidential rulings that have been recorded in a minute to the parties. Of particular concern was the inclusion by Mr Pihama of an appendix to his response of 8 November 2010 that contained an extract of case notes and details of clients who have no connection with this proceeding. Mr Pihama was relying on the document as an example of his record keeping. However, it was inappropriate that personal details of other clients be included in this manner. In a minute dated 27 June 2011, the Panel struck the extract from the record, and invited Mr Pihama, if he wished to rely on the document, to file a replacement version that deleted all names, addresses and any statements which might identify the other clients. This did not occur.
18. We also suppressed publication of the statements of the children of Ms Z.

Alleged Breaches of the Code of Ethics

19. Standing Order 5.31.1 states that a member is guilty of professional misconduct if he or she breaches the code of ethics. The Association through its convener alleges six separate breaches by Mr Pihama of the Code of

Ethics, and says that each, on its own, is capable of constituting professional misconduct if found established.

20. We deal with each of the six charges in turn, and rely on Mr Sherriff's submissions in closing, at paragraph 42, for the wording of the Association's allegations.

Code of Ethics 3.5 – Failure to Maintain Proper Boundaries between Personal and Professional Interests

21. The Association alleges that Mr Pihama failed to maintain proper boundaries between his personal and professional interests in Ms Z, and as such, breached clause 3.5 of the Code of Ethics.
22. Ms Z told us that she did not allege that Mr Pihama acted with any sexual impropriety. In an answer to a question from Mr Sherriff, Ms Z agreed that she considered Mr Pihama was looking for a social relationship with her as well as a professional one. Mr Sherriff for the Association submitted that it was open to us to conclude that Mr Pihama was grooming Ms Z in preparation for a future personal relationship. We were told that grooming was referred to in the context of a set of behaviours intended to draw a person into a personal, and ultimately a sexual, relationship.
23. Mr Pihama denied that this was his intention. He took the view that his actions in relation to Ms Z were consistent with a needs assessment of her and her whanau. Mr Pihama told us that he was interested in building a relationship with the whanau and establishing connections in order to adequately carry out his tasks. Ms Z did not believe that there was any needs assessment to be carried out. She categorised the “contract” between the social worker and client in this instance as being restricted to assisting in the enrolment and funding applications for her children to attend the College.
24. The Panel heard expert evidence from Mr Michael O'Brien, Associate Professor at Auckland and Massey University teaching social work and social policy programmes. We were told that “task centred practice” is a term commonly used to refer to a “contract” or agreement between the practitioner and the client as to the nature of the tasks being undertaken, the expectations and understandings of the different parties, and the desired outcomes. The social work experts on the Panel also regard the concept of “whanau ora” as

an integral part of contractual agreements developed by practitioner and clients concerned, allowing for multi-faceted assessments to occur.

25. Mr O'Brien explained that the dignity of all persons is a fundamental social work principle, and that good practice should leave the user feeling that their mana has been enhanced and/or restored, that they are empowered, and that they have been strengthened in their key relationships. The user will feel better able to advance their own well-being where possible and have increased confidence in the responsiveness of social institutions to meet their needs. Crucially, the practitioner should act with integrity, care, empathy and compassion.
26. We take the view that the "contract" or task centred practice of Mr Pihama in this instance was focused on these wider objectives for the betterment of Ms Z and her whanau. That must have been the case as soon as Mr Pihama engaged with this whanau as a social worker. His focus was not solely on making application to the College devoid of those wider social work frameworks and whanau ora assessment and practice considerations.
27. We are reinforced in this view by the fact that it was Mr Pihama who proposed the College as a potential opportunity for Ms Z's son, arising from Mr Pihama's own connections with that College. That proposal arose, as we see it, from Mr Pihama understanding the needs and requirements of the Z whanau. In turn, that understanding developed through Mr Pihama's practice of building a culturally appropriate relationship with the client.
28. It is in that context that we assess Mr Pihama's actions that are the subject of criticism by Ms Z. We considered whether his actions were "grooming" her for a later sexual relationship, or whether his actions were consistent with establishing a best practice relationship whereby he could best advise and assist Ms Z and her whanau, to facilitate and support her access to the requisite resources available.
29. There was considerable discussion during the hearing about the relevance of tikanga Maori as it relates to social work practice. Mr Pihama was dealing with Ms Z and her whanau as Maori clients, and operated his practice from a whanau ora and kaupapa Maori perspective. This was consistent with the fact that in Aotearoa/New Zealand, the social worker is operating within a Treaty

of Waitangi context, which we interpret as including the active protection and promotion of tikanga Maori, inclusive of whanau ora. For Mr Pihama, “relationship building” was underpinned in that context by whakapapa. From whakapapa comes whanaungatanga, a key principle of whanau ora or family wellbeing. He agreed with questioning from the Panel that his social work practice was inextricably linked to his tikanga, and that establishing and understanding whakapapa connections with his clients was a basic principle in assisting to meet their needs.

30. We regard his approach as entirely consistent with the standards of social work practice as set out for us by Mr O’Brien. We also accept Mr Sherriff’s submissions that Mr Pihama as a member of the Association is bound by the Code of Ethics, and we believe that the Code supports this whanau ora practice.
31. Mr Pihama advised us that it was customary for him as social worker to learn about Ms Z’s family background and her existing relationships as this was the reason she was referred to him, and “I needed to understand the context of her whanau in order to help them.” Mr Pihama gave evidence that:

“Ms [Z] never gave any indications that the questions I asked were inappropriate and most of the time we were making ordinary conversation, which would naturally include references to extracurricular activities such as karaoke singing. I inquired around topics such as her ex-husband because I wanted to understand her absences from the family home. I always make an effort to understand my clients in order to help them with their self-determination. I am troubled by the inferences contained in Ms [Z’s] statement and strongly deny any inappropriate conduct on my behalf towards her.”
32. Mr Sherriff submitted that any needs assessment would have been part of the record, and have included Ms Z’s consent. The Panel had no evidence before it of any documentary records or case notes relating to Ms Z, which is a deficiency addressed later in this decision. While we accept that the standard of the needs assessment will be determined by the standard of the record-keeping, we do not accept that the absence of records means that no needs assessment was undertaken.
33. We conclude that the allegation of breach of Code 3.5 concerning inappropriate boundaries is not made out.

34. We do offer the following comment however concerning one incident whereby Mr Pihama arrived at the Z whanau home when Ms Z was in her pajamas, and while he waited for her to dress, he assisted by doing the dishes. This obviously caused Ms Z discomfort. We take the view that Mr Pihama was unfortunately naïve in not putting his social work practice in a safe environment where there could be no chance of misinterpretation. A social worker acting professionally should err on the side of caution in such a situation, and remain outside the personal space of the client until the client is dressed and ready to receive the social worker. A social worker must be particularly mindful of the comparative powerlessness of the client, and monitor his or her own behavior as a practitioner to protect the wellbeing of the client. While we do not regard the incident as a breach of the requirement to maintain proper boundaries between professional and personal interests, because we believe that Mr Pihama was acting in a manner that he regarded as being consistent with his professional practice, nevertheless we feel there is room for improvement in approach of Mr Pihama to situations where there is the potential for the client to feel uncomfortable or for misinterpretations to arise.

Code of Ethics 3.11 – Failure to Maintain Proper Records

35. The Association alleges that Mr Pihama breached clause 3.11 in two separate ways:
- a. Firstly, failing to maintain any, or any accurate, records of his involvement and intervention with Ms Z;
 - b. Secondly, taking possession of and subsequently losing Ms Z's mother's handwritten original whakapapa document.
36. We agree with counsel for Mr Pihama and do not consider that the second of these, the care of the whakapapa document, can be appropriately addressed under clause 3.11 of the Code of Ethics. That clause specifically applies to the obligation on the practitioner to maintain accurate client records, maintain confidentiality of that information, and to regulate access by the client to those records. It seems to us that the reference to "client records" is to documents about the client created by the practitioner, and not the client's own precious documents in the care of the practitioner. We therefore address

that issue in the context of the alleged breaches of clause 4.1 and 7 of the Code.

37. Dealing with the alleged failure by Mr Pihama to keep records of his interventions with Ms Z and her whanau, the short point is that there is no documentary evidence whatsoever before us of any records or case notes of any description, handwritten or electronic, created by Mr Pihama and relating to Mr Pihama's involvement with Ms Z or her whanau. Mr Pihama accepted entirely that it was appropriate social work practice and a requirement of his contract with the DHB that he keep accurate records. Mr Pihama is adamant that he did keep records, and cannot explain why there are now no records available.
38. We have deliberated as to the possible technological or other circumstances that might have caused the unusual situation we are now faced with. Two practical matters are of concern:
 - a. Firstly, we had before us the "Encounters" document which we were told was a record of all entries onto the DHB's electronic case note system relating to the Z whanau. There are numerous entries by Public Health Nurse Ms HC at the time that Mr Pihama was involved with the Z whanau, including entries in September and October 2008 in which Ms HC referred to Mr Pihama. There are no similar entries by Mr Pihama, and we were advised that it is not technologically possible for entries to be deleted from the system. If there had been a complete deletion of this client's record by some technological flaw, we would have expected to have seen no entries whatsoever, rather than the absence of just a specific practitioner's notes;
 - b. Secondly, we are concerned that the absence of case notes took so long to come to the attention of this practitioner's supervision programme. Mr Y met with Mr Pihama on more than one occasion in relation to the Z whanau, but there is no indication that the deficiencies in the case notes was picked up or addressed. In questioning of Mr Y, he acknowledged that even in the process of closing a file, it would have been anticipated that an "exit pathway" would be created and recorded with the supervisor, but that there was no record of that either.

39. We also took into account three aspects of Mr Pihama's practice as it related to record keeping which arose during the course of the hearing itself. Firstly, Mr Pihama accepted Mr Y's evidence that he had been the subject of a previous incident whereby his supervisor had counseled him about the appropriate keeping of records, which had led to a performance improvement plan. Secondly, Mr Pihama gave evidence, supported by his colleague Mr. PM, that he had concerns about a potential "home alone" scenario in the Z whanau which he monitored with a view to making a referral. In the end, he chose not to pursue this course of action. Importantly however, Mr Pihama admitted that he made no record of his concerns, or his conclusion and outcomes. Even Mr M, who appeared in support of his tuakana Mr Pihama, agreed that he would expect to see the home alone concerns recorded in case notes and discussed with his supervisor and client. Thirdly, we heard from Mr Pihama himself, in an unsolicited admission, that he continued to hold records at his home relating to other clients he had been involved with at the DHB, well after leaving the DHB, and in breach of the Privacy Act 1993. He had included some of those notes in his original response to the allegations. We are very concerned at the breach of confidentiality of client records which is a breach itself of clause 3.11 of the Code.
40. As Mr O'Brien deposed, "good practice requires good records; this is a professional as much as an administrative and organisational requirement." These examples illustrated to us that Mr Pihama was a practitioner who lacks administrative competence in this important area of record keeping. The Panel is unsettled by the clear discrepancy between the insistence of Mr Pihama that he took records of his involvement with the Z whanau, on the one hand, and the complete lack of records, on the other hand. However, the fact remains that there has been a breach of the express wording of clause 3.11 of the Code of Ethics in relation to both the failure to maintain accurate client records, and the breach of confidentiality of other DHB client records.

Code of Ethics 3.12 – Failure to Keep Informed

41. Clause 3.12 of the Code of Ethics provides that client integrity is preserved by (among other things) keeping the client informed. It is alleged that Mr Pihama failed to keep Ms Z informed of what was happening and what had happened over Christmas 2008 through to the powhiri in early 2009.

42. We also consider that clause 3.12 is relevant here where there is an allegation that Mr Pihama failed to achieve the central outcome of his service provision to his client, which was to seek funding for, and apply to, the College. We have therefore also assessed whether there is a breach of the clause 3.12 requirement that a practitioner must take care to inform himself as to the relevant aspects of the client's situation.
43. Ms Z has complained that she did not know what was happening with the status of the applications to the College, and was particularly concerned about the powhiri at the College for the start of the 2009 year without adequate knowledge of whether her children had been accepted or not. Yet she also asserted that Mr Pihama told her that the application to the College had been filed and accepted, and that she relied on that expectation.
44. Mr Sherriff in his submissions invited the Panel to conclude that Mr Pihama had indeed told Ms Z that the applications had been filed and accepted by the College, and also to conclude that in fact, no applications had been filed at all.
45. The Panel readily accepts that it is the obligation of the practitioner under the Code to keep the client informed, and has assessed the evidence of the standard of Mr Pihama's communication with Ms Z accordingly. Naturally, this has not been made any easier by the lack of case notes or documentation relating to the level or regularity of Mr Pihama's communication with his client.
46. However, the Panel also notes that it takes two parties to communicate successfully. Mr O'Brien, as the expert on social work practice, advised us that there was a corresponding expectation that, to a certain extent, the client will be proactive in communication, to see what was happening, or what had not happened. But he (and we) acknowledge that often the client's circumstances do not allow that to occur.
47. Mr Pihama advised us of occasions when he would try to make contact with Ms Z, either by telephone or by calling to her home, but could not reach her. His evidence was that he gave her plenty of opportunities to contact him, and tried very hard to reach her. Mr Y as Mr Pihama's supervisor, was advised of the difficulties of communication, and Mr Y noted under the heading

“Mitigation from TP [Taotahi Pihama]” on the draft apology letter, that Ms Z did not keep three appointments with Mr Pihama and that there was a pattern of the family not following through on a plan.

48. These are the practical constraints and challenges which social workers experience when dealing with clients, and it does often mean that the social worker needs to consider alternative arrangements or means of communication in order to ensure that the client is kept fully informed. For example, postage of a hard copy letter advising the client of the status of the applications to the College and an indicative timeframe within which Ms Z might expect an answer from the College, would have been sure to reach her, and in the event of any challenge by the client as to the adequacy of the communication, Mr Pihama would have been able to produce a file copy of the letter that was sent. We consider that the supervisor and the practitioner had responsibilities here to remedy the issues around communication by agreeing on, and recording, a proposed strategy. We were also given examples by both the complainant Ms Z and Mr Pihama of various occasions when there was communication between them both, so we cannot conclude that Mr Pihama ignored his responsibilities to contact the client and keep her informed.
49. We do not think it probable that Mr Pihama told Ms Z that the applications had been successful. In his draft letter of apology, Mr Pihama did not hide from the fact that the applications were not successfully completed, and we note that Ms Z herself was not sure what the situation was by the time of the powhiri in January 2009.
50. Given that Mr Y as supervisor considered that the challenges of communicating with Ms Z was a mitigating factor in the context of the loss of the whakapapa document, and the competing evidence on whether or not Ms Z was told that the application had been successful, we take the view on the balance of probabilities that no breach of the requirement of the Code of Ethics to adequately inform the client has been made out.
51. The Panel does however conclude, on the balance of probabilities, that Mr Pihama did breach the requirement in clause 3.12 to take care to inform himself as to the relevant aspects of Ms Z’s situation. The Panel finds on the balance of probabilities that the applications were not filed at all, most

probably due to the loss by Mr Pihama of the requisite information. It was telling, in our view, that no documentation from the College was adduced to support the assertion of Mr Pihama that applications had been received by the College. We find that Mr Pihama failed to undertake the key outcome of the task centred practice. We find there is a breach of the clause 3.12 requirement that a practitioner must take care to inform himself as to the relevant aspects of the client's situation.

Code of Ethics 4.1 – Adherence to Work Contracts

52. Clause 4.1 of the Code of Ethics states that “Members have a responsibility to adhere to the work contracts they have entered into with employing agencies or organisations.”
53. Mr Sherriff for the Acting Convenor summarised the allegations under this clause 4.1 as follows:
 - a. Failing to adhere to DHB employment requirements as to record keeping in respect of Ms Z;
 - b. Failing to adhere to DHB security accountability requirements for Ms Z's original whakapapa records;
 - c. Failing to adhere to the DHB's confidentiality and accountability requirements for the protection of client privacy and confidentiality by retaining, removing, and storing client records, more than 12 months after his employment with the DHB had ended; and
 - d. Failing to adhere to the supervision agreement reached with Mr Y on 28 January 2009 to complete and deliver a formal DHB apology to Ms Z in the form discussed at supervision.
54. The Panel did not receive in evidence the work contract between Mr Pihama and the DHB. However, we do accept that the employment requirements between the parties would include the implied term (if it was not otherwise explicit in the contract), that the social worker as a member of the Association would adhere to the Code of Ethics and the Association's Practice Standards.
55. We have already concluded that Mr Pihama's record keeping of case notes in relation to his involvement with the Z whanau was deficient. We accept, as

did Mr Pihama himself, that this also meant a failure to adhere to the employment requirements Mr Pihama had with the DHB, which is a breach of clause 4.1.

56. In terms of the security accountability requirements of the employer relating to the whakapapa document, we did not receive evidence as to the particular requirements of the DHB as contained in the work contract. Mr Y gave oral testimony as to best practice relating to the storage and protection of documents, stating that there were locked cabinets available for client documents held in paper form, however the evidence was limited to one sentence answer to a question from the Panel, and provided no specifics as to the standard of security required of the DHB practitioners, or the circumstances which would trigger that requirement. That said, Mr Pihama himself acknowledged in answers to Mr Sherriff that the DHB had a policy for locking up important documents, but said that the shift of offices meant that the documents were in boxes at the time. The Panel did not have before us the employment contract, nor any DHB protocols, policies or procedures relating to security. This made it very difficult to reach a definitive conclusion on whether the work contract had been adhered to.
57. We have concluded that Mr Pihama was at fault in losing the whakapapa and birth certificate documents, but we do not consider we have sufficient evidence of the particular employment requirements about security accountability to make a determination that there has been a breach of those requirements.
58. Ms Z has requested that further efforts be made to locate the lost whakapapa document. It was Mr Y's evidence that he did not know of the lost whakapapa document until the complaint was raised by Ms Z in April 2010, and that had he known at the time the document was misplaced, he would have initiated an agency search and made formal contact with the client on behalf of the DHB. Unfortunately, it does not appear that an agency search was conducted once Mr Y found out.
59. Mr Y also said that had he known about the loss at the time he met with Mr Pihama on 28 January 2009 when they discussed the draft apology letter, he would have proposed that the letter include specific reference to the loss of the document and its impacts on the client. However we make the observation

that the draft letter did explicitly refer to “loss of the information”. We query why this did not provoke further inquiry by the supervisor at the time. For Mr Pihama to be consciously competent about his social work practice, a competent supervision environment would have facilitated a place of reflection on all aspects of best practice. This was particularly so given the previous performance concern regarding record keeping which had arisen.

60. The third allegation concerns records held by Mr Pihama other than those relating to the Z whanau. This matter has already been addressed as one of particular concern to us. Mr Pihama initially chose to produce to the Association in response to the two complaints an appendix that included personal names and details of other clients. He also admitted under questioning that he held other client records at his home. The Panel finds that his work contract with the DHB would include an implied, if not explicit, term that the practitioner would comply with the Privacy Act 1993, and we take the view that Mr Pihama’s lack of compliance with basic privacy obligations was a breach of Code of Ethics 4.1.
61. The fourth allegation relates to the form of the apology letter. The meeting on 28 January 2009 between Mr Pihama and his supervisor Mr Y agreed on a course of action for the letter to be sent. Ms Z acknowledges that she received a letter from him, although she disputes its sincerity and in her statement in reply, says that it was a “scrappy piece of paper” that did not look anything like the draft attached to Mr Y’s statement. We did not have the letter that she received produced to us. Ms Z’s evidence was that she was so disgusted that she threw it away. We are again not assisted by the fact that whatever letter Mr Pihama sent, he either did not keep a file copy, or could not produce a copy for us.
62. The question is whether the agreed course of action in supervision was so specific as to preclude amendments being made to the letter. Under the circumstances, it is difficult for the Panel to conclude that it was a requirement of the work contract between the practitioner and the DHB that the letter be sent to Ms Z in the exact form as set out in the draft attached to Mr Y’s statement. It is also difficult to assess whether the letter that was in fact sent could be said to be non-compliant with the draft agreed on at supervision. Both Mr Pihama and Ms Z testify that the letter referred to the lost whakapapa document, and the draft version tabled with Mr Y apologises

for the “loss of the information that you provided earlier Ms [Z]”. The fact that subsequent to the meeting with the supervisor, Mr Pihama may have made changes to the letter to refer specifically to the loss of the whakapapa document is not regarded by the Panel as a failure to adhere to a work contract. A letter of apology was sent, as had been agreed.

Code 6.2 – Best Interests of Client in accordance with Supervision Contract

63. The Acting Convenor alleges on behalf of the complainants that Clause 6.2 of the Code of Ethics has been breached in that Mr Pihama failed to act in the interests of Ms Z and the whanau in failing to process properly (or at all) the enrolment applications for the College for each child and the funding applications for each child in accordance with Mr Pihama’s task focused social work contract.
64. Mr Pihama, through his counsel, submitted that the evidence illustrates that the enrolment and funding application was lodged for Ms Z’s son, but that it was Ms Z who did not wish for that to continue. In relation to her daughter, Ms Z decided to terminate Mr Pihama’s services when she learnt of the loss of the whakapapa and birth certificate documents.
65. Clause 6 of the Code of Ethics concerns supervisory relationships, and clause 6.2 relates specifically to the responsibilities of individual member’s supervisees. There are balancing requirements on the supervisor as set out in clause 6.3, including the need to act promptly and professionally at all times in the best interests of clients and supervisees.
66. The allegation as expressed in the closing submissions for the Association centres on the practitioner’s task contract, not the supervisory contract. We received evidence from Mr Y and Mr Pihama on the nature of the task contract and have already concluded as to the nature of the tasks in this case, and the fact that the key outcomes of that needs assessment and the task centred practice were not completed. However, there was little evidence before us as to the specific nature and content of the supervisory contract. Once again, the lack in evidence of any case notes or of any supervision notes does not assist us.
67. We heard from Mr Y and Mr Pihama that they had a supervision relationship. We have made observations as to where the supervision relationship might

have been improved. The Panel has uncontroverted evidence that Mr Pihama initiated the supervisory meeting on 28 January 2009 with Mr Y to raise the fact that Mr Pihama had not been able to see the application through to its completion for Ms Z's son. We regard that meeting as consistent with good supervisee practice, and the fact that a letter of apology was sent (albeit in a form which is in dispute) is consistent with the agreed action arising from that supervision meeting. Based therefore on the evidence before us of the nature of the supervisory relationship, we do not regard the allegation of breach of the supervision contract under clause 6.2 as made out.

Code of Ethics 7 – Members to act with integrity

68. Mr Pihama is alleged to have failed to act with integrity at all times in his dealings with Ms Z. This is a general clause of the Code of Ethics and we take this to include the standard of social work practice as set out for us in the evidence of Mr O'Brien, and including our earlier observations about whanau ora and kaupapa Maori. Mr O'Brien told us that fundamental to social work practice is that:

“the service user should be at the centre of the practitioner's work and practitioner behavior should give priority at all times to the needs, values and well-being (in the widest sense of that work) of the user. An integral part of this is that practitioners should be aware of and sensitive to the power differentials which operate between themselves and users, both in the sense of formal power and what is often referred to as informal power, arising from status, knowledge and position.”

69. Counsel for Mr Pihama submitted that her client was a man of great mana and integrity. She said integrity was a concept of honesty and truthfulness, demonstrating an internal consistency of actions, values, methods, measures, principles, expectations and outcomes.

70. Clause 7 of the Code is under the heading “Responsibility for Self” and the Panel interprets the phrase “Members act with integrity at all times” as encompassing the full range of social work and whanau ora best practice. Accordingly, we have stood back and considered this allegation based on an assessment of Mr Pihama's acts and omissions in this case as a whole.

71. We have concluded that Mr Pihama did fail in certain areas to meet the requisite standard of best practice and adherence to his work contract, and in particular in relation to the care and protection of the original whakapapa

document, the lack of case notes, the breaches of confidentiality relating to other client information, and failing to take care to keep himself informed on the relevant aspects of Ms Z's situation concerning the College. We note that the key outcomes intended from the task were to seek enrolment and funding for Ms Z's children to attend the College, and unfortunately this did not eventuate. But we do not accept that Mr Pihama was grooming Ms Z or had overstepped the boundaries between professional and personal interests. Nor do we find sufficient evidence on the balance of probabilities that Mr Pihama had breached the supervisory requirements on him in relation to the apology letter.

72. We accept that Clause 7 of the Code explicitly refers to “integrity at all times”, but we take the view that the word integrity connotes an internal motivation, and that errors of judgment or incompetence in relation to all aspects of record keeping, unless deliberate, do not necessarily constitute a lack of integrity. We do not accept that Mr Pihama had any intention or motive to cause Ms Z harm or discomfort or anguish. We are loathe to find that an experienced and dedicated social worker such as Mr Pihama, who is also an acknowledged kaumatua and mentor to other social workers working in whanau ora and kaupapa Maori, is someone who lacks “integrity”. We take into account as relevant to this assessment the fact that Mr Pihama expressed his remorse and regret to Ms Z and her whanau for his mistakes in his original letter, then again in his response to the complaints, and again in his written and kanohi ki te kanohi oral testimony for this hearing. This allegation is not made out.

Outcomes

73. The Panel was asked to deliberate on six separate charges of breaches of the Code of Ethics. Based on the wording of paragraph 42 of the submissions in closing for the Association, we determine as follows:
- a. Clause 3.5 – no breach;
 - b. Clause 3.11 – breach of the requirement to maintain accurate client records, and breach of the requirement to take all reasonable steps to ensure the confidentiality of DHB client records;

- c. Clause 3.12 – breach of the requirement to take care to inform himself on all relevant aspects of Ms Z’s situation;
- d. Clause 4.1 –
 - i. breach relating to employment requirements as to record keeping, and client privacy obligations;
 - ii. no breach as to security accountability requirements (due to the paucity of evidence about those employment requirements);
 - iii. no breach concerning the supervision meeting of 28 January 2009;
- e. Clause 6.2 – no breach;
- f. Clause 7 – no breach.

74. We consider the breaches concerning record keeping and privacy and care of client records, and failure to keep informed, to be sufficiently serious in terms of good social work practice as to warrant a censure of Mr Pihama, pursuant to clause 5.11.18.3 of the Standing Orders. We consider this to be appropriate in order to signal the degree of concern we have at the failure of Mr Pihama in this area, and to reinforce to the community and to clients of social workers that a high standard of record keeping is essential and is to be maintained. We recommend that a formal written reprimand be provided to Mr Pihama from the Association recording that this disciplinary Panel found specific breaches of Mr Pihama’s social work practice and this is to be maintained on his Member’s record.

75. In relation to the client records held by Mr Pihama at his home, in contravention of the Privacy Act and the Code of Ethics, we place a condition on the membership of Mr Pihama that he immediately undertake training relating to confidentiality of records and record keeping within a professional and cultural supervisory relationship, with a written collaborative supervisor and supervisee’s report back to the Association within six months of this decision.

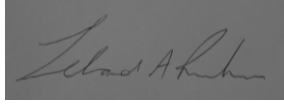
76. We also require Mr Pihama to forthwith return all DHB client records held in his possession to DHB.
77. We also consider it appropriate that there be a gesture of goodwill made to Ms Z by way of a payment of reparation to the complainant for the loss and anguish that these breaches have caused her and her whanau. Pursuant to clause 5.11.18.4.2, we propose a koha be paid by Mr Pihama to Ms Z, through her solicitor in the first instance, of \$500.00.
78. As to costs, the Panel orders Mr Pihama to pay the sum of \$1,500.00 as a contribution to the costs of this proceeding, pursuant to Standing Order 5.11.18.4.3.
79. Pursuant to clause 5.11.18.6 of the Standing Orders, we consider that publication of this decision to be appropriate. However, the version of the decision which identifies the complainants and the DHB is not to be published or distributed beyond those who participated in this proceeding, and the Acting Convenor of the Association. Any published version of this decision shall replace the names of the complainants with non-identifying initials, and shall replace the reference to the DHB with “the Member’s employer” or similar. For the avoidance of doubt, our earlier suppression orders relating to aspects of the evidence remain in force.
80. The Panel is bound by the Standing Orders to provide the member with a reasonable opportunity to comment on proposed outcomes, and as such, Mr Pihama was invited to make written comment to the Chairperson of the Panel within 14 days of the date of issue of a preliminary decision in this form. No comments from the parties were received. Thus, this is the Panel’s final decision on this matter.
81. We thank counsel for their assistance, and we acknowledge Ms Z and her whanau for their role in bringing these issues of importance to the fore. We acknowledge Mr Pihama and his whanau. We trust that this process will continue to move both parties into a space of renewal and growth in accordance with whanau ora.

Ahakoia taumaha te mahi nei, engari kei te puawai hei oranga mo tatou katoa.

No reira, kia kaha kia maia kia manawanui kia mataara,
ma te atua tatou e manaaki i nga wa katoa, whanau ora tonu atu.



Leo Watson



Dr Leland Ruwhiu



Laura Ashton



Louise Elia



Pene Frost