
Natural Health Practitioner

Report on Opinion - Case 97HDC6418

Complaint

The Commissioner received a complaint from a consumer about treatment she received from a natural therapist. The complaint is that:

- *The consumer rang and made an appointment to see a naturopath for counselling. At this time the consumer asked if the therapist did counselling and he said yes.*
- *The provider asked the consumer a few questions about why she was depressed and the consumer responded that she thought she had a weight problem.*
- *The provider then gave the consumer a massage using a massage machine although the consumer thought she was going for verbal counselling.*
- *The provider massaged her thigh and then passed the machine over her vagina a total of 3 times. He told her that the underwire bra she was wearing was pushing fluid up and massaged this area as well.*
- *The provider told the consumer she was fat and had big hips while touching her hips. The provider also told the consumer that she would be a beautiful girl if she did not have acne and black bags under her eyes. The consumer caught him looking at her stomach at one stage during the massage.*
- *The provider told the consumer she should weigh 45 - 50 kg for her frame. He then said she had a small frame so she probably was in fact overweight.*

Investigation

The Commissioner received the consumer's complaint on 3 June 1997 and an investigation was commenced. Information was obtained from:

The Consumer
The Provider / Natural Health Practitioner
A Counsellor employed by the Provider

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Outcome of Investigation

In late May 1997 the consumer contacted the provider, a natural health practitioner, at a Natural Health Clinic. The consumer required counselling for depression over her weight and she had obtained the provider's name from the telephone directory. The consumer said she asked the provider if he did counselling for depression and the provider confirmed he did.

The provider ("the Practitioner") is a natural health practitioner with 22 years experience. He is not affiliated to any professional organisation. He has qualifications in massage and Celloid Mineral Therapy displayed in his office.

The Practitioner said he informed the consumer they did provide counselling as they have a counsellor operating from the clinic. The counsellor, an enrolled nurse, worked at the clinic from 9am to 3pm. When the consumer made the appointment, the Practitioner did not mention that the counsellor would not be present at the consultation time. The Practitioner said he explained to the consumer how he works holistically so that initially she would have a full check-up before he could decide what treatment was required including whether the consumer required referral on to the Practitioner's associate counsellor.

An appointment was made for the next day at 5.30pm which was the first available time to fit in with the consumer's working hours. The consumer and the Practitioner do not agree upon the precise appointment time, but this is of no consequence to the investigation. The Practitioner advised the appointment was made "*for [the consumer's] convenience.*"

The consumer said that about 10-15 minutes into the consultation, the Practitioner told her the counsellor worked part time. There was no receptionist or anyone else present during the consultation. The Practitioner did not offer a chaperone.

The Practitioner proceeded to ask the consumer about 6-10 questions from his patient profile sheet. The consumer said that it seemed from the questions that the Practitioner was looking for a physical cause to her depression and that at no time during the consultation did he ask her what she believed to be the cause of her depression.

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**Outcome of
Investigation,
continued**

During the investigation, the Practitioner explained he is more interested in the practical workings of the body and the Counsellor handles the counselling side of the practice.

The consumer said that she had answered yes to 95% of what was asked, and that the Practitioner told her that she was pretty messed up and handed her the patient profile sheet to take home. During the investigation, the Practitioner said the first 10-15 questions are connected with depression. The consumer did not return the profile sheet to the Practitioner.

The Practitioner stated that based on the consumer's response to the profile sheet, he worked on the "nerve related questions". The Practitioner asked the consumer if she would like a massage which would relax her. The consumer said she was concerned, as she wanted to talk about depression and weight. The consumer said there was no other explanation as to what he was going to do.

In his response to the Commissioner, the Practitioner said, "*When she came for her appointment I asked her a large number of questions, relating to her symptoms, as included on our patient symptom profile analysis, at which time she also confirmed she thought she had a weight problem. I explained to her that it could possibly be her back that was giving her problems. At this point I asked her if she would like a full treatment and she agreed to this.*"

The Practitioner explained most people get their backs checked as part of a holistic approach because vertebral misalignment can cause effects such as depression or problems with eating. The Practitioner said his full holistic treatment consisted of a back manipulation, massage of the lymphatics and medication to remove toxins.

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**Outcome of
Investigation,
*continued***

The Initial Examination

The consumer went into the changing room, a curtained off area within the main consultation area, and took off her top, replacing it with a towelling robe. The supplied robe has an opening in the middle for the head and is open at the sides, with velcro ties at the waist. The consumer did not remove her bra, pants or slacks. The consumer lay on a massage table and said she did unbutton her slacks initially when the Practitioner examined her abdominal area. She said the Practitioner felt with his hands up the centre of her body under the rib cage and said he could feel toxin build up under the ribcage. The consumer said she felt nothing untoward then, as it was no different to what a doctor would do when examining the abdomen.

The consumer said the Practitioner then asked whether she was tender around the armpits. The consumer said the Practitioner said the underwire of her bra makes the area tender and then commented that one breast was bigger than the other. The consumer said the Practitioner squeezed her breasts. The consumer said *"it didn't hurt physically, but [she] felt really yukky"*. The consumer said she was on her back and the Practitioner straddled the base of the bed and grabbed her right leg and moved it up towards him and then turned it around his side then repeated the procedure with her other leg. The consumer said the Practitioner told her that her hips were out and he would loosen them up but did not explain how this would help her depression. During the investigation, the consumer explained she was feeling uncomfortable at this time as the Practitioner was too close to her genital area.

The Practitioner said he hand massaged her neck and shoulders then he *"checked her liver reflex, her colon and her lymphatic system. I told her she had congestion in her lymphatics and that I could give them an initial clearing now and the medication I would give her would clear her colon."* The Practitioner said he did not touch the breasts as he only used the massage machine in that area. *"I did mention that I felt the underwire bra she was wearing aggravated her lymphatics but I did not say anything about pushing fluid up."* The Practitioner said the skin in the area was tough which is a sign of lymphatic congestion. The Practitioner said he mentioned congestion but cannot recall if he explained what was going on.

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Outcome of Investigation, continued

The Practitioner said he checked the consumer's vertebrae for alignment and massaged down her spine. He said the consumer was on her side in a similar position to the standard recovery position while he stood to the side of the massage table and he manipulated the consumer's torso and leg and repeated the procedure with the other side. He said this gently manipulates the spine. The consumer turned onto her stomach and the Practitioner massaged down her spine. The consumer was then lying on her back. The Practitioner stood mid-bed and got the consumer to tuck her knees up to her chin so he could check the alignment of her sacro-ileac platform. The Practitioner says this is a standard procedure. He brought her head up to the top of her knees and he thinks he told her that her hips were out. During the investigation, the Practitioner explained that sometimes he straddles the table to make it more comfortable for himself.

The Massage

The Practitioner then gave the consumer a massage using a massage machine with a vibrating head about the size of a clothes iron. The consumer said there was no explanation given as to why the massage was needed apart from loosening her up. The consumer said the Practitioner massaged her inner thighs and during this time went over her vagina about three times and prolonged the massage at the clitoris. The consumer said she was feeling "*grossed out*" at this point. The consumer said the Practitioner had not explained what he was doing and she felt extremely uncomfortable. The consumer said when the Practitioner stopped what he was doing with the massage machine he placed his thumbs over her clitoris area with his hand outstretched to her groin and massaged the area for about 5-6 seconds.

The Practitioner said he used the machine to massage lymph glands in the thigh and groin area and between the breast and underarm. The purpose was to drain the lymphatics. "*To drain the lymphatics I used the massage machine on the lower abdominal lymphatics but at no time did I massage her vagina.*" The Practitioner explained during the investigation that he traverses the machine down each side of the groin to the inner leg to the tendon that runs on each side. He is emphatic he did not massage an inappropriate area. "*I have clearly explained to your office that the massage was by a machine to her inner thigh and no other part of her anatomy.*" The consumer was clothed at all times and the massage was performed over her clothes.

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Outcome of Investigation, continued

During the investigation, the Practitioner both stated and demonstrated that the machine has quite an intense action. The Practitioner demonstrated the action on the arm of the investigation officer who confirmed that the machine produces quite a strong vibration. The Practitioner denies massaging the consumer's vagina and suggested that the vibration from the machine could have given her this sensation. During the investigation, the consumer was adamant it was not the vibration of the machine she felt and that if it had been she would have felt it on the inside of her thighs. The consumer said she knows what touching feels like.

The Practitioner stated that in 22 years of treating people he had given a large number of massages and regarded himself as highly skilled in the area. He explained that the massage he provides is not intimate and cannot be described as such, "*the patient was gowned, clothed below the waist and the massage involved the use of a machine on the inner thigh.*"

The Conversation

During the investigation, the consumer said the Practitioner chatted and asked her questions about her home. At some time during the procedure the consumer said the Practitioner asked her if her father loved her to which she answered yes. The consumer said he repeated the question saying, "*No, does your father really love you?*" The Practitioner disputes that he said this on basis that they are neither words that he uses or would use. The Practitioner could not remember the specifics of the conversation and said they talked in general terms about her family and friends. He was concerned what could happen if the consumer didn't find friends. During the investigation, he said there was a general discussion on treatment. The Practitioner said he told her what each step of the procedure was as he did it. He said in retrospect he did not explain as much to her as he should have.

At the end of the consultation, the consumer said the Practitioner got her to stand in front of him with her back to him and told her to bend over. The consumer said she was feeling very uncomfortable as he was too close. After weighing her and measuring her height, the consumer said the Practitioner told her she was overweight and had big hips and then grabbed her hips and shook them. He also told her she would be beautiful if she did not have acne and black bags under her eyes.

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Outcome of Investigation, continued

The Practitioner said he *“carries out a set of standard tests at the end which include the patient bending over like they are diving into a swimming pool to check for any twists in the vertebrae and rolling their shoulders forward and back to check for any discomfort in that region, and marching up and down on the spot to jar the spine to establish any discomfort, and full rotation of hips in both directions to check for lower back or hip discomfort.”*

The consumer said the Practitioner asked her how she felt and she replied her body felt “heaps better” and not so tense. Inside she said she was shocked and just wanted to get out of there. The consumer said it was not in her nature to be outspoken to adults and this man was a professional.

The Practitioner said he mentioned the black under her eyes and said iron would help that, but never said she would be a beautiful girl if she did not have acne and black bags under her eyes. He said, *“I did say the medication that I prescribed would remove the toxins, help her complexion and help remove the darkness from under her eyes. The reason she may have thought I was looking at her stomach at one stage was when I was checking the alignment of her hips (the sacro-ileac platform) which appeared to be out of alignment.”* The Practitioner acknowledged that he looked at the consumer's stomach for signs of bloat. The consumer's weight of 43kgs was recorded on her card, but the Practitioner did not consider her overweight.

During the investigation, the Practitioner said the consumer seemed as ‘good as gold’ and gave him no indication that anything was wrong. The Practitioner stated that *“there was no coercion. [The consumer] was free to leave the room at any time, no treatment took place until after she had completed the initial portion of the symptom profile sheet [sic] has been explained and asked if she wanted a comprehensive treatment and had changed into a treatment gown without the need to remove her underwear or lower garments.”*

Immediately after the consultation, the Practitioner said that he spoke to the Counsellor and recommended the consumer for counselling. The Counsellor said that the Practitioner told her the next morning that this was a very nervous and depressed young woman. The Counsellor said the Practitioner did not mention any problems with the consultation.

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**Outcome of
Investigation,
*continued***

The consumer said she was very upset after the consultation and told her boyfriend that night. The following morning she told her work colleagues and asked if they thought what the Practitioner had done was all right. One of her work colleagues contacted the police and after advice from another natural practitioner, the consumer laid a complaint with the Health and Disability Commissioner on 3 June 1997.

The consumer says she has been badly affected by what has gone on and is still depressed.

The Practitioner said he does not do the lymph drainage any more as a result of this complaint and as it is time consuming and there is no money in it. He has since trained the Counsellor to carry out this treatment when necessary as a separate appointment.

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**Code of
Health and
Disability
Services
Consumers'
Rights**

The following rights are applicable:

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.*
- 3) *Every consumer has the right to have services provided in a manner consistent with his or her needs.*

RIGHT 5

Right to Effective Communication

- 2) *Every consumer has the right to an environment that enables both consumer and provider to communicate openly, honestly, and effectively.*

RIGHT 6

Right to be Fully Informed

- 2) *Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.*

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.*

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Code of Health and Disability Services Consumers' Rights, continued

- 3 Provider Compliance**
- 1) *A provider is not in breach of this Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in this Code.*
 - 2) *The onus is on the provider to prove that it took reasonable actions.*
 - 3) *For the purposes of this clause, "the circumstances" means all the relevant circumstances, including the consumer's clinical circumstances and the provider's resource constraints.*

Opinion: Breach

In my opinion the Practitioner breached Right 4(2), Right 4(3), Right 5(2), Right 6(2) and Right 7(1) of the Code as follows:

Rights 5, 6 and 7 - Informed consent

The informed consent of the consumer is essential before any procedure is provided to him or her. In terms of the Code of Rights, informed consent is not a one-off event, but a *process* containing three essential ingredients, namely,

- effective communication between the parties,
- provision of all necessary information to the consumer (including information about options, risks and benefits), and
- the consumer's freely given and competent consent.

These ingredients work together and are represented in the Code by Rights 5, 6 and 7 respectively. Based on the evidence provided to me, I have formed the opinion that the process of obtaining informed consent from the consumer was not followed by the Practitioner to a sufficient extent to meet the standard required by the Code of Rights. For the sake of clarity, I have referred below to breaches of Rights 5, 6 and 7 separately.

Right 5(2)

While I accept the Practitioner works holistically and there can be physical causes for depression, this does not reduce his obligation to effectively communicate with consumers. Further, much of his ongoing discussions with the consumer occurred in an inappropriate environment as she was lying on a massage table.

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**Opinion:
Breach,
*continued***

Right 6(2)

In my opinion the Practitioner should have ensured the consumer was informed she would be consulting with the Practitioner alone and that he focuses on physical causes of her depression.

The Practitioner did not inform the consumer when she made the appointment that he did not undertake counselling and that a counsellor would not be present at consultation time. The Practitioner only informed her of this a short while into the consultation. The consumer had a right to know this information in order to make a choice whether to use the Practitioner's services. The consumer consulted the Practitioner believing that he was going to provide counselling. The consumer did not know that full treatment also involved massage and back manipulation. The Practitioner proceeded to apply massage and used the machine without ensuring the consumer fully understood and therefore was fully informed of the procedure he was about to perform.

The Practitioner has not shown that he took reasonable actions in the circumstances to give effect to the consumer's right to be fully informed and therefore has breached Right 6(2) of the Code.

Right 7(1)

By not informing the consumer that he did not undertake counselling himself and that the counsellor would not be present at the arranged consultation time, the Practitioner put the consumer in a vulnerable position at the consultation. This resulted in her agreeing to treatment without fully understanding why she should have it.

The Practitioner proceeded to provide massage treatment to the consumer's inner thigh area without ensuring the consumer understood what the technique involved. Even though the consumer was fully clothed, from her own account, she felt powerless once massage commenced, as she had been expecting verbal counselling and not physical treatment.

The consumer had clearly advised the Practitioner she required counselling. By not fully explaining to the consumer about the counselling side of his practice and by proceeding with a massage without a full explanation, the consumer was unable to give informed consent.

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**Opinion:
Breach,
continued**

In my opinion the Practitioner did not demonstrate that he took reasonable steps to ensure the consumer gave informed consent before proceeding with treatment and breached Right 7(1) of the Code.

Right 4(2)

The Practitioner denies any inappropriate touching or behaviour during the consultation. Due to the conflicting nature of the evidence and the absence of any witnesses, there is insufficient evidence to establish that the Practitioner acted inappropriately when conducting the massage or that he made the comments complained of.

The Practitioner advised he operates holistically. Consistent with a holistic approach, I would expect that the patient profile analysis sheet would be filled out in order to get a holistic picture of what is wrong with a consumer before proceeding with any treatment. The Practitioner concluded that the consumer required counselling, yet proceeded with massage treatment that the consumer neither expected or gave informed consent to.

Finally, in respect of the massage itself, despite the absence of any defined standards of practice to which I can refer, by failing to obtain informed consent, in my opinion this massage was not provided to an acceptable standard and the Practitioner breached Right 4(2) of the Code.

Right 4(3)

The consumer had the right to services of an appropriate standard which includes the right to have services provided in a manner consistent with her needs. When the consumer telephoned the provider's Clinic she did so for the sole purpose of arranging a counselling appointment for her depression. Instead, she received massage treatment. In providing the consumer with massage treatment that she did not request, in my opinion the Practitioner did not provide the consumer with services in a manner consistent with her needs and breached Right 4(3) of the Code of Health and Disability Services Consumers' Rights.

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Report on Opinion - Case 97HDC6418, continued

Actions

I recommend that the Practitioner takes the following actions:

- Provides a written apology to the consumer for his breaches of the Code. This is to be sent to the Commissioner's office and will be forwarded to the consumer.
 - Refunds the cost of the consultation. This cheque is to be made out to the consumer, sent to this office and will be forwarded to the consumer.
 - Reads the Code of Health and Disability Services Consumers' Rights, views the provider video available from this office and confirms in writing to the Commissioner that he fully understands his obligations as a provider of health services.
 - In future ensures any client requesting counselling is given an appointment at the time the counsellor is available.
 - Ensures that prior to undertaking any form of therapeutic massage, consumers are fully informed in an appropriate place and manner of his procedures, the reasons for them and that he obtains consent before proceeding.
 - Draws up an information sheet to inform clients of procedures used. The information should contain an explanation of options available, the risks, side effects, benefits and costs of each option. The sheet should also advise that the Practitioner training and methods and should state that he is not affiliated with any professional organisation.
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Other Actions

This opinion will be used for education purposes to ensure natural health practitioners understand their obligations under the Code of Rights and to ensure the public enquire into the qualifications and experience of those persons from whom counselling is sought. Consumers will be advised to carefully check the nature and type of qualifications of individuals and the professional associations with whom they are affiliated to determine the expertise of the alternative health provider being accessed.
