Neuromuscular Therapist, Mr D

A Report by the

Deputy Health and Disability Commissioner

(Case 08HDC07644)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Overview

On 2 June 2007, Ms C consulted Mr D, a qualified neuromuscular therapist, because she had a stiff and painful neck and back.

Ms C consulted Mr D the following day for further therapy. During this appointment, Mr D massaged Ms C's breast area.

This report considers Mr D's responsibility to obtain fully informed consent when providing therapy, and the rationale for the treatment he provided.

Complaint and investigation

On 21 February 2008 the Health and Disability Commissioner (HDC) was made aware of a complaint about the services provided by Mr D. The Deputy Commissioner commenced an investigation into this complaint on 13 May 2008. The following issue was identified for investigation:

The appropriateness of the care and adequacy of the information provided to Ms C by Mr D in 2007.

The investigation was delegated to Deputy Commissioner Tania Thomas. Information was obtained from:

Ms C	Consumer
Mr D	Provider

Independent expert advice was obtained from massage therapist Pip Charlton (see Appendix).

Information gathered during investigation

Background
In January 2007, Ms C, then aged 22, consulted Mr D because of pain and stiffness in her neck and left shoulder area. Mr D treated Ms C on two separate occasions for this pain. He assessed Ms C as having a decreased range of motion that required postural correction, and treated her with massage techniques.

2–4 June 2007
On 2 June 2007, Ms C woke with a very painful and stiff neck and back. She decided to book a massage with Mr D, and arranged an appointment for 11am on 3 June 2007.

On 3 June, Ms C attended the appointment with Mr D. Her husband was also present.

Mr D documented that Ms C's pain started in her left upper trapezius muscle and neck area, spreading into her right side. His records state: "Began [left] upper [trapezius muscle] and left neck [pain] now going to [right] side also." Mr D explained that he did not document any further information about Ms C's presenting problem because the only information she gave him was that she had woken up with a painful neck.

On assessment, Mr D noted that Ms C had pain on "light pressure or slow gentle [movement]" but did not document any further assessment. His treatment included "ice and stretches and heat". He recommended that Ms C continue with "self care strategies", with the plan to see her again the following day. He also recommended that she "[r]elax [her] nervous system and whole body".

Ms C said that she believed that the treatment provided during this session was appropriate for her problem.

Mr D documented in Ms C's clinical records that her second appointment was the following day, 4 June 2007, at 11am. Although Ms C does not recall attending this appointment, she agrees that it is very possible that it occurred.

In the clinical records for the appointment, Mr D documented that Ms C felt a "bit better" following treatment given the previous day, but advised that the pain was sharp over her left scapula and that she had a "really bad constant [pain]" in her cervical spine. He noted that her cervical range of motion had improved.

Mr D noted that Ms C had pain with "lightest pressure". Treatment consisted of myofascial release[1] and neuromuscular techniques to her shoulder and neck muscles. Mr D also documented that he performed massage of her chest area. At the completion of the treatment, he recommended that Ms C continue with her stretches and planned to see her again in another two days' time.

Mr D advised that at 2.45pm Ms C telephoned and said that she was "really sore" and requested that she see him again that day. Mr D agreed to see her at 5pm.

Mr D noted that Ms C had more movement and had a more erect posture than earlier that day. He advised that he carried out similar treatment to that performed during the previous session. This included myofascial release of the neck and shoulder muscles. He also performed "massage from abdominals [through] chest". Mr D documented that his plan was to "relax muscles in erect posture" and to see Ms C again in another two days' time.

[1] Myofascial release is a deep tissue massage technique that aims to mobilise restricted fascia/connective tissue structures that surround the muscle.

Mr D advised that, because of Ms C's acute pain in the muscles of her back, he decided to treat the anterior muscle groups (the abdominal and chest areas). He explained:

> "The rationale for this was to help lengthen as much as possible all the anterior torso soft tissue structure to naturally ease tension on the posterior ones while minimizing the amount of direct work on the posterior aspects, because of extreme sensitivity and PAIN experienced there with the very lightest of touch."

Mr D subsequently added that, although he did not document it, he also noted that Ms C had a very forward flexed posture. Therefore, he considered that treatment of the abdominal and chest area to "lengthen those anterior structures that were pulling her torso into a forward flexed position" was justified.

Ms C advised that she found this treatment very uncomfortable. She stated:

> "[Mr D] had me lying on my back with my arms above my head and my body arched on the Physio/Chiropractic table, with a towel longitudinally over me covering my neck to my toes. I was wearing only my underwear and socks underneath. He then said he was going to work on some stretches on my neck, and he asked if it was ok to lower the towel, I responded 'Yes' assuming that he was only going to lower it to my collar bone."

Ms C explained that Mr D then lowered the towel to her waist, leaving her breasts completely exposed. This action took Ms C "by surprise".

Mr D then used strokes up the side of her body, from her waist to her shoulder, repeating this up the centre of her chest. Ms C explained that this felt "awkward". Mr D then began "cupping and massaging" her breasts, and she found this very concerning. She stated:

> "He started massaging with his palm from my abdomen up to my left breast, and began using his fingers and palm to massage up to my neck. … I was not given any warning or was not asked permission to massage my breasts. After this I felt extremely uncomfortable."

When Ms C asked Mr D what he was doing, he told her that "it was good to stretch the muscles and help the fascia". Ms C feels that Mr D "crossed the trust barrier during the treatment he provided".

Mr D agrees that he did perform these massage techniques on Ms C's abdomen and chest, "very much as [Ms C] described". However, he explained that the treatment involved holding the breast to the side while he massaged around the breast. He stated that he never massaged the breast directly.

Mr D advised that he explained the rationale for this to Ms C prior to commencing treatment. He also ensured that she was covered with a towel throughout the massage,

and asked permission to move the towel when this involved exposing her chest area. Mr D said:

> "I really wanted to make a difference for [Ms C] by giving her relief from her pain, and because of the very high sensitivity to the lightest pressure (PAIN) that she had in her upper trunk posterior muscles, I asked permission to work anteriorly, explaining the rationale to [Ms C]."

However, Mr D has also acknowledged that his communication was "extremely inadequate to say the least". Mr D subsequently explained that this statement was meant as an acknowledgement that Ms C had not clearly understood his intention despite providing her with what he thought was a thorough explanation.

Mr D advised that it was his understanding that Ms C consented to the treatment he provided. He stated:

> "I understood she understood my description of the work and the reasons, and that she had given permission, although only verbally, for the work in the manner described."

Complaint and Mr D's response
Following this appointment, Ms C made a complaint directly to Mr D in relation to her concerns about the treatment he provided. On 8 June 2007, in response to her complaint, Mr D emailed Ms C and apologised for not adequately explaining his intended treatment. He also agreed that the treatment was unnecessary. He stated:

> "I agree … that the work in question that required some additional exposure, and for the duration of the procedure, was <u>not necessary</u>!"

In subsequent emails to Ms C, Mr D further expressed his feelings about the impact of her complaint on him. He said that as a result of her complaint, he had been "crushed, in spirit and physically". He told Ms C that he had stopped performing this type of massage technique. Mr D also expressed his understanding of the impact the incident on 4 June 2007 may have had on Ms C. He suggested she may have felt sexually "violated" and described experiences with sexual abuse within his own family.

I have viewed all the emails described above.

New Zealand College of Massage
On 11 June 2007, Ms C complained to the New Zealand College of Massage.

Mr D subsequently met with the Director of the New Zealand College of Massage on 21 June, then again with the Director and the Academic Manager on 17 August. During these meetings, Mr D was advised about the appropriateness of the techniques he used. He was also advised that if he was going to massage the breast area, he needed to first provide a clear explanation and obtain written consent.

Following these meetings, the Director wrote an educational letter to Mr D (dated 21 August 2007), highlighting the importance of informed consent, adequate draping, and boundaries between therapists and consumers. The Director commented on Mr D's communication with Ms C during the complaints process. She stated:

> "… [I]t is not appropriate to share your own story with a client … The five pages you write to her are predominately about the effects that the process has had on you, as well as sharing information from your family, which crosses boundaries …"

Response to provisional opinion

In relation to Ms Charlton's criticisms that he did not adequately assess Ms C when she presented in June 2006, Mr D explained that he did not document any client history when he saw Ms C in June because she did not give him any history of an injury. The only information Ms C gave him was that she had woken up with a sore neck.

In relation to the way he documents his patient records, Mr D explained that he documents his "actions" rather than "assessment" under 'A'. Mr D considered that Ms Charlton's criticism about his records is based on her interpretation of his use of 'A' and is therefore incorrect because his assessment findings are actually recorded under 'S' (subjective). He goes on to quote what he had documented under 'S', such as on 4 June where he documented: "Feel a bit better, but in saying that really sharp [pain] [left scapula]…"

Mr D accepts that his documentation could be more legible and complete. However, he disputes Ms Charlton's advice that the exposure of Ms C's breasts and poor draping techniques was "inexcusable" and that he had no rationale for treating this area anyway. Mr D considers that his assessment that Ms C was experiencing severe pain around her shoulder area was sufficient rationale for treating her chest and breast area. Mr D explained that while he would generally choose to perform neuromuscular techniques such as digital pressure, which would be done through draping, in this situation he found that Ms C was too sore. He therefore had to use longitudinal gliding and stroking techniques. Mr D explained that this could not be done through draping.

Mr D reiterated his belief that he did explain his intended treatment and obtained permission to lower the towel further than the level of Ms C's collar bone. Mr D believes that he made it clear to Ms C what he intended to do and why. Mr D also advised that he performed the exact same techniques involving massage of the anterior chest and breast area on two consecutive sessions. Therefore, Mr D believes that Ms C knew exactly what to expect.

In relation to his previous statement that his communication was "extremely inadequate to say the least", Mr D explained that this was an acknowledgement that Ms C did not feel that she received adequate information. Mr D reiterated his belief that he clearly explained his treatment to Ms C.

Mr D commented that it may be that Ms C experienced a phenomenon they had been told about during his training where a patient may feel comfortable at the time, but on reflection feels uncomfortable.

In relation to his previous statement that the exposure of Ms C's breasts and the duration of the procedure were not necessary, Mr D explained that what he meant was that he could have chosen not to carry out the treatment. However, Mr D advised that "just because [a particular treatment is] not necessary is not a reason to not engage in those techniques …" He considers that due to the pain Ms C was experiencing with light touching of her back and shoulder area, it was appropriate to treat her chest area, and this was better than not treating her at all.

In relation to the length of his treatment, Mr D explained that he did not treat Ms C's neck for an hour and a half as suggested. He explained that some of this time was spent discussing the problem and treatment with her.

Mr D accepts that it was inappropriate for him to treat Ms C twice in one day. He explained that he was under pressure when she called him and asked for the second treatment, but felt that it was appropriate for him to assess her and give her some "very light treatment to relax her nervous system".

Mr D agrees that it was inappropriate for him to discuss his own experiences and feelings in relation to Ms C's complaint. He explained that the reason he did this was to acknowledge Ms C's feelings.

In relation to the recommendation that he consult with the New Zealand College of Massage, Mr D advised that he has already been in touch and is constantly improving his techniques. However, he accepts that it may be appropriate for him to undergo further training.

Code of Health and Disability Services Consumers' Rights

The following rights in the Code of Health and Disability Services Consumers' Rights (the Code) are applicable to this complaint:

RIGHT 4

Right to Services of an Appropriate Standard

...

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

...

RIGHT 6

Right to be Fully Informed

(1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive. ...

RIGHT 7

Right to Make an Informed Choice and Give Informed Consent

(1) Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise. ...

Other relevant standards

Massage New Zealand *Code of Ethics*:

"Scope of Practice/Appropriate Techniques:

— A practitioner shall ensure that the techniques they employ are the most appropriate for the condition presented by the client. …"

Opinion: Breach — Mr D

Standard of care and informed consent
Mr D first treated Ms C on three occasions in January 2007 for neck and shoulder pain. During this series of treatments, Mr D documented Ms C's history, information about her presenting complaint, and a range of motion and postural assessment. Treatment was then provided and documented in accordance with his assessment.

Mr D next treated Ms C in June 2007, when she presented with acute neck and back pain. In the records relating to the treatment on 3 June, Mr D documented: "Began [left] upper [trapezius muscle] and left neck [pain] now going to [right] side also." He then documented that Ms C was complaining of pain with "light pressure or slow gentle [movement]". Mr D did not document any further assessment. Similarly, there is no evidence that Mr D obtained any history in relation to the 3 June presentation.

My expert advisor, Pip Charlton, stated:

> "It is industry practice to re-assess any client who presents with a new injury so that the treatment can be tailored accordingly. Relying on a client saying that it is the same as an injury 6 months earlier is unacceptable for this level of practitioner."

Mr D submitted that the reason he did not document a further assessment was that Ms C failed to provide any new information to him. I am not persuaded by Mr D's submission. Even taking into account the way Mr D writes his notes, writing his 'actions' under 'A', he failed to adequately document any pre- or post-assessment findings.

Ms C next saw Mr D the following day at 11am, then again at 5pm. In relation to the frequency and length of treatment Ms Charlton stated:

> "Treatment on the neck lasting 1.5 hours and 3 treatments within a 24–48 hour period is inappropriate and unacceptable. This would constitute over treating the injury with no clinical evidence to suggest that this was necessary or advisable."

I note Mr D's advice that he did not spend the whole time treating Ms C's neck. However, irrespective of how much time Mr D actually spent treating Ms C's neck, it is never appropriate to treat someone for this length of time three times in less than 48 hours.

Ms C advised that treatment during the final session involved Mr D massaging, using his palm, from her abdomen up to her breasts. She recalls that he then began "cupping and massaging" her breasts. Ms C advised that Mr D did not explain to her, or ask permission, to carry out this procedure. In particular, he did not provide any explanation, or ask permission, prior to massaging her abdomen and chest area. When Ms C asked Mr D what he was doing he told her that "it was good to stretch the muscles and help the fascia".

Ms C stated that Mr D asked if he could lower the towel that was draped over her body. However, it was her understanding that he was going to lower it to the level of her collar bone so he could massage her neck. When Mr D lowered the towel to her waist, this took Ms C "by surprise". Ms C stated that she feels that Mr D "crossed the trust barrier during the treatment he provided".

Mr D stated that this treatment did occur "very much as [Ms C] described". In email correspondence to Ms C, Mr D acknowledged that his communication was "extremely inadequate to say the least". Furthermore, while he considers that he did have a rationale for the techniques he used, he acknowledged that the duration and the techniques used were unnecessary.

In response to my provisional opinion Mr D agreed that his statement that his communication was inadequate was an acknowledgement that Ms C had not understood his explanations. However, it is his belief that he provided a very thorough explanation to Ms C. Again, I am not persuaded by Mr D's submission. In my view, the mere fact that Ms C had not understood what he was going to do suggests that he did not provide her with sufficient information.

Ms Charlton considered Mr D's failure to adequately explain the proposed procedure and obtain consent prior to commencing treatment to be "professionally unacceptable".

Ms Charlton also advised:

> "Exposure of breasts and poor draping techniques that [Mr D] admits to are unacceptable and inexcusable from anyone in the industry let alone someone with the amount of training that [Mr D] has. There is no documented supporting evidence (eg. assessment) for [Mr D] to carry out the massage treatment on the breasts and the techniques used ([Ms C's]) description would arguably be inappropriate for his rationale anyway."

I do not accept Mr D's submission that he does not believe that there were any other options available to him in Ms C's case. Mr D advised that due to Ms C's pain levels he could only carry out stroking and effleurage techniques of her chest and abdomen areas. However, his clinical records state that he performed myofascial release to Ms C's abdominal and chest area, as well as neuromuscular techniques to her shoulder on the morning on 4 June. This would indicate that Ms C was able to tolerate a degree of pressure both to her front and her back.

I accept that in some circumstances when a patient presents with acute back pain, it may be appropriate to use techniques to treat the fascia in the chest area. However, I note Ms Charlton's advice that Mr D did not have any rationale for treating this area in Ms C's case. Indeed, Mr D has acknowledged that "there are far better ways of achieving what I was attempting to achieve".

The Massage New Zealand *Code of Ethics* states that "a practitioner shall ensure that the techniques they employ are the most appropriate for the condition presented by the client". I note my expert's advice and conclude that the techniques Mr D employed to treat Ms C in June 2007 were not the most appropriate techniques for her presenting problem. Furthermore, by failing to perform an adequate assessment of Ms C, Mr D was unable to develop a treatment plan that was specific to her presenting problem.

Overall, I am left with some unease about Mr D's treatment of Ms C's chest area. Accordingly, it is my view that Mr D breached Right 4(2) of the Code by failing to provide services in accordance with the Massage New Zealand *Code of Ethics*, a relevant professional standard.

It is also my view that Mr D failed to adequately explain to Ms C what he was proposing to do, or why he considered that this area should be worked on, in particular the breast area. As stated in a previous HDC opinion,[2] "[p]roviders who do not adequately explain the services being provided run the risk of making the consumer feel confused and uncomfortable". This is particularly important when treating sensitive areas of the body such as the chest. It is therefore my opinion that Mr D breached Right 6(1) of the Code. As a consequence, Mr D also breached Right 7(1), as he provided a service without Ms C's informed consent.

Documentation
As I noted in opinion 06HDC09882:[3]

> "All health service providers, including massage therapists, have a professional obligation to document the services provided to consumers."

Documentation of services provided is important to ensure quality and continuity of services. It is also important to document assessment findings to support the subsequent treatment.

Mr D's records are difficult to read and understand. As noted by Ms Charlton, while Mr D has recorded his treatment under the SOAP (Subjective, Objective, Assessment, Plan) format, Mr D failed to document any pre- or post-assessment findings. Ms Charlton considered that this was "professionally unacceptable".

By failing to keep adequate documentation of his assessment and treatment of Ms C, Mr D failed to comply with his professional obligation to adequately document the services he provides to consumers. Accordingly, he breached Right 4(2) of the Code.

Professional conduct
After Ms C complained directly to Mr D about this treatment, Mr D responded to Ms C by email. Mr D sent Ms C four separate emails in which he apologised to Ms C and

[2] Geoffrey Mogridge, A Report by the Deputy Health and Disability Commissioner (06HDC09882, 25 January 2007). Available online at http://www.hdc.org.nz/

[3] Refer to footnote 2.

provided her with an explanation for his rationale for treatment. Mr D also went into detail about the effect this complaint has had on him, stating that he had been "crushed, in spirit and physically". Mr D went on to discuss experiences within his own family of sexual abuse, expressing his understanding about the impact this incident may have had on Ms C.

By personalising the effect the complaint has had on him and sharing his feelings with Ms C, Mr D is crossing professional boundaries. Clearly, this was inappropriate and may have further added to Ms C's distress. This view is shared by the Director of the New Zealand College of Massage, who stated:

> "[I]t is not appropriate to share your own story with a client … The five pages you write to her are predominately about the effects that the process has had on you, as well as sharing information from your family, which crosses boundaries …"

Similarly, Ms Charlton stated:

> "During training, massage students are taught about these issues of transference and counter-transference and the dangers that lie in crossing the therapist-client boundary as [Mr D] has done with this correspondence."

Overall, it is my view that Mr D breached Right 4(2) of the Code by communicating in an inappropriate manner with Ms C after she had made a complaint.

Recommendations

I am very concerned about Mr D's fitness to practise as a massage therapist. From his response to the provisional opinion it is apparent that he has a lack of insight into the inappropriateness of his actions.

Because the massage industry in New Zealand is unregulated there are limited options available to me to ensure that Mr D is competent to practise.

However, I recommend that Mr D undertake further training, specifically in communication, consent and patient privacy.

I also recommend that Mr D ensure that a chaperone is present when treating any female patient.

Mr D should report back to this Office on what action he has taken in relation to these recommendations by **30 January 2009**.

Follow-up actions

- Mr D will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
- A copy of this report will be sent to the New Zealand College of Massage.
- A copy of this report, with details identifying the parties removed, except the expert who advised on this case, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addendum

The Director of Proceedings filed a claim in the Human Rights Review Tribunal seeking relief, including a declaration and damages, on behalf of the consumer for the massage therapist's breaches.

Having regard to agreed facts and to the fact that other aspects of the relief initially claimed by the Director had been resolved between the parties, the Tribunal issued a declaration pursuant to s 54(1)(a) of the Act that the actions of the massage therapist were in breach of rights 4(2), 6(2) and 7(1) of the Code.

Appendix A

The following expert advice was obtained from Pip Charlton:

"I was asked by the Health and Disability Commissioner to provide a professional opinion on two cases relating to service provided by a massage therapist. I declare that there was no conflict of interest for me relating to [file 08/07644]. I read and agreed to follow the Commissioner's Guidelines for Independent Advisors.

I have qualifications in physical education and massage therapy and have worked as a massage therapist in private practice since 1993. I have taught in the massage industry since 1995 at both certificate and diploma level. I have also been involved in the massage industry at both committee and executive level with MNZ, the industry's professional body (previously NZATMP and TMA) since 1994. I regard my qualifications, clinical and teaching experience as relevant and fundamental to the professional opinions I have provided to the Health and Disability Commission.

General standard of care provided to [Ms C] by [Mr D]

What standards apply in this case?

[Mr D] states that he is a Remedial Massage Therapist (RMT) with Massage New Zealand (MNZ). On this basis he is bound by the MNZ Code of Ethics and is expected to provide service that meets the MNZ Scope of Practice for an RMT.

The appropriateness of care provided to [Ms C]

There are several key issues that arise when considering the level of care and service provided to [Ms C] by [Mr D].

1. The initial visit for the incident in question was on the 3/6/07. [Mr D] has given no evidence of any client history or assessment being taken on this visit that deals with the injury [Ms C] presented with. The client records presented are for the injury [Ms C] presented with 6 months earlier in January 2007.

2. Given that there appeared to be no assessment of the condition I question why the session for an apparent neck injury lasted 1 ½ hours.

3. A second treatment was carried out within 24 hours of the first and a third treatment then within hours of the previous one.

4. Lowering of the towel to the pelvic area without adequate draping/coverage of the breast area.

5. [Ms C] reports of [Mr D] "cupping and massaging her breasts" [in [Ms C's] letter of complaint dated 11 June 2007].

6. Treatment was given to the breast area however where no assessment has been documented to justify its involvement in the injury [Ms C] presented with.

7. [Ms C] reports [in [Ms C's] letter of complaint dated 11 June 2007] that she was not given any warning and was not asked permission for [Mr D] to massage her breasts.

8. The notes of the 3 visits in June are recorded under the headings of S.O.A.P. but the notes written are not in accordance with how SOAP would normally be documented.

The description of assessment (or lack of) and treatment carried out in 1–8 above by [Mr D], would in my professional opinion not be considered "normal or acceptable practice". It is industry practice to re-assess any client who presents with a new injury so that the treatment can be tailored accordingly. Relying on a client saying that it is the same as an injury 6 months earlier is unacceptable for this level of practitioner. A treatment on the neck lasting for 1.5 hours and 3 treatments within a 24–48 hour period is inappropriate and unacceptable. This would constitute over treating the injury with no clinical evidence to suggest that this was necessary or advisable. Exposure of breasts and poor draping techniques that [Mr D] admits to are unacceptable and inexcusable from anyone in the industry let alone someone with the amount of training that [Mr D] has had. There is no documented supporting evidence (eg. assessment) for [Mr D] to carry out the massage treatment on the breasts and the techniques used ([Ms C's] description) would arguably be inappropriate for his rationale anyway.

Conclusion: Professionally unacceptable

Relevant components of the MNZ Code of Ethics to this case:

Scope of Practice/Appropriate Techniques

- a practitioner shall ensure that the treatment they provide confirms to the relevant scope of practice of Massage New Zealand
- A practitioner shall ensure that the techniques they employ are the most appropriate for the condition presented by the client

Were these standards complied with?

Consent and clear communication

[On 8 June 2007] [Mr D] admits in email correspondence with [Ms C] that he didn't adequately explain the reasons for his work and that the length of exposure was not necessary and [in email dated 21 June 2007] he acknowledges that his communication with [Ms C] was "extremely inadequate to say the least".

Conclusion: Professionally unacceptable

Client History Records

Under the Privacy Act health practitioners are required to keep notes on all appointments with clients/patients. Notes are required to be legible and written in such a way that they can be interpreted by peers and such like. I do not find [Mr D's] notes either easy to read or interpret and this does not comply with industry expectations and standards.

There is also no specific record of any assessment conducted prior to the treatment carried out in June which is in breach of the Scope of Practice for [a Massage New Zealand Remedial Massage Therapist]. We can only assume that [Mr D's] treatment rationale was based on an assumption he had about what was going on. This would not be considered acceptable practice by an MNZ RMT.

S.O.A.P notes recorded do not really comply with industry standards.

S = Subjective information gathered from client

O = Objective information gathered from different assessments (eg. posture, ROM, treatment approach) and during treatment

A = Assessment (reassessment at end of treatment)

P = Plan (frequency of treatment, self care etc)

[Mr D] has recorded what he has actually treated in the session under these headings which is fine but it should also incorporate assessment information prior to and post treatment as well.

Conclusion: Professionally unacceptable

Professional Conduct

[Mr D] has presented evidence of email correspondence he had with [Ms C] [dated 26 June 2007] after she lodged her complaint. The fact that this took place and the nature of the communication where [Mr D] personalizes the effect that [Ms C's] complaint had on him are unethical. During training, massage students are taught about these issues of transference and counter-transference and the dangers that lie in crossing the therapist-client boundary as [Ms C] has done with this correspondence.

Conclusion: Professionally unacceptable

SUMMARY

In summary I consider the following areas of conduct by [Mr D] to be professionally unacceptable:

- Inadequate client consent and clear communication about treatment intention and justification
- No documentation of injury assessment prior to treatment therefore question over treatment rationale (particularly of breast and abdominal area)
- Inappropriate and unjustified amount of treatment time in 48 hours
- Inadequate draping of client's areas of privacy and therefore inappropriate exposure
- Inappropriate communication by [Mr D] after a complaint had been lodged by [Ms C]

COMMENT

While [Mr D] is aware of some of the inappropriateness of his behaviours (admission [in email of 6 June 2007]) and he expresses his regret, none of the behaviours outlined above would be acceptable within the industry. It is my professional opinion that [Mr D's] conduct would be seen by his peers with severe disapproval."

Further advice from Pip Charlton

In relation to whether there are any situations when it is appropriate to massage the chest area, Ms Charlton advised that there are situations where treating the chest and abdominal areas is appropriate for someone presenting with acute back pain. However, she stated that this would not include the breast tissue. She also stated that other treatments would be tried first.

In relation to Mr D's rationale for treating Ms C's chest area, Ms Charlton reiterated her advice that there is no evidence that Mr D reassessed Ms C. Therefore, Ms Charlton advised that Mr D did not have any rationale for treating Ms C's chest area. Even if he had reassessed Ms C, Ms Charlton considered that his rationale for treating Ms C's chest area was flawed.

In relation to informed consent, Ms Charlton advised that when treating sensitive areas the provider (particularly when a male provider is treating a female client) needs to be even more careful to ensure that the patient is adequately informed of the proposed treatment.