
Massage Therapist

Report on Opinion - Case 98HDC14193

Complaint

The Commissioner received a complaint about the services provided to the consumer by the massage therapist from a therapeutic massage group. The complaint is that:

- *In late September 1997 the massage therapist gave the consumer a therapeutic massage. The massage therapist removed his clothing and worked only in speedo shorts.*
 - *During the massage the towel used to cover the consumer was displaced exposing the consumer's genitals.*
 - *While the consumer was lying on his back the massage therapist sat on his waist and placed a towel over the consumer's face. Perspiration from the massage therapist dripped onto the consumer's face.*
 - *The massage therapist's technique caused the consumer pain and made it impossible for him to give the massage therapist feedback on whether he wanted the massage to continue.*
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Investigation

The Commissioner received the complaint on 24 April 1998 from the New Zealand Association of Therapeutic Massage Practitioners Inc ("NZATMP"). The Commissioner was advised that the consumer was not available to comment and she therefore commenced an investigation on her own initiative. Information was received from:

The Consumer's letter to the NZATMP.

The massage therapist was given the opportunity to respond to the consumer's complaint, but chose not to make a substantive response to the complaint. The Commissioner sought information from the New Zealand Association of Therapeutic Massage Practitioners.

Information Gathered During Investigation

In his letter the consumer stated that he was a massage therapist visiting New Zealand from another country. While staying in New Zealand and looking for employment he found the name of the therapeutic massage group in the telephone book. Thinking he might be an asset to the massage team he telephoned the massage therapist and arranged a meeting for late September 1997.

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**Information
Gathered
During
Investigation**

On that day the consumer went to the therapeutic massage group located in what the consumer described as an abandoned city council building and met the massage therapist. The consumer described the meeting with the massage therapist in the following terms:

"[The massage therapist] led me up a flight of stairs and down a long, tall corridor, past rooms of battered gym lockers to a wooden door at the end of the hall. My impression ? 'X-Files'.

He then led me into his room. His table is approximately 9x6 feet with a rectangular hole near the centre for my "boys" (his affectionate term for my genitals). We talked for awhile and then got started with the massage."

The consumer advised the NZATMP in his letter of complaint that the massage therapist changed from the clothes he was wearing into speedo shorts. The consumer did not understand what type of massage required the massager to be almost naked. He described the massage in the following terms:

"I was on the table with only a towel over my butt and he came into the room and started to change out of his clothes. He informed me that he only wears speedos because of the nature of his work ... He worked up on the table with me and most of his pressure was appropriate except for my back. He really hurt my back. He asked me to take a deep breath and let him push it out. Then I couldn't breath at all! I couldn't even tell him to stop! That is dangerous. The client should always be in control! And I wasn't! ... In fact he boasts that when he massages somebody, they can't resist him. Meaning the client is unable to pull away from him when he is working. They're trapped.

I laid on my back while he worked in my chest, (by this time, the towel that had provided me with modesty was gone). He was straddling my waist, facing my head and he put a towel over my face so that he wouldn't "drip sweat in my eyes".

The consumer advised that he felt this practise "a little sadistic" when the massage therapist put the towel over his face.

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**Information
Gathered
During
Investigation**
continued

The consumer was so concerned about the massage technique used by the massage therapist that in early October 1998 he sent a written complaint to NZATMP. The consumer concluded:

“This letter is intended to bring to light a therapist whose work is, in my opinion, unethical and unprofessional and to make sure that people are informed about his work.”

In keeping with their complaints policy the NZATMP sent a copy of the consumer's complaint letter, with all reference to the consumer removed, to the massage therapist, advising him that the matter would be discussed at the next NZATMP executive meeting in mid-December 1997. The massage therapist was also advised that his name would not appear on the agenda of the meeting and the NZATMP complaint procedure was included with the letter. There is no evidence that the massage therapist responded to this communication.

Eight days after the meeting the NZATMP advised the massage therapist that, following their meeting in mid-December 1997, the executive committee wished to bring to his attention areas of his practice where he should consider making changes. A representative signed the communication on behalf of the executive of the NZATMP. Those areas of practise as set out in the letter, and which formed part of the draft Code of Ethics for the NZATMP, included:

“Professional Draping

By using proper draping (uncovering only the portion of the body that is being massaged) and by always concealing the person's private parts, the Practitioner maintains professional and ethical practice while preventing embarrassment to either the Practitioner or the client.

Appropriate Clothing / Hygiene

To ensure confidence and trust in your clients you should project a well-groomed, professional appearance at all times. Wear the appropriate clothing for your profession. Clothing made of natural fibres such as cotton are good if you perspire heavily, take precautions so that your perspiration does not drop on the client.

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**Information
Gathered
During
Investigation,
continued**

Client Control

It is important that the client is always in control during the treatment/massage, session. To ensure you are meeting client needs and for safety reasons, the client should be encouraged to feedback to the Practitioner especially concerning pressure and duration."

In mid-April 1998 the NZATMP forwarded the consumer's letter and correspondence about the matter to the Health and Disability Commissioner, as the matter had not been resolved satisfactorily.

On 21 July 1998 the Commissioner commenced an investigation.

In October 1998 the massage therapist advised that Commissioner that he was unable to respond to the consumer's claims because he has been blocked from gathering the information by threats of legal action by another party. In this letter the massage therapist advised the Commissioner that the visit by the consumer in late September 1997 was a job interview.

Despite correspondence from the Commissioner informing the massage therapist of the Commissioner's jurisdiction the massage therapist has not provided any further information. The Commissioner has attempted to contact the consumer, but was advised that he has left New Zealand.

The NZATMP advised the Commissioner that the standards outlined in the letter of mid-December 1997 are the basic and fundamental requirements of practice for members of the NZATMP. The NZATMP forwarded the constitution, which identifies the criteria for certification as being a member of the NZATMP. The Commissioner was advised that the massage therapist was a certified member. To be a certified member one must pass an examination or practice assessment set by the NZATMP.

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

RIGHT 1

Right to be Treated with Respect

- 1) *Every consumer has the right to be treated with respect.*
- 2) *Every consumer has the right to have his or her privacy respected.*
- ...

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 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.*

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Massage Therapist

Report on Opinion – Case 98HDC14193, continued

Code of Health and Disability Services

Consumers' Rights

continued

RIGHT 10

Right to Complain

- 1) *Every consumer has the right to complain about a provider in any form appropriate to the consumer.*
- 2) *Every consumer may make a complaint to –*
 - a) *The individual or individuals who provided the services complained of; and*
 - b) *Any person authorised to receive complaints about that provider; and*
 - c) *Any other appropriate person, including –*
 - i. *An independent advocate provided under the Health and Disability Commissioner Act 1994; and*
 - ii. *The Health and Disability Commissioner.*
- 3) *Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.*
- 4) *Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month.*
- ...
- 6) *Every provider, unless an employee of a provider, must have a complaints procedure that ensures that –*
 - a) *The complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and*
 - b) *The consumer is informed of any relevant internal and external complaints procedures, including the availability of -*
 - (i) *Independent advocates provided under the Health and Disability Commissioner Act 1994; and*
 - (ii) *The Health and Disability Commissioner; and*
- ...
- 7) *Within 10 working days of giving written acknowledgement of a complaint, the provider must, -*
 - a) *Decide whether the provider –*
 - i. *Accepts that the complaint is justified; or*
 - ii. *Does not accept that the complaint is justified; or*
 - b) *If it decides that more time is needed to investigate the complaint, -*
 - i. *Determine how much additional time is needed; and*
 - ii. *If that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.*

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Code of Health and Disability Services Consumers' Rights
continued

8) *As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of –*

- i. The reasons for the decision; and*
- ii. Any actions the provider proposes to take; and*
- iii. Any appeal procedure the provider has in place.*

Relevant Standards

Rules of the New Zealand Association of Therapeutic Massage Practitioners state the following:

...(iii) Certified Membership Status

Upon successful completion of the National Certification Examinations or acceptance of presented evidence of equivalent training and/to qualifications in therapeutic massage and awarding NZATMP Diploma of Therapeutic Massage, individuals are upgraded to “Certified Membership Status”. Satisfactory completion of an assessment of competency with the practical skills of massage is a requirement before certification. Even where credit is given for the theoretical papers. To be considered for credit for certified membership a person must be already a member of the Association.

Section 3(k) Health and Disability Commissioner Act 1994

3. ***Definition of “health care provider”*** – *In this Act, unless the context otherwise requires, the term “health care provider” means –*

...

(k) Any other person who provides, or holds himself or herself or itself out as providing, health services to the public or to any section of the public, whether or not any charge is made for the services.

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Jurisdiction I accept that when the consumer attended the therapeutic massage group he was in search of a job as a massage therapist. I have no information about the subject of the discussion between the consumer and the massage therapist, but the outcome of the meeting was that the massage therapist gave the consumer a massage. The consumer's complaint was about the way the massage therapist performed the massage and in my opinion the consumer received a health service. The therapeutic massage group advertise therapeutic massage and are health providers within section 3(k) of the Health and Disability Commissioner Act 1994. All health providers are subject to the duties in the Code.

**Opinion:
Breach** In my opinion the massage therapist breached Rights 1(1), 1(2), Right 4(2), Right 5(2) and Right 10 of the Code of Health and Disability Services Consumers' Rights as follows:

Rights 1(1) and 1(2)

The consumer had the right to be treated with respect and to have his privacy respected. Privacy includes the right to physical privacy.

As a part of the massage the consumer was required to remove his clothing. At the beginning of the massage the consumer was appropriately covered with a towel. During the course of the procedure the towel became displaced. The massage therapist made no attempt to replace the towel and keep the consumer covered. In my opinion the massage therapist's failure to keep the consumer appropriately covered breached his right to respect and physical privacy.

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**Opinion:
Breach**

continued

Right 4(2)

In my opinion the massage therapist breached Right 4(2) as follows:

Professional draping

The consumer had a right to services that complied with the Code of Ethical Standards accepted by therapeutic massage practitioners. The massage therapist was a member of the NZATMP and its draft Code of Ethics set the standard for proper draping of the client during massage. This Code of Ethics describes the need to keep those parts not being massaged covered, particularly the genitals. The massage therapist's technique failed to meet that professional standard.

Professional Standard of Dress

The NZATMP Code of Ethics describes the appropriate standard of dress for the person performing the massage. The massage therapist dressed in a manner that caused the consumer embarrassment. Furthermore, the consumer found the massage therapist's method of covering his face unacceptable. Body massage is a particularly intimate service and the onus falls on the practitioner to set a particularly high standard of practice to protect the client and the practitioner from allegations of impropriety. Additionally, the massage therapist's lack of clothing resulted in perspiration falling on the consumer. The massage therapist's mode of dress did not meet professional standards.

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**Opinion:
Breach,
*continued***

Right 5(2)

The provider must ensure an environment where both parties are able to communicate openly, honestly and effectively. An environment for effective communication means that the consumer was able to control the situation, to proceed with, or stop the massage if he chose to do so. It was the massage therapist's responsibility to provide and foster this interaction. The consumer was unable to communicate due to the techniques used by the massage therapist, who did not provide an appropriate environment for such communication. This did not comply with the requirements of Right 5(2) of the Code.

Right 10

The consumer has the right to make a complaint in any way he chooses. It is not necessary for him to approach the provider directly. As a health provider the massage therapist is obliged to have a complaints procedure in place that complies with the Code of Rights and failure to have such a procedure is a breach of the Code. The massage therapist provided no evidence of a complaint procedure.

Actions

A copy of this opinion will be sent to the New Zealand Association of Therapeutic Massage Practitioners Inc.

I understand that the massage therapist no longer practises as a massage therapist, but if he should do so in the future he must institute a complaints process for the proper handling and administration of complaints received. Furthermore, the massage therapist would be required to abide by the standards of practice accepted by the NZATMP.
