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**The Health and Disability Commissioner**

Te Toihau Hauora, Hauatanga  
Level 10, Tower Centre  
45 Queen Street  
(P.O. Box 1791)  
Auckland 1010

26 April 2013

Attention: **The Health and Disability Commissioner**

Re: **Complaint 12HDCxxxxx** (breaches of the 'Code of Health and Disability Services Consumers' Rights', the 'Code of Ethics' of 'The Medical Association of New Zealand' and legal provisions - by General Practitioner **Dr Dxxxx Xxxxxxx**); **response to your decision dated 24 April 2013**

**Dear Health and Disability Commissioner, dear Madam / dear Sir,**

This letter is in response to your Deputy Health and Disability Commissioner's decision to take no further action on my complaint about professional misconduct, breaches of my consumer rights, principles of the 'Code of Ethics of the New Zealand Medical Profession' and certain legal provisions, which I established Dr Xxxxxxx, general practitioner (GP) at 'Xxxxxxxx Health Centre', has committed.

I request that this letter will be read, the raised issues attended to and dealt with by Commissioner Anthony Hill himself, or another Deputy Commissioner, but not by Ms Theo Baker. Furthermore I insist that your Mental Health Commissioner is consulted on all matters raised in relation my complaint.

Ms Theo Baker based her decision on section 38 (1) of the 'Health and Disability Commissioner Act 1994' (the Act), which gives her as Commissioner certain discretion to make such a decision on a complaint received. She gave explanations as to how and why she decided this way on the matter.

While I respect your Commissioner's rights and responsibilities under the Act, I feel extremely disappointed, yes devastated, upset and highly distressed, that she has chosen to take this course of action. I cannot accept the decision and how it was made, as the response dated 24 April 2013 (which I presume should have been the 23 April 2013, as I received it by ordinary post on that 24 April) does give me the very clear impression that very insufficient and only selective consideration was given to some of all relevant and crucial facts - plus submitted evidence - that I supplied with my complaint.

**I do particularly take issue with the following points:**

1. Ms Theo Baker states that she considers it adequate, that I had the right to address issues with Dr Xxxxxxx and his examination, which delivered the "recommendation" on which Work and Income (WINZ) staff made their decision (on medical grounds) about my health related benefit entitlement, by filing an appeal under section 53A of the Social Security Act 1994 and have matters heard by a Medical Appeal Board. She also wrongly states that I was "successful" in following this appeals route.

2. Ms Baker mentions that she asked Dr Dxxxx Xxxxxxx to specifically respond to the "communication issues" I had raised. It appears that none of the many other serious issues (e.g. breaches of various rights, codes and law) I raised in relation to Dr Xxxxxxx and his conduct was put to him to answer to.

3. While Ms Baker summarily listed some of the main points of issues I had raised about Dr Dxxxx Xxxxxxx and his professional conduct during and after a medical examination (conducted on 17 June 2010 for Work and Income New Zealand (WINZ)), she did not at all address most of these, but one.

4. Her consideration upon which she made the decision to take no further action to investigate - or to take other measures - appears to be solely, or at least primarily, based on the argument that I had the right and ability to raise my issues before a Medical Appeal Board. It appears NO other considerations were given to the large amount of compelling evidence I supplied to your office with my complaint.

5. Ms Theo Baker has clearly also given consideration to statements Dr Dxxxx Xxxxxxx made in a letter dated 22 November 2012. I do though take serious issue with the comments and statements by Dr Xxxxxxx, which are in large part generalisations of his claimed usual conduct and handling of referrals from WINZ. In relation to my case they are absolutely untrue. Dr Xxxxxxx even dares to claim that I basically willingly “chose” to see him for that “interview”, which WINZ required to be conducted as a medical examination under section 44 of the Social Security Act, offering little or no true choice.

Hence Ms Baker has left me in a situation where I can only conclude that totally insufficient considerations were given to indeed very relevant information - and that my complaint has consequently not been properly and thoroughly examined and investigated. The decision by Ms Baker also raises serious questions about fairness, reasonableness and objectivity, which means that in the assessment - and only very limited investigation – principles of natural justice were not followed.

It is my firm view and belief that your staff are bound by natural justice principles in making any determination, as well as they are required to apply a reasonable duty of care, whether it is only for making an initial determination or a final determination on a matter put before you and your office.

#### **Detailed arguments re the issues raised above:**

1. A Medical Appeal Board is a panel of 3 medical and health professionals, appointed by a Medical Appeal’s Coordinator employed by the Ministry of Social Development (the Ministry) to hear appeals put before them on medical grounds only. It is common that at least 2 of the 3 members are MSD trained designated doctors (almost all GPs) working with or for MSD. Appointments are made from an established pool of panel members, who in most cases are designated doctors that have been selected by the Ministry, which employs also a Principal Health Advisor, Principal Disability Advisor, a number of Regional Health Advisors, Regional Disability Advisors and so-called Health and Disability Coordinators, who all work with such mentioned doctors and other health professionals.

All the MSD staff mentioned are involved in finding and selecting designated doctors, but a special role is played by Health and Disability Coordinators (see position description in attached PDF document 5, listed at the end of this letter), who regularly visit general practitioners and other health practitioners. All staff working under the Principal Health Advisor (PHA), who has since 2007 been Dr David Bratt, have been and are being managed, trained, instructed and monitored by that PHA. Dr David Bratt is himself known to be a very biased, using selective “research” and even scientifically unproved statistics. As “Principal Health Advisor” (see a position description in attachment 6 listed at bottom of this letter) he has held numerous presentations for GPs and other health professionals, and he also used training material, which contained bizarre, biased statements. In presentations he gave to general practitioners he usually compares benefit dependence to “*drug dependence*”!

I may in this regard refer you to PDF and PowerPoint documents attached to the email sent with this letter, which are also listed as further evidence documents 8 to 12 at the bottom of this letter! Dr Bratt quite unashamedly exposes his own bias, which MSD and Work and Income appear to not only tolerate, they appear to rather accept and permit Dr Bratt’s position!

While members sitting on a Medical Appeals Board are different medical practitioners - or other health professionals - from the one(s) that acted as designated doctor who initially examined a WINZ referred client/patient under sections 44 and 54B of the Social Security Act, they are in their vast majority also WINZ trained designated doctors (usually GPs). An attached PDF file shows the list of all “designated doctors” used by WINZ, current as on 20 August 2012 (see attachment 2 in the list at the bottom of this letter). All designated doctors have been - and are being regularly informed, trained, instructed and liaised with (or: are

liaising) by WINZ and MSD staff (by the Principal Health Advisor, and also by the Regional Health and Disability Advisors, Health and Disability Coordinators).

According to the Social Security Act 1964 the medical practitioners, psychologists or other health professionals that work for WINZ are supposed to be “independent”. The same is supposed to apply to those sitting on Medical Appeal Boards. The truth is far from that, already clearly due to them being carefully chosen and appointed by WINZ and MSD staff. The fact that they are also trained, monitored and bound to fulfil certain strict expectations that the Ministry has in them, does make them anything but “independent”. I have evidence of this, which was also presented in a case filed at the High Court in Auckland on xx Xxxxxxx 2011.

The Medical Appeal Board (3 GPs as long term WINZ designated doctors) that heard my appeal on only medical grounds, was displaying a clear bias. I had repeatedly insisted to the Medical Appeals Coordinator that due to my particular mental health and addiction illnesses, and disabilities arising from them, I should be heard by a panel that had at least one psychologist or psychiatrist. This was bluntly refused, and MSD insisted on me being heard by their chosen GPs, all having no evident mental health and/or addiction treatment knowledge and experience. I presented well over x00 pages of compelling evidence to make my case, but much of it was simply ignored - or not considered fairly, reasonably and objectively.

That Board did at no time pay any attention to the way Dr Xxxxxxx may have conducted his examination and interview, and it was not interested in his professional competencies or any other matters that I raised with your office. As a matter of fact, such a Medical Appeal Board has no responsibility to address any of the particular issues I raised with your office! I refer you to the attached document ‘*Medical Appeals Board – A resource for board members*’ (see evidence document 7 listed at the bottom), which gives “official” information about the role, appointments, and processes to follow and so forth. On page 19 it is clearly stated what is outside of the area of responsibility for such Medical Appeal Boards.

While the Medical Appeal Board that heard my case adopted a somewhat more moderate, and in part perhaps a slightly “more objective” view on aspects in their report and decision, the members did in the end still stubbornly support and confirm the decision that WINZ made based on the report presented by the apparently even more biased Dr Xxxxxxx. Ignoring very relevant, serious aspects and evidence, I was considered to be able to work part time (over 15 hours a week) within a short time. Presumptions were made about purely hypothetical work that I could perhaps do, while “*working around my drinking*”. This was the result of the new stringent approach to look rather at what a client “can do”, rather than what a client “cannot do”! Consequently WINZ stopped my invalid’s benefit and put me on a sickness benefit.

Due to some illegal processes followed and the natural justice breaching handling of my case by that Board, I was forced to spend many months looking for a lawyer who would be prepared to assist me and file a judicial review with the High Court. This was the only way I could seek legal redress for the wrong decision made. I approached dozens of lawyers, and only one was after desperate convincing on my behalf prepared to take up my case and prepare judicial review proceedings. As she was doing it all under legal aid, which barely covered her costs, it became clear that she could only spend so much time and effort on it.

It is absurd to claim that I “succeeded” taking the appeals route. There is NO further right of appeal under statutory law once a Medical Appeal Board (appointed by MSD staff!) makes a determination. So I did not succeed with an appeal at all, and I was forced to go and make arduous efforts and suffer endless stress, impacting very badly on my already poor health, to finally at least come to a settlement with MSD (after 10 months of very difficult negotiations). I have attached to this letter a PDF file of relevance, to show the valid legal issues that arose through Dr Xxxxxxx’s flawed, unprofessional, biased medical assessment, and the sought legal remedies of some core claims made against MSD and the Medical Appeal Board that heard my appeal. It is a copy of the original ‘Statement of Claim’, filed at the Auckland High Court on xx Xxxxxxx 2011, which is PDF attachment 1 (as listed at the end of this letter). The final settlement was confirmed by a formal, but undated letter, received from MSD on xx Xxxx 2012, which is PDF attachment 2 (as listed at the end of this letter).

I should instead have been given time and peace to focus on my health and needed treatment, but that was definitely NOT possible for all that time. So if this is a “success”, then this is a totally unfounded, ill-informed and unreasonable view by Ms Theo Baker.

My complaint to your office was about Dr Xxxxxxx breaching a number of rights under the 'Code of Health and Disability Services Consumer's Rights', but this has been considered to be unnecessary to address by Ms Baker, as I supposedly could have had these issues resolved by a Medical Appeal Board. It is apparent that Ms Baker does not even understand the realities, the relevant law and the intended role of such a Board, and what can be presented and resolved in applied processes. Clients of WINZ are exposed to bias and unfair treatment by medical practitioners acting as designated doctors (mostly GPs) at all levels.

So the stated considerations by Ms Baker are most certainly not accepted by me, and it is unreasonable, unfair and not based on objective analysis of the facts, what she has decided.

2. I appreciate that a letter from Dr Dxxxx Xxxxxxx (dated 22 December 2012), the assessor and examining medical practitioner in my case (on 17 June 2010), in response to "communication issues", was attached to the response I received from Ms Theo Baker.

From her response to me, and Dr Xxxxxxx's letter, it becomes clear that Ms Baker only confronted Dr Xxxxxxx with one point of my complaints, namely that of a breach of Right 5 – 'Right to Effective Communication', to which Dr Xxxxxxx gave his comments. These were only made in a generalised form, by him claiming he does usually follow a reasonable standard format and manner in communicating with clients/patients referred to him by WINZ staff. He defends himself by claiming he always acts in a "patient-centred" and "careful" manner.

Dr Xxxxxxx states that he does not have any clear recollection of the examination, interview and communications with me, as it happened nearly two and a half years before. This may well be the case, but your office was presented with abundant evidence showing what he recorded on me and my health conditions, and also what report and recommendations he sent to WINZ. I gave a detailed description of the conversation and examination by Dr Xxxxxxx, which was based on truthful notes I had made right after the interview. Further to that I did in confidence discuss Dr Xxxxxxx's examination and him personally with my own GP, who confirmed to me that Dr Xxxxxxx was a "difficult" person to deal with, as staff and a colleague of his had experienced this in a very serious manner, where both practices were involved. My own GP informed me that he and others knew, that Dr Xxxxxxx was doing a large amount of examinations and assessments for WINZ, and he often also requested "host doctor reports".

In his letter Dr Xxxxxxx further claims that all these issues were clearly covered in his report on me, which I presume is the one that he sent to Work and Income. That though is absurd, as I pointed out in detail in my complaint. The report is full of flaws, mistakes, partly does not answer questions, in other parts gives bizarre, incorrect, clearly biased answers, and it does not even meet the basic requirements set in the Guide for Designated Doctors, which WINZ supplies to every doctor they commission to examine their clients on their health. Every person who looked at it, including my lawyer, instantly commented that the report was clearly flawed, biased and prepared in a rushed, unprofessional, anything but considerate manner.

I presented a range of medical certificates, completed forms and other medical reports and letters from my GP and other healthcare specialists, and it is more than clear, that Dr Xxxxxxx's report and recommendation is totally out of line and without basis. One document ('Disability Certificate', see attachment 9 to email 3, sent to you at 02:30 am on 01 July 2012) had been completed by my own GP on that same day as Dr Xxxxxxx's examination and assessment on me, and that document was also provided as evidence, showing major differences between what Dr Xxxxxxx "diagnosed" and recorded, and what my own doctor found and stated. In my complaint to your office I stated and explained all this in detail.

Ms Baker appears to simply have taken Dr Xxxxxxx's words in his letter for likely facts, has apparently not even examined the ample evidence that I supplied, and thus she has failed abysmally in not establishing that Dr Xxxxxxx has displayed a clear bias and a true lack of understanding or appreciation of my health issues and conditions. It is evident that Dr Xxxxxxx was the wrong kind of doctor to perform the examination and assessment on me.

There was apparently NO attempt made to challenge Dr Xxxxxxx on his lack of expertise, qualifications and competency in mental health and addiction diagnosis, treatment and examination. That in part explains how his manual and typed reports and recommendations to WINZ are completely unfounded and bizarre. As I have learned over the last three years, it is

though common practice, that WINZ send clients to their preferred designated doctors (mostly only GPs), to get the recommendations they want, so they can shift sick and disabled onto a lower paid benefits, and put pressure on them to rather try and find any part or full time work they are supposed to be able to do, despite of their incapacity. Cost saving is the true agenda.

As my own GP and other medical professionals have confided to me, Dr Xxxxxxx has been, and apparently still is, doing a high amount of “examinations” and “assessments” for Work and Income on a regular basis, which clearly is also a sought after, secure revenue stream for him. This will now be even more important to him, given his loss of revenue from XxxCare funding, which was repeatedly reported on in the NZ Doctor magazine in mid to late 2012.

It is absolutely wrong and untrue, that I – or any other WINZ client for that sake, have any kind of real free choice to see Dr Xxxxxxx or any other medical practitioner or specialist for examinations or “interviews” on health conditions, which impact on ability to work or study. Dr Xxxxxxx’s comments that I came to an “interview” at the “request” of WINZ was clear “acceptance” that I was “willing to do this”, is absurd. According to the legal provisions under sections 44 and 54B of the Social Security Act clients can be forced to be medically examined by a medical practitioner or psychologist. Non compliance would mean having one’s benefit cut or stopped! As MSD and WINZ have virtually NO psychologists on their books as “designated doctors”, and very few psychiatrists, they do in virtually all cases send their clients on sickness or invalid’s benefit, or applicants for such benefits, to their preferred and managed designated doctor GPs. I already stated under point 1 above, that they have all been “trained” by PHA Dr David Bratt, and they are also “advised” and “consulted” on a regular basis, what WINZ expects of them. This certainly is not limited to basic standards for filling in medical certificates and the likes. Just looking at presentations by Dr David Bratt (and I have yet more information!) shows, that there is at least a strong attempt made by him, and other MSD and WINZ staff, to unduly influence the doctors they work with (see again attachments 8 – 12).

I do also know a person I have been acquainted with, who was at a later stage in 2011 also TOLD by a WINZ case manager to see Dr Dxxxx Xxxxxxx for an assessment, when having to apply for the invalid’s benefit. That person was initially not even given any choice at all, about whom to see. Only because that person had been advised by me, that he would according to the statute have a right to try and “agree” (and thus try to make his own suggestion for a medical professional) with WINZ - on who to be examined and assessed by, did the person raise issues with the case manager. Eventually he was allowed to see another designated GP.

It is very common that WINZ staff members (usually case managers in cooperation with Regional Health Advisors) do not offer their clients any choice about designated doctors to re-examine and re-assess them. At best they present clients a small short list of their preferred designated doctors, which also happened in my case. I was not given any advice on the law, and that I could propose another doctor than those on the list presented. So I was forced to make an uninformed, very limited “choice” from that list, not knowing what really goes on in such cases. Such a restricted “choice” and “agreement” under the threat of having the benefit stopped for the case of non-compliance, is actually illegal and unfair practice by Work and Income staff! I only learned this later. Nothing re this has changed, according to anecdotal information that I received from others affected and advocates working with beneficiaries. WINZ only settled with me on issues I had raised by way of legal proceedings, xx xxx xx xxxxxxxx (***crossed out on legal advice***), so they could continue with applying their agenda and processes to others.

Dr Xxxxxxx will as a well known, long term, experienced and surely informed designated doctor for WINZ know full well what the applied processes and procedures in use are, and he is certainly misleading your staff with the comments in his letter to your office.

Last not least, it is also common practice by WINZ and their staff, that they exclusively rely on information in designated doctor reports and recommendations, and largely ignore any other, earlier medical reports and documents presented to them, once a current designated doctor report is received. Whatever a designated doctor diagnoses, records, reports and recommends is in almost all cases accepted by the Health or Disability Advisors working for MSD and WINZ, who then make corresponding recommendations to case managers, who simply adopt these as they are presented. Only “officially” the case manager makes decisions.

This means that the role and service delivered by designated doctors is a highly sensitive and important one. Hence a very high standard must be expected, and detailed scrutiny,

consideration of all medical aspects, earlier reports and what else is relevant, should be applied by such doctors as Dr Xxxxxxx. Making wrong diagnosis and recommendations can lead to disastrous consequences; and like in my case push some wrongly assessed WINZ clients close to self harm or suicide! It appears that your staff members are not familiar with the designated doctor and related processes that are followed by Work and Income, and hence Ms Baker has failed to take these matters as seriously as they should be taken. We are dealing with matters involving at times very critical, delicate health issues, and in some cases possibly life or death consequences. Harm should be avoided at all times by any doctor.

With my compelling evidence I also supplied to you a copy of a document dealing with an earlier complaint a WINZ client had made about Dr Dxxxx Xxxxxxx (see evidence document 11 that was attached as PDF to email number 5 that was sent to you at 12:43 h on 02 July 2012). It is an internal memo from Nxxxxx Hxxxxx, Service Development Advisor for MSD, dated 18.06.2010. It should most certainly have prompted your staff to examine my complaint with all raised issues very seriously and thoroughly, which regrettably has not been done.

3. In summary on this point, of all my rights under the 'Code of Health and Disability Services Consumer's Rights' only questions re Right 5 appear to have been raised with Dr Xxxxxxx. The other rights 1, 3, 4 and 6, that were also breached, and which I raised in my original complaint, have by all indications not at all been seriously discussed with him.

Re the 'Code of Ethics for the New Zealand Medical Profession' and various principles I listed for having been breached by Dr Xxxxxxx, nothing appears to have been done. Also have there been no apparent efforts made to clarify issues with Dr Xxxxxxx apparently having breached section 8 of the 'Health Practitioners Competence Assurance Act 2003': "*Health practitioners must not practise outside scope of practice*". It is beyond me how such a serious matter can be left unaddressed by your office! This is a matter that must also interest the Medical Council.

Re the 'Health Information Privacy Code 1994', rules 2, 3 and 8 on the sourcing, collection and ensuring the accuracy of health information, nothing seems to have been done either, to examine and assess whether Dr Xxxxxxx did or did not comply with these.

Regarding the 'Health (Retention of Health Information) Regulations 1996', particularly sections 5 and 6, nothing has been followed up with Dr Xxxxxxx! He clearly has not kept documents that according to those regulations should have been kept by him. This was made very clear in my complaint and even in response by Dr Xxxxxxx to a Privacy Act request I made to him (by email) on 27 May 2012. You can find proof of this in his email response to me dated 11 June 2012 (11:28 am), which was also provided as evidence document 2, attached to email 1, sent to your office at 10:34 pm on 30 June 2012

All the issues I raised in relation to standards or requirements set by the Code of Ethics, and the various other legal provisions, are clearly also relevant to assess and determine in how far any 'Rights' under your office's own Code were upheld or not by Dr Dxxxx Xxxxxxx.

I am bitterly disappointed that no assessment was done in this regards at all.

4. With my complaint I provided substantial and well documented evidence, to support my complaint. I admit that some of it may only be of secondary or little direct relevance, but one should fairly and reasonably expect that at least the wide range of provided medical records and documents, from my own doctor, Dr Xxxxx Txxxxx, as well as from XXXX counsellors, a XXXX psychiatrist, from specialists at St Luke's Community Mental Health Centre, from XxxXXXX psychologist Xxx Lxxxx, from Xxxxx House, and so forth should have been read by your staff. This appears to not have happened. Again I attach the list of said evidence, detailing what document was attached to which particular email sent, and dated 02 July 2012 to the email carrying this letter. It is listed as "3" under the attachments at the end of this letter.

Also should it have been of real relevance, what happened as a consequence of Dr Xxxxxxx's wrong assessment and recommendations, e.g. how Work and Income harassed me with letters demanding I attend Workbride and other interviews, prepare for work and study and the likes. It would have been even more important to view the documents showing how my requests for a psychologist or psychiatrist to be member of the Medical Appeal Board hearing my appeal against the wrong decision by WINZ, which was based on false, flawed information

from Dr Xxxxxxx, was completely ignored and not followed by MSD. This clearly shows the complete disregard that MSD and WINZ have towards clients seeking justice and fairness.

Other information, like reports from XxxXXXX (early 2011 and 2012) clearly show how the whole processes involving the designated doctor assessment, the Medical Appeal Board hearing, and the constant denial of my rights, impacted extremely badly on my health. The mentioned developments and my desperate attempts to seek a judicial review impacted severely on my ability to focus on recovery. Rather than being forced to fight for my rights as a wrongfully treated WINZ client, also wrongly assessed by the biased designated doctor Dxxxx Xxxxxxx, I should have been treated with fairness, reasonableness, objectivity and respect.

The Medical Appeal Board's decision and recommendation in my case should have been looked at, to see how biased that panel was, at the same time also lacking the qualifications, expertise and competence to properly hear an appeal from a person with my conditions.

Evidence I supplied clearly shows how I was eventually forced to take matters to the High Court, which caused enormous stress and impacted severely on my health, so that I am still suffering from the consequences of this. This happened to me already struggling with illness.

As it was my sincere expectation that your office would have the skills, the understanding, appreciation, the means and abilities of your staff, to fairly, reasonably and objectively examine and assess a complaint about Dr Dxxxx Xxxxxxx and his clearly proved wrong conduct, I put faith and trust into a fair and reasonable process to be followed.

The decision that your staff have presented to me resembles a slap in the face to me, and it is more than extremely disappointing, that apparently only very selective, low level and limited efforts were made to examine and address the number of issues I raised. I was stunned when my own GP, Dr Xxxxx Txxxxxx of the Xxxxxxxx Bay Medical Centre, recently told me (upon my questions), that he was never contacted by anyone from your office, to perhaps get some information on my situation, my health issues and about Dr Xxxxxxx's involvement from him.

I already made it absolutely clear under point 1 in this letter, that in no way could the Medical Appeal Board that was only tasked with considering my appeal on medical grounds, have any authority, let alone ability and means, to deal with the issues that I raised with your office in regards to Dr Xxxxxxx, his appalling, biased, in part unprofessional and illegal conduct.

Claiming that my right and ability to make an appeal to a Medical Appeal Board on medical grounds is a fair reason to NOT investigate - or otherwise address issues I raised with my complaint to your office - is actually untrue and not acceptable. Ms Baker has therefore made a decision based on totally irrelevant information and facts. This represents a breach of natural justice, and I must appeal to you to remedy this and review the decision made in this matter.

5. Ms Baker appears to have accepted Dr Xxxxxxx's statements in his letter from 22 Nov. 2012 to your office rather unchallenged. She merely states that his statements and comments are "contrary" to the ones I presented. She appears to have taken his word for him claiming his interviewing of clients/patients "are all patient-centred", that he is "very careful" to approach all cases in a "standardised" and "non-judgmental" manner.

She writes: "Thus, it is clear that his views about his communication style during the consultation are contrary to yours".

This is unacceptable to me, as the very reports that Dr Xxxxxxx completed on me show a total disregard to the presented medical diagnosis, assessment of work capacity and various treatment related, or other aspects, that were stated in records by my own doctor and other medical professionals or "specialists"! They clearly show that Dr Xxxxxxx failed to act fairly, responsibly, respectfully and professionally. He did prepare reports that were not based on the available objective information and facts presented to him. If unsure, he should have sought further information, but he did not bother to do this, displaying a high degree of bias or neglect.

A degree of bias certainly appears to be evident, likely in combination with a lack of understanding and appreciation of what my true medical conditions and work capacity were.

As this is all clearly well documented, it is not fair and reasonable for Ms Baker to simply base her considerations so substantially on that letter from Dr Xxxxxxx, for making the decision she made. Ignoring highly relevant information and documents of evidence is irresponsible and in conflict with the responsibilities she has as Deputy Health and Disability Commissioner.

I presume though that she has based her decision on what other staff working under her have presented to her as their "assessment", so she may simply have relied on this questionable advice and decided to sign a letter that announces and tries to justify the decision made.

As for the claims by Dr Xxxxxxx, that I willingly agreed to see him upon a request by WINZ, I have already explained under point 2, that there is little voluntary and fair agreement possible for any WINZ client facing a review and a mandatory examination (see sections 44 (1) and 54B (3) of the Social Security Act. The Chief Executive and her/his staff can "require" sickness and invalid's beneficiaries to be examined, this isn't just a kind "request" we are talking about.

Section 44 (1) of that Social Security Act 1964 states the following:

*"The chief executive may require an applicant for an invalid's benefit, or a person in receipt of an invalid's benefit, to submit himself or herself for examination by a medical practitioner or a psychologist. The medical practitioner or psychologist must be agreed for the purpose between the applicant or beneficiary and the chief executive, or, failing agreement, must be nominated by the chief executive."*

And section 54B of the same Act states this:

*"The chief executive may at any time require an applicant for a sickness benefit or a sickness beneficiary to submit himself or herself for examination by a medical practitioner or psychologist. The medical practitioner or psychologist must be agreed for the purpose between the applicant or beneficiary and the chief executive, or, failing agreement, must be nominated by the chief executive."*

It is clear that WINZ will ultimately have the upper hand to appoint and assign the kind of designated doctors they have chosen to conduct such examinations. Client input will regularly be rejected, and so medical practitioners like Dr Xxxxxxx will be the ones offering the often biased, not independent assessments and recommendations that MSD and WINZ want.

Non-compliance with WINZ will mean that WINZ case managers and their advisors will argue that they have insufficient information to renew or grant a sickness or invalid's benefit, which would put enormous financial pressure on any affected person. Clients face pressure to accept the processes presented to them, or to lose their required, basic benefit income.

As I am now well informed and could offer you a huge amount of further compelling evidence, how MSD and WINZ work when assessing clients for their health conditions and work capacity, I can assure you that any talk about "independence" of doctors like Dr Xxxxxxx, and informed "choice" and willing "agreement" on any assessor by clients affected is a distortion of the truth. MSD have done all to keep information withheld, and it was only thanks to my lawyer that I obtained highly sensitive, revealing information, what has and is going on behind the scenes. In view of this, the letter by Dr Xxxxxxx, dated 22 Nov. 2012, must be seen as a desperate attempt to avoid accountability and to cover himself from undesired consequences!

### **Final comments, conclusions and expectations:**

Given that the stated (wrong) reasons for not taking further action on resolving my complaint existed at least since the receipt of the letter from Dr Xxxxxxx (dated 22 Nov. 12) by your office on 27 November 2012, I must ask in all sincerity, what was otherwise done with my complaint over the last 5 months?

If his response, and the then already known fact, that I had taken an appeal to a Medical Appeal Board in October 2010, were the supposedly major relevant matters to consider, then I am left under the impression that my complaint seems to have been lying unattended in your offices for most of that time. I see little evidence that any of my submitted, relevant evidence documents have been looked at.

This is not a good look for the Office of the Health and Disability Commissioner.



The decision to take no further action will also serve to facilitate the continuation of illegal processes by doctors like Dr Dxxxx Xxxxxxx and by Work and Income staff, who have over recent years already thrown thousands off the invalid's benefit, under the draconian 'Future Focus' policies introduced in 2010. The new welfare reforms to be implemented from July this year will escalate this appalling process, and I expect that the result will be the first kinds of self harm and suicides by wrongly diagnosed and assessed WINZ clients, particularly those with mental health conditions and issues, who will be denied fair treatment and respect even more frequently.

Appeals to Medical Appeal Boards, with members that are also MSD chosen and appointed, and who are also anything but truly "independent", are the only measure any WINZ client can take after having been given an unsatisfactory diagnosis and recommendation by practitioners like designated doctor Dxxxx Xxxxxxx. I was the first and only person who ever managed to file for judicial review in such a case. The lack of access to justice, also due to new limitations to obtain legal aid, and the total absence of any further appeals provisions after Medical Appeal Board hearings, makes it impossible for WINZ clients to get fair, just and independent treatment under the present system.

The Minister for Social Development has already announced to introduce work capability assessments along the lines they are done by ATOS Origin Healthcare for the Department of Work and Pensions in the UK. Recently published data reported that over 1,100 affected sick and disabled in the UK either died early while not coping with wrong assessments and higher work expectations, or simply committed suicide. It is extremely disconcerting that senior staff members of your office, like Ms Baker, do take such a dismissive position on questionable conduct by medical assessors like Dr Xxxxxxx.

I must urge you to conduct a thorough, fair, reasonable and objective re-assessment of my whole complaint, and to apply principles of natural justice in conducting a real, proper investigation in the matters raised by me with your office.

If this will not be done, then I will need to examine, whether it will be possible and advisable to seek a judicial review of the decision made.

I trust that you will look honestly and seriously at the concerns, objections and disapproval I have expressed in this letter, and I will look forward to your response in due course.

Yours thankfully and sincerely

Xxxxxxx Xxxxxxx

P.S.:

Further to the above I seek full disclosure of any previous or present contacts (personal, professional or other) any existing or previous staff member working at and for the 'Office of the Health and Disability Commissioner' has had with Dr Dxxxx Xxxxxxx, general practitioner, and also previous xxxx xxxx xxxxxxxx at Auckland University's Medical School. This may also be treated as a request under the Official Information Act 1982.

**Attachments to email sent with this letter:**

1. PDF file with 'Statement of Claim', for Application for Review, from xx Xxxxxxx 2011, filed with the High Court at Auckland, xx Xxxxxxx 2011; stating the various legal issues and implications in question – also of relevance to certain issues in this complaint matter (see Dr Xxxxxxx);
2. PDF file with "Settlement" letter and apology from the Deputy Chief Executive Debbie Power, Ministry of Social Development, which is undated, but was received on xx Xxxx 2012 (about 40 days after settlement was agreed to by me, and only received after my lawyer repeatedly "reminded" MSD of their commitment and obligation to present such a letter!);
3. PDF file with the list of submissions and evidence documents that I provided to your office in this matter of complaint C12HDCxxxxx, dated 02 July 2012; which contain relevant evidence;

4. PDF file with the '*Designated Doctor List*' for such designated doctors and their qualifications, that MSD and Work and Income use as their "pool" of chosen assessors, 20 August 2012, it shows that they are almost exclusively general practitioners, and that there is NO psychologist available; all these have been, and get trained and instructed on an ongoing basis;
5. PDF file with position description for Health and Disability Coordinator, MSD, obtained by way of O.I.A. request, undated, likely from 2007, outlining also how such staff work closely with medical practitioners, by communicating the expectations and "services" by MSD and WINZ;
6. PDF file with position description for Principal Health Advisor, MSD, obtained through O.I.A. request, undated, likely from 2007 (yet still valid), outlining how this senior Advisor manages, mentors, instructs, trains, liaises and works with Regional Health or Disability Advisors, and to some degree also with designated doctors, GPs and other health professionals in general;
7. PDF file with '*Medical Appeals Board – A resource for board members*', giving "official" information about the role, appointments, processes to follow and so forth, obtained through my lawyer in early 2012; it makes clear, that MSD choose, train and appoint the members; on page 19 it is written that only medical and work capacity aspects are considered by the MAB;
8. PDF file with article in NZ Doctor on Dr David Bratt, PHA for MSD and Work and Income, titled "*Harm lurks for benefit addicts*", and quoting his comparisons between benefit dependence and drug dependence (!), fr. 01 August 2012;
9. PDF file with article in NZ Doctor, "*Questioning the direction of MSD policy*", raising valid criticism about Dr Bratt and his biased position, by Tim Walker Nelson, from 29 August 2012;
10. PDF file with GP presentation by Dr Bratt, 2012, called '*Medical Certificates are Clinical Instruments Too!*', in which he compares benefit receipt with drug dependence (see pages 3, 16 and 33), and also uses very selectively chosen statistics and presumed "research" findings;
11. PDF file with GP presentation by Dr Bratt, 2010, called '*Ready, Steady, Crook, Are we killing our patients with kindness?*', in which Dr Bratt also compares benefit dependence to drug addiction (see pages 13, 20, 21 and 35), and again uses very selectively chosen statistics and supposed "research" findings, mostly coming from one known school of thought in the UK;
12. A PowerPoint presentation by Dr Bratt, titled '*Pressure / No Pressure, Strategies for Pushy Patients*', see sheet/page 27 for his usual, biased comparison of benefit dependence to drug dependence!;
13. PDF file containing a scan copy of the signed original of this letter, dated 26 April 2013.