

Massage Therapists Ms B and Mr C

A Report by the Health and Disability Commissioner

(Case 02HDC18117)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer
Mrs A	Consumer's mother
Ms B	Provider / Massage therapist
Mr C	Provider / Beautician / Massage therapist
Dr D	Neurologist

Complaint

On 18 November 2002 the Commissioner received a complaint from Ms A about Ms B and Mr C. The complaint is that:

Ms B, a masseuse at a massage parlour, did not provide services of an appropriate standard to Ms A. In particular, Ms B:

- *made an incorrect medical diagnosis that she was unqualified to make.*

Ms B also financially exploited Ms A.

Mr C, a masseur at the massage parlour, did not provide services of an appropriate standard to Ms A. In particular, Mr C:

- *made an incorrect medical diagnosis that he was unqualified to make*
- *gave inappropriate advice as to the treatment of this proposed condition.*

Mr C also financially exploited Ms A.

An investigation was commenced on 27 February 2003.

Information reviewed

- A book written by Mr C
- Report from an independent Shiatsu massage therapist, Ms Waveney Reta

Commissioner's jurisdiction

Mr C raised the issue of whether he, a Shiatsu massage therapist, and Ms B, a beautician/massage therapist, were subject to the provisions of the Health and Disability Commissioner Act 1994 (the Act) in the context of advising about ginger compress treatments as an adjunct to massage during the provision of beautician services.

I consider both Mr C and Ms B to be health care providers, under section 3(k) of the Act, as they "held [themselves] out as providing health services to the public". "Health services" include "services to promote health" (s 2). The health service involved was a diagnosis of Ms A's kidney problems using Shiatsu techniques, and the offer of the ginger compress treatments. The service occurred in the context of the massage parlour's beautician business, which "provides massage as a necessary, usual or reasonable incident" to its business.

Information gathered during investigation

Information provided by Ms A

On 9 November 2002 Ms A and her mother went to the massage parlour for a massage and facial. Ms A received a massage from Ms B. During the massage Ms B told Ms A that she thought she might have something wrong with her kidneys, although Ms B did not elaborate. She asked Ms A if she could obtain a second opinion from Mr C, who was much more experienced in massage. Ms A said she had no objection, and soon after Ms B returned with Mr C.

Mr C commenced massaging the lumbar region of Ms A's back and confirmed Ms B's suspicions. In Ms A's words, Mr C told her there was definitely something wrong with her kidneys and it was very lucky that they had discovered this, as in five to ten years it could result in cancer.

Mr C suggested ginger compress treatments to the kidney area to help and possibly cure her kidney problems. Mr C then started feeling around her lower stomach and told her that she was also having gynaecological problems and that many women have unnecessary surgery. He made a comment about her uterus "ending up in a bucket". Ms A said she was in a state of shock as she had had cancer before and also suffers from epilepsy. She takes a large quantity of medication and was concerned that the medication must have caused kidney damage. Ms B said that she would need ten sessions and Mr C said she might need as many as 20. Ms B left the room and returned with the appointment book. Ms B suggested that if she wanted to proceed with the ginger compress treatments, each treatment was normally \$90 per session, but if she prepaid, they would reduce the cost to \$80 per session and include a free copy of a book written by Mr C. Ms A made an appointment to have the first treatment on Monday 11 November. Ms B suggested that she could pay now or when she came for the next session.

Ms A left the massage room. Her mother was in the waiting room outside. Ms A told her mother what Mr C had said; her mother was extremely upset and said it must be the drugs and suggested she obtain a second opinion from her neurologist, Dr D. Ms A said Mr C's diagnosis was extremely distressing because she could not see her specialist until after the weekend. She believes that Mr C and Ms B used "abhorrent scare tactics, which left me in no doubt that if I did not proceed with the ginger treatment, then I would get cancer".

Ms A consulted Dr D on Wednesday 13 November at 9am. He advised her that the medication she was taking does not affect the kidneys and that they cannot be felt unless extremely bloated. Dr D took blood tests, and the results were normal. Ms A believes that if Ms B and Mr C were concerned about possible kidney damage, they could have recommended she see a specialist or advised her about other treatment options, of which ginger compress treatment was but one.

Mrs A's recollection

Mrs A confirmed that her daughter had been told she was likely to have health problems. She understood that Mr C told her daughter he could feel a hard solid mass and her kidneys were enlarged and she was probably retaining water. Her daughter took this on board and was keen to sign up for the ginger treatments, but it was \$800 and Mrs A suggested that perhaps her daughter should see the specialist first. Dr D has been her daughter's doctor since she was seven years old because of her epilepsy. They both talked with Dr D and he said that it was impossible to detect enlarged kidneys in healthy people; in fact, it was impossible to detect anything in the kidney area.

Both therapists accompanied Ms A from the therapy room, and Mrs A felt there was an element of coercion as her daughter was being pressured into signing for the treatments.

Mrs A confirmed that they had had a wonderful day and her daughter was very keen to sign up for the treatment, but she was being pressured into signing, which is why she suggested her daughter see the specialist. In her opinion Mr C was a very confident young man, who took them on a tour of the massage parlour before they had their facial and massage. She noted that Mr C speaks with confidence and authority and it would be easy for people to believe his diagnosis.

Ms B's response

Ms B advised me that she has been working in the health and beauty industry since 1989. She has studied in Australia, completed a number of courses, and gained certificates, including in massage, lymphatic drainage, reflexology and Reiki therapies. She has also worked as a massage therapist with an osteopath. Since October 2002, Ms B has worked with Mr C as a beauty therapist/massage therapist.

Ms B reported that while massaging Ms A on 9 November 2002, she could feel what she thought was a build-up of fluids and toxins, particularly in her lower back, kidney region. Ms A told her that she had suffered with a sore back. Ms B had done some training sessions with Mr C using ginger compress and learnt which ailments would benefit from such treatment. In her view Ms A would benefit from ginger compress treatments to help

detoxify the lower back and kidney area. She explained how ginger compress treatments were done, and the benefits and cost.

Because of Ms B's inexperience she asked Ms A if she could obtain a second opinion from Mr C. When Mr C entered the therapy room he talked to Ms A and massaged her for approximately ten minutes. He consulted with her about her health and talked about how the ginger compresses would help her body. Ms A told them that she was taking a lot of medication and had had cancer in the past. Ms B said that Mr C agreed with her that Ms A's kidney area felt "very hard and congested and would indeed benefit from a course of treatments".

Ms B gained the impression that Ms A was happy with this recommendation. They discussed how she was feeling and her state of health, and finally she said she would like to book for ten treatments. Ms B advised that it would be fair to discount the cost to \$80 per treatment if she was going to book for ten treatments. Mr C also said he would give her a copy of his book, which would help her with her diet. Ms A told them she was on epilepsy medication and Ms B said it was important that she keep taking her medication; the ginger treatments would detoxify her body via the kidneys, which would help them cope with the daily ingestion of her prescribed medication. Ms A made appointments for Monday 11 and Wednesday 13 November 2002.

Ms B said that Ms A left her keys and the information pamphlet with her appointment time on the reception desk after she left the spa, and Ms B followed her to the "recess bar" to return her belongings. When Ms B asked her how she felt, she said she was looking forward to starting the ginger treatments. Ms A's mother said they should check with her specialist first. Ms and Mrs A confirmed that Ms B approached them in the lounge, where they were enjoying a complimentary drink.

Although Ms A made the appointment for Monday she did not attend or telephone to cancel the appointment. Ms B attempted to contact Ms A but was unable to do so until Wednesday, when she was due for her second appointment. Ms A told her that she had consulted her doctor, who told her nothing was wrong with her kidneys, and she would not be keeping the appointment.

Ms B denied that she had provided services of an inappropriate standard or made an incorrect medical diagnosis. She felt that she had provided an excellent massage. When Ms A departed, she seemed very happy with the treatment she had received. She denies that she made a medical diagnosis; she always suggests that clients check with their general practitioners or specialists. It is a part of beauty therapy work policy and procedures that if clients have any queries about their health, they should check with their doctor first. Ms B said she is a trained beauty therapist and masseuse, and was offering Ms A the treatment she provides all her clients. She denies that she attempted to exploit Ms A; she considered it fair to discount the treatments. She is paid by the hour and had nothing to gain financially from the number of treatments.

Mr C's response

Mr C's interest in remedies outside mainstream medicine grew from personal experience. As a teenager he was "plagued with severe shin-splints despite being an extremely competitive white-water kayaker, racing slalom at national level. At times [he] was in debilitating pain and that was unbearable. It was difficult to walk and near impossible to run." One specialist informed him that he would be in a wheelchair by the time he was 40 and there was nothing anyone could do. He began exploring other forms of treatment. He followed the path of good food, meditation and yoga. He reported that within three months the leg pains had completely disappeared.

Mr C said he has been working in the health and massage industry since 1986. He has a diploma in Shiatsu massage and became a macrobiotic consultant in 1988. Since then he has worked as a Shiatsu massage therapist. The massage parlour is owned by a Trust, of which Mr C is the trustee. He is also the manager at the massage parlour and works with other beauty therapists providing spa-related treatments. He provided a flyer, advertising ginger compress treatments, as well as other treatments they provide. He also provided a copy of his book. Ginger compress treatment is described as follows:

"Ginger compress

With the application of heated compress containing plant and mineral extracts to specific parts of the body, this treatment is designed to balance and purify vital organs. Ideal for muscular tension, kidney disorders and lung congestion."

Mr C confirmed that Ms B asked him to provide a second opinion on Ms A's lower back pain. Mr C is not a doctor and he always explains that his advice is based on personal experience in Shiatsu and macrobiotics. He massaged Ms A's lower back and kidney area, and believed Ms A's lower back pain "could come from the kidneys having little energy". He recommended ginger compress, which involves a heated compress made with grated ginger, to the kidney area. Ms B asked how many treatments would be necessary and he recommended about ten and offered a discount and a free copy of his book.

Mr C advised me that on massaging Ms A's back her kidneys felt "spongy", which indicated that her kidneys were not well. Mr C described what he can feel during massage of the lumbar area, as follows:

1. The kidneys can feel hard and dense like a brick, which can be the result of a diet high in salt and bread.
2. The kidneys can be bloated in which case they are tight like a balloon, which is usually the result of too much sugar in the diet.
3. The kidneys can feel like a rugby ball, springy and toned. This is how healthy kidneys feel.
4. The kidneys can feel spongy. This is a sticky feeling as though I put my hand into a peanut butter jar. There was low vitality. This is how I thought [Ms A's] kidneys

felt. It usually means that the kidneys are weakened and could be heading towards a disease. The client often feels fatigued. In this case I recommend a change of diet by maintaining your normal diet, but replacing about 40% with the diet recommended in the book. I also recommended ginger treatments. I have had good response to ginger treatments with most clients reporting feeling better within about two treatments.”

Mr C described the massage. He commenced with Ms A lying on her stomach and he examined her back. Ms A told him that she also had abdominal pain. At this point she turned on to her back and he felt her stomach.

When asked to explain the “uterus ending up in a bucket” comment he made to Ms A, Mr C said that it is a language he uses with many of his clients. It has been his experience that sometimes women have unnecessary surgery for gynaecological problems. He gets “angry” because he believes that some doctors can resort to surgery quickly. He apologised if Ms A found his language offensive and said that he is more careful about his explanations, after reading her complaint.

Mr C advised me that Ms A seemed very enthusiastic about ginger compress treatment and genuinely interested in the theory behind it. He usually asks clients to feel their own kidneys and explains what is happening so they can understand how their own kidney region feels before asking them to feel his kidney region for comparison.

When asked whether he mentioned the word “cancer” to Ms A, Mr C replied that he did not mention cancer and cannot recall the word being used at all. It was not until later that he learnt from Ms B that Ms A had had cancer in the past.

Mr C said that although he recommended ten ginger treatments, he was speaking from experience when he suggested a number. He does not usually book ten appointments in the first instance. Rather, he advises his clients to have one or two treatments and telephones them to see whether they have noticed any benefit. If they confirm a benefit he will make additional appointments. In this case, Mr C considered Ms A as Ms B’s client.

After the consultation Ms A came out of the room and her mother was waiting for her in the waiting room. Ms A wanted to sign up for ten treatments before leaving. He thought that Ms A’s mother was not as enthusiastic and advised her daughter to obtain a second opinion. Nevertheless, Ms A made an appointment to have her first treatment the following Monday.

When Ms A did not turn up for the appointment on Monday, Mr C asked Ms B to call her to see whether she was worried about something. He confirmed Ms B rang her on a number of occasions and eventually he attempted to contact Ms A also. Neither was able to contact her, and he did not wish to leave messages about such a sensitive issue on the answer phone.

Mr C said that believes his advice about the ginger treatments was appropriate in the circumstances, but he and Ms B would be willing to meet with Ms A to apologise for any offence or distress that their recommendations may have caused.

Dr D's advice

On 13 November Ms A consulted her neurologist, Dr D. Dr D wrote to Ms A's general practitioner after the consultation. He advised her that Ms A's seizures have proved very difficult to control, but none of the medications she was taking would be expected to result in kidney malfunction. Dr D's letter to Ms A's general practitioner stated:

"I saw your patient for review; she was accompanied by her mother. Apparently a non medical massage therapist told her that she had kidney malfunction. [Ms A] feels well in herself and enjoys her full-time work. ... I have arranged for some blood tests including creatinine and electrolytes to be done, but I find no evidence of any problems with her kidneys; abdominal examination was normal and her blood pressure was 125/75."

Dr D recalled that Ms A was very upset because she had been told she had kidney problems. He had spoken to her about the side effects of the medications, which involve liver complications, but did not mention kidney complications because that was not an issue. He thinks that when Ms A came to see him it was time for a general review, but the trigger point for the consultation was the information she had received about possible kidney problems.

Conflict of evidence

There is conflicting information about what happened during Ms A's consultation. There are no independent witnesses to the conversation between Ms A, Ms B and Mr C. However, it is clear that Ms A was told she had something wrong with her kidneys that might progress to disease. The treatment recommended was ginger compress treatments at \$90 per treatment; if she agreed to pay for ten treatments she would receive a discount of ten dollars per treatment and a copy of his book.

Cancer diagnosis

Ms A recalled Mr C telling her that she was lucky he had discovered her problem because in five to ten years it could result in cancer. Ms B knew about Ms A's past and present medical problems, although when this was disclosed has not been established. Mr C told me that he cannot recall the word "cancer" being used during the consultation. He described low energy levels and fatigue as indications of kidney malfunction. He said that he did not learn of Ms A's history until later. Mrs A, Ms B and Mr C confirmed that Ms A seemed very enthusiastic about the treatment and did not seem upset about the "diagnosis".

In my opinion, it is likely that Ms A related her past experiences with cancer to Ms B and Mr C, who denied introducing the topic. I accept that the possibility of cancer was discussed, but only after Ms A introduced the topic when it was suggested that she had potential kidney problems.

Independent advice to Commissioner

The following expert advice was obtained from Ms Waveney Reta:

“I am a fully qualified practitioner and teacher of Shiatsu holding a Diploma of Shiatsu, with a total of 6 years part-time training through the Shiatsu College Aotearoa, and a paid up member of the Shiatsu Practitioners Association Aotearoa. The Association is a registered member of the New Zealand Charter of Health Practitioners Inc. We follow the Charter’s Code of Ethics.

I have 18 years experience as a clinical therapist and 10 years Shiatsu teaching experience, most of that being as first assistant to the Shiatsu College Aotearoa.

I also hold a Diploma of Therapeutic Massage from the New Zealand Institute of Natural Body Masseurs, 1983. I practised Swedish Massage for 8 years prior to becoming a Shiatsu Practitioner.

My Instructions from the Commissioner are as follows.

Purpose

To advise the Commissioner whether [Ms A] received an appropriate standard of massage from [Ms B] and [Mr C].

Background

On 9 November 2002 [Ms A] and her mother went to [the massage parlour] for a massage and facial. During the massage [Ms B] told [Ms A] that she thought she had something wrong with her kidneys. [Ms B] asked [Ms A] whether she would like a second opinion from [Mr C], who was more experienced with this type of massage.

[Mr C] examined [Ms A] and said she definitely had something wrong with her kidneys, and would develop problems later in life if not treated. [Mr C] also told her she was likely to have gynaecological problems in the future.

[Ms A] reported that [Mr C] told her she would develop cancer, but [Mr C] denies this. [Mr C] said that, to his touch, [Ms A’s] kidney area felt spongy, which was a sign that her kidneys were weakened and could result in disease. He usually recommends a change of diet, replacing about 40% of their normal diet with the diet recommended in [his] book and recommended 10 ginger compress treatments to the lumbar area.

[Ms B] and [Mr C] advised that if [Ms A] signed for the ten sessions, they would reduce the costs from \$90 to \$80 per session, and include a copy of [his] book.

[Ms A] had been treated for cancer and suffers severe epilepsy. She regularly attends a neurologist to control her medication. [Ms A’s] mother suggested that they should receive a second opinion from the neurologist because the medication may be upsetting her kidneys or her liver. The following Monday morning [Ms A] made an appointment

to see the neurologist who, following blood analysis, advised her that there was no sign of liver or kidney damage.

Complaint

[Ms A's] complaint against [Ms B] and [Mr C] is outlined in her letter of complaint. However, the issues arising from the complaint investigated are summarised as follows:

- *[Ms B], a masseur at [the massage parlour] did not provide services of an appropriate standard to [Ms A]. In particular, [Ms B] made an incorrect medical diagnosis that she was unqualified to make. [Ms B] also financially exploited [Ms A].*
- *[Mr C], a masseur at [the massage parlour] did not provide services of an appropriate standard to [Ms A]. In particular, [Mr C] made an incorrect medical diagnosis that he was unqualified to make and gave inappropriate advice as to the treatment of this proposed condition. [Mr C] also financially exploited [Ms A].*

Supporting Information

- [Ms A's] letter of complaint to the Commissioner dated 27 November 2002, pages 1 to 3 marked 'A'.
- Subsequent telephone conversations with [Ms A], pages 4 to 7, dated 24 February, 10 April, 24 June, 7 August 2003, marked 'B'.
- The Commissioner's notification letter to [Mr C] dated 27 February 2003, pages 8 to 10, marked 'C'.
- Commissioner's notification letter to [Ms B] dated 27 February 2003, pages 11 to 13, marked 'D'.
- [Mr C's] response to the Commissioner dated 8 June 2003, page 14, marked 'E'.
- [Ms B's] response to the Commissioner dated 8 June 2003, pages 15 to 17, marked 'F'.
- Interview notes with [Mr C] dated 7 July 2003, pages 18 to 20, marked 'G'.
- [The] book, marked 'H'.

Expert Advice Required

To advise the Commissioner whether [Ms A] provided services with reasonable care and skill, and to answer the following questions:

- What standards apply in this particular case? (If there are any standards, would you please provide a copy or advise me of where I can obtain these standards.)
- Did [Ms B's] treatment come within these standards?
- Is it possible, using the technique described by [Ms B] to palpate kidneys in an otherwise healthy person?
- Whether [Ms B] was qualified to make a diagnosis of potential kidney problems?
- To advise the Commissioner whether [Mr C] provided services with reasonable care and skill, and to answer the following questions:
- Did [Mr C's] treatment come within the standards outlined above?
- Is it possible, using the technique used by [Mr C] to palpate kidneys in an otherwise healthy person?

- Whether [Mr C] was qualified to make a diagnosis of potential kidney problems?
- Any other matter which, in your opinion, should be brought to the Commissioner's attention.

My sources of information

Literature

'Zen Shiatsu . How to Harmonize Yin and Yang for Better Health.' Shizuto Masunaga with Wataru Ohashi. Page 38 Back Diagnosis chart

'Healing Ourselves.' Naboru Muramoto Page 111 Ginger Compress instructions

Code of Ethics – The NZ Charter of Health Practitioners' Inc.

Shiatsu College Aotearoa – P.O. Box 56-126, Auckland. 3. Director, Val Cooksley, phone 07 544 7164, 025 7900 68. – Teaching standards.

Please note attached copies of Ginger Compress recipe, and NZ Charter's Code of Ethics

Standards applying in this particular case.

It is important to keep in mind that the standards of Shiatsu are based on Traditional Oriental or Chinese Medicine, eg Acupuncture, not Western Allopathic medicine.

The training for a Shiatsu Practitioner in NZ consists of a 3 year part-time course with one of the registered Shiatsu Colleges, which come under the auspices of the Shiatsu Practitioners Association Aotearoa. Parallel training in Australia, UK, Europe, US, or Japan may also be acceptable standards for practice in NZ which would be assessed by the Association upon application.

While practising Shiatsu in New Zealand, the practitioner is bound by the Code of Health and Disability Services Consumers' Rights, as taught at the Shiatsu College Aotearoa, where I trained.

Members of the Shiatsu Practitioners' Association Aotearoa (SPAA) are also bound by the Association's Code of Ethics.

Members of the Charter of Natural Health Practitioners are bound by the Charter's Code of Ethics. (See copy attached.)

Practitioners are not bound by law to belong to any Association in this country. The Consumer must check the practitioners' credentials for themselves.

- The Shiatsu practitioner is trained to diagnose the quality of the human body's energy flow (ie electro-magnetic energy, known as ki in Japanese, or Chi in Chinese as followed in all Martial Arts disciplines, eg Tai Chi) based on the principles of

Traditional Chinese Medicine and Acupuncture. They are not trained in Western Medical diagnosis.

- The quality of energy movement or lack of it in an energy pathway (meridian) can be diagnosed by touch, (ie deficient or excessive) but not the organ itself. Oriental Medicine diagnosis states that imbalances in this flow of energy can, over a period of time, lead to disease in the related organ. Each meridian is named for the organ through which it travels, eg the kidney meridian energy flows through the kidneys themselves. (See 'Zen Shiatsu' available in alternative book stores.)
- The diagnostic area for kidneys on the back in Shiatsu Diagnosis can be seen in the accompanying diagram. (The diagnostic technique according to this diagram is commonly used to identify which associated meridians need Shiatsu pressure to bring about balance in the flow of energy.) Each different area is thought to reflect the organ named, ie lung at the top, heart below that, etc.

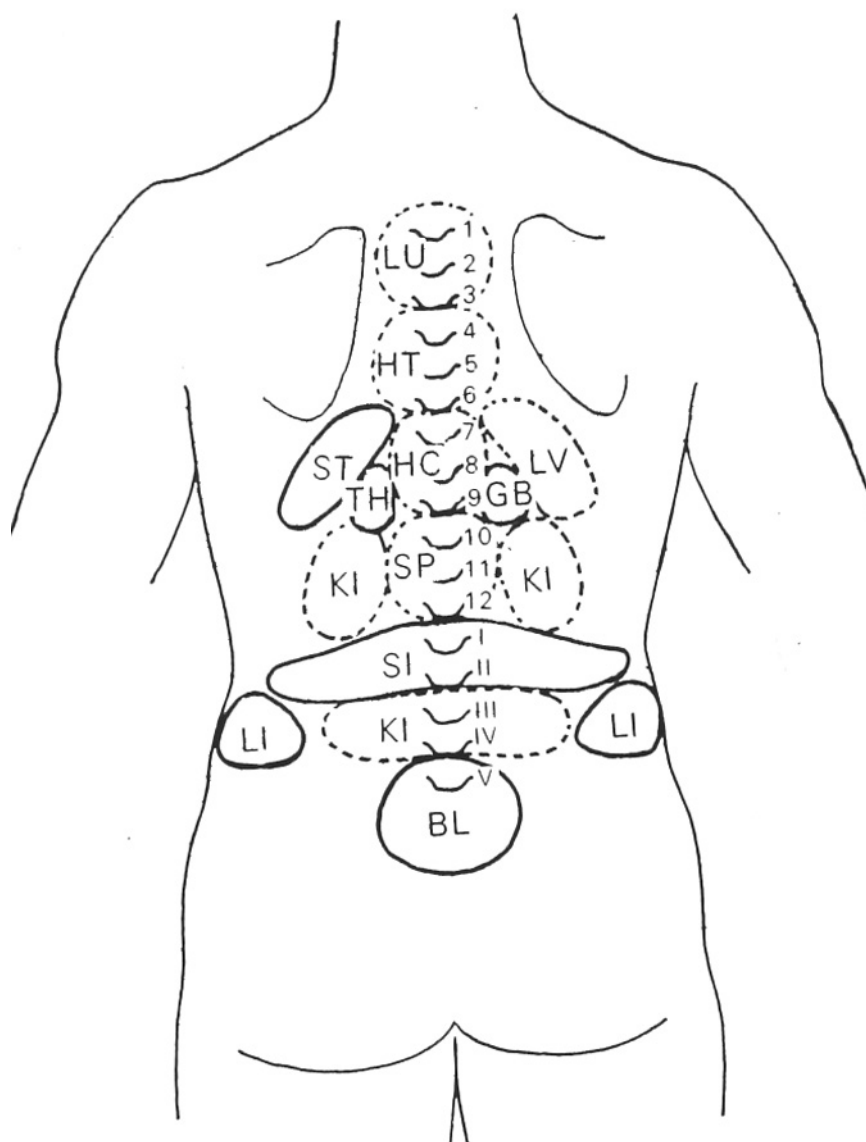


Fig. 20

- This area (see Ki on the diagram) reflects the possible condition or function of the underlying kidneys, eg if the area feels spongy to the touch it may indicate fluid retention which may be a temporary condition if the receiver was pre-menstrual for example. It would not necessarily represent a permanent or serious potential threat to the health of the consumer. A hot salt pack would normally be prescribed in that case, to draw out the excess fluid. (As used in Macrobiotics. For an explanation of Macrobiotics see 'Healing Ourselves' or many other easily accessible books on the subject.)
- If hard to the touch a ginger compress would be prescribed.

- In either case a shiatsu treatment massage including the Bladder and Kidney Meridians would be strongly indicated.
- In Oriental medical diagnosis it is considered the condition of the energy in a particular meridian may give an early indication of the potential health of a particular organ, which may be evident before it would show up in a western medical test.

The Ginger Compress Please see the enclosed copy of a Ginger Compress excerpted from the book, 'Healing Ourselves' (see refs).

It states that a person with strong constitution will take 10 minutes to redden (ie bring strong energy to the area), a person with a weak constitution 20-30 minutes. This would be an adequate time for a ginger compress treatment. [The massage parlour's] price list quotes the ginger compress treatment for 1 hour at \$90.00. It also states the compress contains plant and mineral extracts, when in fact it is made solely of grated ginger root and water.

[Mr C's] interview report states he said that people report feeling better after 2 treatments. It would be difficult to tell how soon the consumer would respond, therefore having [Ms A] pay in advance for 10 treatments seems excessive and exploitative, in my opinion.

The consumer can be shown how to apply the compress to themselves, since it is very easy to make, and be given the option to do it themselves at home.

Therefore a 60 minute session is unnecessary, in my opinion.

Also [Mr C's] demonstration of making the compress falls short of the recommendation in the quoted recipe, as the ginger is not cooked, nor squeezed to strengthen the amount of ginger in the liquid, meaning that the effectiveness of the compress would be lessened.

I am limited in my professional opinion by the fact that [Ms A's] statement, and [Mr C's] and [Ms B's] statements conflict in what they each claim was said in the clinic room, and afterwards.

Advice Concerning [Ms B]

[Ms B] is not a trained Shiatsu Practitioner but neither was she claiming to be, as her treatment appears to have consisted of a massage, as opposed to Shiatsu Therapy. If [Ms A] booked for a Massage rather than a Shiatsu session then [Ms B] would be bound by the standards and ethics of the Beauty/Massage Association in NZ to which she belongs, if any.

However, she would not be qualified to make her statement to [Ms A] that there may be something wrong with her kidneys. It is not possible to palpate kidneys, but rather only the area on the back reflecting the kidney energy.

She did call in [Mr C] for a second, more experienced opinion, however though this could have been done without her making such a statement.

If her comments to [Ms A], as stated in [Ms A's] letter, are true this would be considered pressuring and unrespectful behavior to a client, according to SPAA and the Charter's Code of Ethics. A doctor's opinion and tests would normally be recommended also.

Advice Concerning [Mr C]

The above standards apply to [Mr C]. If he is not a member of the Shiatsu Association Aotearoa, he is still bound by the Health & Disability [Commissioner] Act.

[Mr C's] treatment of [Ms A] did not come within the standards outlined above.

It is not possible using the technique used by [Mr C] to palpate the kidneys.

It is possible to diagnose the area reflecting the condition or function of the kidneys, not the kidneys themselves, and this should be clearly communicated to the receiver. Care should be taken not to alarm the receiver, and in this a lack of care appears to be evident. A recommendation to a check up with her specialist would normally be indicated.

The Shiatsu practitioner would also have recommended Shiatsu treatment on [Ms A's] Bladder and Kidney meridians.

There is conflicting information between [Ms B] and [Mr C] on the state of [Ms A's] 'kidneys'. The former stating [Mr C] agreed with her they felt hard and congested, while [Mr C] in his interview states they felt spongy. [Ms B] also states that during the time [Mr C] was massaging [Ms A], 'it was at this point he found out she was taking ... medication and had ... had cancer'. In his statement he denies the word cancer was mentioned during the massage session. These discrepancies indicate a lack of record keeping, which would be necessary if he is advising clients on serious issues such as potential kidney disease.

Comments such as 'uterus ending up in a bucket' which [Mr C] confirms he made, or as [Ms A] states, regarding her kidneys, that 'in 5 or 10 years it could result in cancer' would by the standards mentioned above, be considered extremely unprofessional. Though this may not have been [Mr C's] intention, the effect on his client was to make her feel this was 'abhorrent scare tactics'. I find this a fairly major 'failure to meet the standard of care and skill reasonably expected of such a provider', and that this conduct would incur the moderate to severe disapproval of other peers.

To summarise

The Facts

Oriental Medicine includes an effective method of diagnosis which can indicate potential patterns that may, over a period of time, develop into a disease state. The early

intervention in these patterns are seen to be a method of prevention on which Oriental Medical philosophy is based. This system is quite different to allopathic medicine, as different in characteristic as Western culture is to Eastern culture.

[Mr C] is qualified to indicate this potential to his client, as I have outlined above, but as he is bound by the Health & Disability [Commissioner] Act, should also recommend this be confirmed by her GP or Specialist.

As a Shiatsu practitioner he is bound to offer her the appropriate Shiatsu treatment.

[Ms B] is not qualified to make a diagnosis of potential kidney problems.

My Opinion

It is my opinion that [Mr C] was qualified to indicate to [Ms A] that the function of her kidneys may have been affected due to deficient energy, but not to state there is something wrong with her kidneys.

As stated above also, I feel he was trying to financially exploit [Ms A] because he could not have foretold how many ginger compresses she would need, did not show her how she could do them herself, and seems to have pressured her to prepay for 10 sessions.

[Ms B] also used pressure on [Ms A] to prepay for 10 sessions. Her treatment of [Ms A] after she had cancelled her Ginger Compress appointments is unprofessional, according to [Ms A's] statement. It is the client's right to choose freely which course of treatment to pursue, and this must be respected at all times."

Code of Health and Disability Services Consumers' Rights

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

RIGHT 2

Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

RIGHT 4

Right to Services of an Appropriate Standard

1) Every consumer has the right to have services provided with reasonable care and skill.

RIGHT 5
Right to Effective Communication

- 1) *Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. ...*

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, including –*
- a) *An explanation of his or her condition; ...*
-

Opinion: No breach – Ms B

Exploitation

Under Right 2 of the Code Ms A has the right to services provided free of exploitation, including financial exploitation. In a clinical setting exploitation occurs where a provider recommends a treatment for financial benefit without any genuine belief that the treatment will have therapeutic benefit for the consumer.

Ms A reported being very distressed by Ms B's news that she had a build-up of fluid and toxins and risked future kidney problems, possibly cancer, but she seemed happy to accept the discounted price of \$800 and made two appointments to have the first treatments. It was her mother who suggested that she seek a second opinion from the specialist who had been treating her for so many years. The question is whether Ms B's prognosis was a scare tactic, as described by Ms A, used for personal financial benefit.

I am satisfied that Ms B stood to benefit if Ms A committed herself to ten treatments. She works at the massage parlour and relies on clients to maintain the business and her work.

Ms A, who revealed that she had had cancer successfully treated in the past, was vulnerable to any suggestion that there was treatment available to prevent the onset of disease or possibly a return of cancer.

Ms B appeared to pursue Ms A, suggesting a discounted price and following her to the lounge where she and her mother were enjoying a complimentary drink. Ms B seemed to pressure Ms A into accepting the full course of ten treatments.

Ms B's behaviour bordered on being exploitative, but I am satisfied that as a massage therapist (but lacking any Shiatsu qualifications) she genuinely believed the ginger compress treatments would benefit Ms A, and that Ms A was free to decline the treatment. After carefully considering all the evidence, I do not consider that Ms B exploited Ms A. Accordingly, Ms B did not breach Right 2 of the Code.

Diagnosis of kidney problems

Under Right 4(1) of the Code Ms A has the right to health services provided with reasonable care and skill. The legal standard is that of a responsible practitioner in the particular circumstances.

Ms A maintains that Ms B made an incorrect medical diagnosis that she was not qualified to make. While accounts of the conversation between Ms B and Ms A on 9 November 2002 vary, I am satisfied that Ms B talked about the likelihood of kidney problems and Ms A related this information to her past medical condition.

My advisor confirmed that Shiatsu massage techniques enable the masseuse to detect low energy flow, signalling that the organ is unwell, and can cause disease in the future. According to Oriental philosophy the focus is on prevention. When Ms B advised Ms A that she could feel fluid build-up in the kidney area and recommended ginger compress treatment, she was following this philosophy. She did not categorise the symptoms to a particular disease, and sought a second opinion on her suspicions.

Ms B is not qualified in Shiatsu therapies. She recognised the limits of her knowledge about Shiatsu massage and asked for a second opinion from Mr C. It would have been prudent of Ms B to have consulted Mr C before she told Ms A her concerns. However, I am satisfied that Ms B did not step outside her area of expertise and acted reasonably in seeking a second opinion from a qualified practitioner. Accordingly, she did not breach Right 4(1) of the Code.

Opinion: No breach – Mr C*Diagnosis of kidney problems*

Mr C told Ms A that she had fluid congestion of the kidneys and the potential to develop kidney problems. Ms A said that Mr C made an incorrect medical diagnosis. Dr D assured her, by his physical examination and blood analysis, that she did not have kidney problems. Furthermore, she understood that one cannot feel the kidney in a well person. In her view, Mr C was not a qualified doctor and should not have made the diagnosis.

In relation to Mr C's qualifications, my advisor indicated that Mr C was qualified to make his diagnosis. Shiatsu massage techniques do not follow Western medical teaching. Shiatsu massage enables the practitioner to diagnose fluid retention by detecting low energy flows within the region of the organ, although it is not possible to feel the organ itself. In Shiatsu teachings the area of the body takes its name from the organ through which the energy flows. Where a Shiatsu therapist detects low energy from the kidneys, this signals that the organ is unwell and could cause disease in the future. Oriental philosophy aims at preventing illness, and Mr C was qualified to use Shiatsu therapy to make a diagnosis.

Although Ms A subsequently obtained an expert opinion from a neurologist – that she did not have kidney problems – in my opinion Mr C provided services with reasonable care and

skill when he advised Ms A of his findings, and therefore did not breach Right 4(1) of the Code.

Opinion: Breach – Mr C

Exploitation

Ms A considered that Mr C attempted to financially exploit her. The question is whether Mr C's recommendations, in prescribing what amounted to \$800 worth of ginger treatments, placed his own interests for financial gain above any therapeutic benefit Ms A would obtain from the treatments. Clearly, Mr C stood to benefit selling Ms A a package of treatment.

My advisor, a Shiatsu practitioner, stated that ginger compress is not used to treat "spongy" tissues. She advised that "if the area feels spongy to the touch it may indicate fluid retention which may be a temporary condition if the receiver was pre-menstrual". Fluid retention may not represent a permanent or serious potential threat to the health of the consumer. A "hot salt pack", rather than ginger compress, would normally be prescribed to draw out the excess fluid.

My advisor noted that if Mr C genuinely believed Ms A had kidney problems he had an obligation to refer her to a general practitioner or specialist, regardless of her medical history.

In my opinion, in recommending that Ms A purchase \$800 worth of treatment of doubtful benefit and failing to recommend she consult a medical practitioner first, Mr C placed his financial interests above any therapeutic benefit to Ms A and attempted to financially exploit her. As a qualified Shiatsu practitioner, he can properly be held to a higher standard of conduct than his colleague, Ms B. In these circumstances, Mr C breached Right 2 of the Code.

Communication and information

Mr C should have taken care not to alarm Ms A by the way in which he conveyed information about her condition. His advice that her uterus could end up in a bucket was offensive and unprofessional.

Mr C did not give Ms A an adequate explanation about her potential kidney problems, and he failed to recommend that she obtain medical advice.

In my opinion, Mr C used inappropriate language to convey to Ms A his opinion about possible kidney or gynaecological disease, and failed to give her the information that a reasonable client in her circumstances would expect to receive. Accordingly, Mr C breached Rights 5(1) and 6(1) of the Code.

Actions taken

Mr C provided a written apology to Ms A for breaching the Code.

Further actions

- A copy of this report, with details identifying the parties removed, will be sent to the New Zealand Charter of Health Practitioners Inc, the Shiatsu Practitioners Association Aotearoa, and the New Zealand Institute of Natural Body Masseurs, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.