Neuromuscular Therapist, Mr B

A Report by the

Deputy Health and Disability Commissioner

(Case 07HDC18827)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Overview

This report focuses on the appropriateness of care provided by neuromuscular therapist Mr B to Miss A, who was 14 years old at the time of the therapy.

Although Miss A initially consulted Mr B because of bunions, he provided therapy that included massage of her groin. Miss A complained to her mother that she found the massage of her groin distressing, and her mother subsequently complained to the Health and Disability Commissioner.

This report considers issues including the appropriateness of the care Mr B provided to Miss A.

Complaint and investigation

On 29 October 2007 the Health and Disability Commissioner (HDC) received a complaint from Mrs A about the services provided to her daughter, Miss A, by neuromuscular therapist Mr B. The following issue was identified for investigation:

The appropriateness of the care provided to Miss A by Mr B from 25 April to 15 May 2007.

An investigation was commenced on 15 November 2007.

The investigation was delegated to Deputy Commissioner Tania Thomas.

Information was provided by Mrs A, Miss A, Mr B, and the New Zealand College of Massage. Independent expert advice was provided by massage therapist Pip Charlton, whose report is attached as Appendix A.

Information reviewed

Background
Miss A had suffered from bilateral bunions for a number of years, and in June 2006 had had an operation to remove the bunions on both feet. However, the bunions recurred and caused Miss A pain and discomfort.

Mr B and Mrs A, Miss A's mother, were members of a business networking group. In conversation, Mr B told Mrs A that "he could help with the problem and get [Miss A] some relief from the pain".

Mr B advised that he had no experience working with a patient with bunions prior to this time.

First consultation — 18 April 2007
On 18 April 2007, Miss A consulted Mr B for the first time, with her mother in attendance.

Mr B performed an assessment of Miss A. He stated:

> "I charted [Miss A's] hips as being very laterally rotated when standing in a relaxed stance (indicated by feet splayed outwards). This immediately suggested to me the possibility that this structural and biomechanical variance might be a contributing factor to the pain [Miss A] experienced in her right big toe first joint."

Following his examination, which included an assessment of Miss A's hip range of movement, Mr B concluded that there were "some main major specific muscles needing lengthening or strengthening to regain structural balance".

Mr B stated that he showed Miss A, using a skeleton in his clinic, "where the muscles attach to the pelvis in the groin area, along with explanation of the reasons for working fascia, muscle bellies, and musculo-tendinous junctions (on the pelvis)".

In a subsequent interview, Mr B stated that he did not consider referring Miss A to another health professional with experience in the management of bunions because he "saw some very solid reasons for being able to do some good work with [Miss A]".

Second consultation — 25 April 2007
Miss A attended for a second time on 25 April, on this occasion accompanied by her father. Mr B performed further assessments, and in his email to Miss A and her parents sent immediately after the consultation, he stated:

> "Pain you experienced today was of a type and location consistent with anomalies in specific muscles contributing to your big toe angulation (which gives rise to the painful bunions)."

Mr B recommended that Miss A wear different shoes, that she put "padding between [her] toes", improve her nutrition, and consult Mr B as often as she could, so that he could "reduce the muscle tensions and pain".

Third consultation — 1 May 2007
Miss A attended again on 1 May, accompanied by her mother. Mrs A stated that Mr B "concentrated on Miss A's feet and gave her a general massage". Mrs A stated that Mr B advised that, on the next appointment, "he would have to perform some delicate massage in future sessions but didn't go into more detail".

Fourth consultation — 8 May 2007
Miss A attended for the fourth time on 8 May 2007, accompanied by her mother.

Mrs A stated:

> "[Miss A's] feet were not really touched at this treatment and [Mr B] performed his first intensive massage. I was a little shocked to see him massaging the region around her inner thigh. … The treatment went on for about 15 minutes. [Mr B] said that as she had bad posture he had to concentrate on her groin area more in the next treatment. Although a bit sceptical I booked in for another appointment as she had been through so much during the past year and I just wanted her to get better and be able to carry on with the sport she loved."

Miss A stated that Mr B massaged higher up her leg than on previous appointments, including her groin area and that, although she felt uncomfortable, she did not say anything at the time.

In her complaint, Mrs A stated that throughout Miss A's treatment sessions, Mr B never explained to either her or Miss A "why exactly the groin treatment was being performed — he just said he would have to do some deep intensive massage to improve her posture." Mrs A said that "he stated this after the very first initial examination after he had only performed a brief postural assessment of [Miss A]".

In a written response to the complaint, Mr B asserted that he is "of the firm conviction that [he] thoroughly communicated reasons for suggested treatment, and [his] intent". He said:

> "I used the skeleton model especially to show where the muscles attach to the pelvis in the groin area, along with explanations of the reasons for working fascia, muscle bellies, and musculo-tendinous junctions (on the pelvis) … I explained how working on these junctions was part of the work to facilitate lengthening of muscles inhibiting hip movement or creating gait and postural patterns that were potential contributors to her pain in her big toe(s). I had mentioned this early on as a worthy area for work later on in [Miss A's] treatment, but the hips area was investigated more fully only after having made some excellent progress, by the end of the session, in reducing pain in [Miss A's] toes by working on muscles in the lower leg and foot …
>
> I explain these things before I do even the Myofascial release (MFR) work preparatory to such work in the groin area, explaining what the work is designed to achieve, in line with the client's stated goals. I have a protocol of the procedure for this work that includes, as the first part, an explanation of why the work is expected to be beneficial, my stated recognition of the possible discomfort (physical and 'other') the client may feel, encouragement to the client to let me know of any and all discomfort, and assurance that they are always in charge. My procedure of explanation and demonstration with the

> skeleton, as with all clients, was one that I followed in my sessions with Miss A from the 1st session onwards. Its just what I find most useful to get the information across. This is why I asked specifically for her mum to be present, as a reassurance to her and her mum, and to have an older support person present who could more easily understand my explanations and demonstrations and ask for clarification. In my view, [Mrs A] and [Miss A] were well informed of the work I wanted to do, the reasons for it, and the body areas involved."

Mr B then commented on Miss A's consent to the treatment. He said:

> "After my explaining the reasons for and the nature of this specific work, with the help of the skeleton, I asked both [Mrs A] and [Miss A] if it was ok, and [Miss A] was asked often throughout all work, if she was okay, or to let me know if she was uncomfortable. I understood them both to agree, at these times, for the work to continue. I believed they have both given consent for the work. [Mrs A] might have been shocked to see me do this work, but that's not because of my not having shown her and [Miss A] the nature of the work in advance. I'm extremely surprised she says she was shocked, as I had understood then to have agreed to the work after having showed them what was required."

Mr B concluded his response as follows:

> "So, I contend, and believe, that, I communicated appropriately and comprehensively with [Miss A] and [Mrs A]. I described the work and the reasons for it, asked for permission and understood them to have given it, and asked them both, but particularly [Miss A], to let me know of any discomfort … I understood them to have agreed both verbally and by absence of any indicators to the contrary, to the treatments at all stages."

In a subsequent interview, Mr B described the explanation he gave prior to the massage:

> "So I did what I could at least, explaining how [the muscles] attach here … I use the words medial and lateral and with an explanation so that they can get used to as I use it all the time, rather than trying to figure out which is which. So understandably this is very close to the midline you know, and in the groin area, and usually I [say] groin area and people usually understand that. And I'll be saying things like, 'It's important that if you're uncomfortable with it you let me know'. I say there are discomforts of all sorts. There can be physical discomfort if it's hurting and it's not sort of degree of type of hurt that you feel is good, just let me know. If you're cold or if you're too hot. But it can be emotional, it can be because it is a sensitive area.
>
> So I explain those things and I have to show why this makes it all so relevant. Particularly obturator internus which is attaching into the obturator foramen …

> I even mention also with respect to obturator internus in our training sometimes as we work on we feel the person's digit was actually not on a muscle but on the anus and explain that and explain the trigger points and what can be trigger points. So a bit of time is spent on this. I don't know if I spent too much time, or whether I did well enough or not, I rely to a large extent on communication with the client while they're on the table, whether they're comfortable with that, those sorts of things. … I would have explained, using the skeleton."

Fifth consultation — 15 May 2007

During the consultation on 15 May 2007, Mrs A was again concerned about Mr B's massage of Miss A. Mrs A recalled that the appointment lasted about an hour and a half, with the massage of the groin taking up approximately one hour and 10 minutes of that time. Mrs A decided that she would not arrange another appointment with Mr B for Miss A because she was becoming "more and more uncomfortable about every subsequent treatment".

Miss A recalled that the massage Mr B provided at the fifth appointment was much like the fourth. She said she told her mother that she did not want to go back to see Mr B again.

Mr B advised that his massage of Miss A's groin was because she had "laterally rotated hips". He added that, for the appointments on 1 and 8 May 2007:

> "My session notes show I covered … a good range of other structures in the leg and foot and gluteus muscles that left only an amount of treatment time that I would normally spend on adductors and deep 6 lateral rotators origins in the groin."

Mr B stated that, prior to the complaint to HDC, neither Mrs A nor Miss A told him they were uncomfortable with the care he provided.

Subsequent events

Miss A accompanied her mother to a party hosted by the business networking group of which Mr B and her mother were members. Mr B spoke to Miss A, and she said afterwards to her mother that he was "really weird". She added:

> "I felt sick because what he had done was wrong."

Miss A subsequently told her mother that she had felt very uncomfortable about the massages that Mr B had performed on the fourth and fifth appointments. Mrs A advised that "[Miss A] stated that he had massaged the bone between her legs consistently" during the last two appointments. Mrs A subsequently complained to HDC.

New Zealand College of Massage Therapy
Because of the complaint made to HDC, Mr B contacted the New Zealand College of Massage Therapy (NZCMT) and a meeting was held on 3 December 2007.

Having reviewed the case, he was advised by his former tutor that she did not feel that he had "strong clinical reasons for working on the muscles of [Miss A's] groin". Mr B advised that he agreed with her assessment. The recommendations that came from the meeting were:

> "a. Be aware that girls as young as [Miss A] might not communicate discomfort easily, although asked [to].
>
> b. Think about referring young girls to female therapists if need for this treatment arises.
>
> c. Do a brief demonstration of the work proposed, on the client, and then ask for consent to treatment in that fashion …"

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 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.

Response to provisional opinion

Mr B

In response to the provisional report Mr B submitted that Ms Charlton was not appropriately trained to provide advice on the care he provided. Mr B explained that he is a neuromuscular therapist, which requires additional training to that required for a remedial massage therapist. He advised that a lot of the knowledge and techniques obtained during the neuromuscular therapy diploma course are not covered in remedial massage training, and that without completing the neuromuscular therapy diploma course, Ms Charlton would never have the level of understanding required to comment of the care he provided. Mr B considered that it would be similar to him providing advice on the care provided by an osteopath.

Mr B disputed Ms Charlton's advice that he did not have any clinical justification to treat Miss A's groin. He advised that his rationale for treating this area was based on Miss A's postural assessment. Mr B advised that anyone with training or knowledge of neuromuscular therapy would understand how much of an impact postural abnormalities may have on pain and, in his opinion, Miss A had sufficient postural abnormality to warrant treatment.

Mr B acknowledged that his communication with Mrs A and Miss A was inadequate. However, he believes that he took every step possible to provide a clear explanation to them. It was his understanding that they fully understood his explanation and gave consent for treatment.

Mr B disputes that he spent over 70 minutes treating Miss A's groin area. He explained that the treatments included myofascial release of the thigh muscles, as well as compression techniques of the muscular insertions. Furthermore, he considered that when you take into account the range of muscles he treated, which included the flexor, adductor and lateral rotator muscle groups of the hip, some of which insert into the femur, 70 minutes is not excessive.

Mr B also disagrees with Ms Charlton's advice that the hip lateral rotators can be accessed while the patient is supine. He explained that only some of the lateral rotator muscle insertions can be accessed in this position. Mr B considers that Ms Charlton's advice therefore demonstrates her limited understanding of anatomy.

Mr B disputed Ms Charlton's advice that the patient's passive range of motion should be tested as part of the initial assessment. Mr B explained that Miss A only had problems with active movements. He also believes that if range of motion was restricted in active range of motion it would also be restricted in passive range of motion and therefore did not need to be tested.

Mr B also disagrees with Ms Charlton's advice in relation to the consistencies of his measurements and his subsequent rationale for treatment. Mr B reiterated his belief that his assessment findings were accurate and provided justification for his treatment. Mr B stated that his rationale for treatment was based on his experience that loosening all the tissues around the joint can have a significant effect on range of movement of the joint.

Mr B accepts that his patient records are difficult to read in places. He explained that this is because he is often rushed to write his notes between patients. However, he considers that he has covered everything necessary in relation to Miss A's consultations.

Mr B disputes Mrs A's assertion that he made inappropriate comments about other health professionals. He advised that he would never do that and often refers patients to osteopaths or physiotherapists if he considers it appropriate.

Mr B stated that he has very mixed feelings about this complaint. He advised that he never wanted either Miss A or Mrs A to feel as they do. It was always his intention to help Miss A. Mr B stated:

> "I am very sorry that my own lack of communication or understanding that there was any less than total consent for treatments that I believe I had described and explained very full, that I misunderstood that the permission for consent was actually given …"

Following the receipt of this complaint Mr B advised that he has worked with the College of Massage to develop a consent form for patients. He is also working at making improvements to his communication and documentation techniques.

Mrs A

Mrs A reiterated that she does not recall Mr B ever providing either her or Miss A an explanation about his intended treatment. She stated:

> "[Mr B] did not explain what the groin massage was designed to achieve and he did not discuss any stated goals. He did not explain why the work was expected to be beneficial but did state that [Miss A] may feel physical discomfort. I feel that it is totally ridiculous for [Mr B] to expect a 14-year-old child to inform him whilst he is massaging the bone between their legs for an hour and 10 minutes with mostly silence to expect them to be able to communicate effectively with him and [Miss A] was definitely not in any sort of control of the situation. [Mr B] was in total control throughout the treatments."

Mrs A advised that while they gave Mr B consent to treat Miss A's bunion pain, they never gave him consent to "violate her body and leave her in a traumatized and confused state". She advised that had she known what Mr B intended to do she would never have given her consent.

Expert Advice

In his response to this complaint, Mr B stated that it was important that the information be evaluated by a fellow neuromuscular therapist, rather than a remedial massage therapist.

Ms Charlton addressed the issue of her authority to comment on this case in her expert advice. Mr B was a certified remedial massage therapist at the time he treated Miss A. Therefore, he was required to comply with the Massage New Zealand Code of Ethics.

I accept Ms Charlton's advice that the distinction between a neuromuscular therapist, and a remedial massage therapist who has graduated from a massage college or institution with a high standard of training, is unclear. Ms Charlton is a remedial massage therapist who employs a range of physical assessments (including postural analysis) and soft tissue techniques (including trigger points). She has 15 years' experience as a massage therapist and 12 years' experience as a massage tutor. On balance, I am satisfied that Ms Charlton is suitably qualified to give expert advice on this complaint.

Opinion: Breach — Mr B

The complaint made by Miss A and her mother is very serious: that Mr B treated and touched her inappropriately, and at some length, during the course of two consultations on 8 and 15 May 2007.

Under Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), Mr B was expected to provide services that complied with professional standards.

Under Right 6(1) of the Code, Mr B also had a duty to provide Miss A with the information that a reasonable consumer, in Miss A's circumstances, would expect to receive. Mr B also had an obligation to ensure that Miss A had given her informed consent before he provided the massage services, as required by Right 7(1) of the Code.

Information and consent
Miss A attended Mr B for treatment of pain associated with her bunions. During the first three sessions Mr B massaged Miss A's feet and lower legs. During the last two treatments Mr B massaged Miss A's groin area, explaining that Miss A's pain was probably associated with her posture and lateral rotation of her hips.

Neither Miss A nor Mrs A recalls any explanation about Mr B's treatment around Miss A's groin area.

Mr B advised that he fully informed both Miss A and Mrs A about the proposed treatment in the groin area. In response to this complaint, Mr B said that he followed his "usual" practice in providing consumers with information about proposed treatment. His usual practice includes the use of anatomical terms, an explanation of "trigger points", and the use of a skeleton to identify anatomical features and demonstrate techniques. However, in this case, Mr B said, "I don't know if I spent too much time, or whether I did well enough or not" in providing Miss A with information about the proposed massage in the groin area. Furthermore, Mr B has not documented anything to suggest that the proposed treatment was discussed, or that Miss A gave her informed consent to the treatment provided.

Mr B had a duty to provide Miss A with all the information that a reasonable consumer, in her circumstances, would expect to receive. This includes information about the rationale for the treatment, and the location of the treatment. As stated in a previous HDC opinion,[1] "[p]roviders who do not adequately explain the services being provided run the risk of making the consumer feel confused and uncomfortable". It was particularly important that Mr B discharge this obligation when the proposed treatment involved massaging the groin of a 14-year-old girl, where there is an inherent imbalance of power. As noted by Mr B's former tutor from the New Zealand College of Massage during a discussion with Mr B, he should "be aware that girls as young as Miss A might not communicate discomfort easily, although asked [to]".

I accept that Mr B took some steps to explain his proposed treatment, involving massage around the groin area, to Miss A and Mrs A. However, on balance, I am of the view that Mr B did not provide Miss A with sufficient information about the treatment around the groin area and, therefore, she did not give her informed consent to this aspect of his treatment. Accordingly, Mr B breached Right 6(1) of the Code. As a consequence, Mr B also breached Right 7(1), as he provided a health service without Miss A's informed consent.

Standard of care
Mr B has acknowledged that he did treat Miss A as she claimed. However, he believed the therapy he provided was necessary, but unfortunately was misinterpreted by Miss A and her mother. Following a subsequent review from the New Zealand

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

College of Massage Therapy, Mr B has accepted that he did not have strong clinical justification for the treatment he provided. However, while he agrees that his justification was not strong, Mr B maintains that his assessment provided sufficient justification for treating Miss A's groin area. I remain unconvinced. It is my view that Mr B had limited reason to treat the muscles around the groin area. In any case, regardless of his assessment findings, there were other options available to Mr B in the first instance.

This view is echoed by my independent advisor, Pip Charlton, who stated that, in her view, Mr B's "[t]reatment rationale [was] based on assessment information that [was] neither conclusive nor consistent".

Furthermore, Ms Charlton considered that the amount of time Mrs A advised Mr B spent massaging the groin area was inappropriate. I do not accept Mr B's explanation that he treated a number of different muscle groups and that much of the session was spent discussing his proposed treatment with Miss A and Mrs A. I note Ms Charlton's advice:

> "Although hard to know if this was in fact the length of time he spent on this area, 70 minutes is an excessive amount of time to treat these muscles in my professional opinion even if it did include the lateral rotators that can also be accessed in the supine position."

The Massage New Zealand *Code of Ethics* states:

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

I accept Ms Charlton's advice that Mr B's treatment rationale was flawed, and that 70 minutes is an excessive length of time to treat the muscles in the groin area. Accordingly, I do not believe that Mr B's treatment technique was the most appropriate for Miss A's condition. It is my view that Mr B breached Right 4(2) of the Code by failing to provide services that complied with the Massage New Zealand *Code of Ethics*, a relevant professional standard.

Documentation

Documentation of services provided is important to ensure quality and continuity of services. As I noted in opinion 06HDC09882:[2]

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

While Mr B did keep records of his consultations with Miss A, these are very difficult to read. Patient records need to be complete, accurate and legible so that they can be accessed by the patient, and by other health professionals who may subsequently treat

[2] See footnote 1.

the patient. By not keeping clear records of the services he provided to Miss A, Mr B failed to comply with his professional obligation to adequately document the services he provided to Miss A. Accordingly, he breached Right 4(2) of the Code.

Recommendations

I recommend that Mr B provide a written apology to Miss A, to be sent to this Office. This will then be forwarded to Miss A.

I am very concerned about Mr B'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 B is competent to practise.

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

Follow-up actions

- Mr B 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, 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 07/18827]. 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 Commissioner.

General standard of care provided to [Miss A] by [Mr B]

What standards apply in this case?

[Mr B] makes no claims on his advertising material that he is a Remedial Massage Therapist (RMT) with Massage New Zealand (MNZ), NZ's only professional body representing massage therapists. He has shown evidence however that in fact he is an RMT member of MNZ (current practicing certificate) and therefore is bound by the rules of the Association to not only display the MNZ Code of Ethics (see attached) but ensure his work complies with them.

[Letter dated 30 November 2007] [Mr B] states that he works as a Neuromuscular Therapist (NMT). The Scope of Practice of a RMT with MNZ only covers the work of a massage therapist [see Appendix B]. It would be fair to say that there are many within the massage industry that struggle to clearly differentiate between a NMT and a massage therapist who has graduated from a massage college/institution offering a high standard of massage training. While the specific approach of [Mr B] as a NMT is not strictly covered by the MNZ RMT Scope of Practice, as a current RMT he should still abide by the principles laid down in the Code of Ethics.

[Letter dated 30 November 2007] [Mr B] also states that this case should be evaluated by an NMT rather than a massage therapist. I am not a "certified" NMT but work clinically using a range of physical assessments (including postural analysis) and soft tissue techniques including trigger points and feel more than competent and experienced as a therapist (15 years) and massage tutor (12 years) to make comment on this case.

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

Scope of Practice/Appropriate Techniques

- A practitioner shall represent their education, training, qualifications and abilities honestly.
- 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
[Letter dated 30 November 2007] [Mr B] states 'I believe that I communicated thoroughly at every stage ... particularly what my reasoning was for suggested treatment protocols and demonstrated those procedures ... I understood them to nod or murmur in agreement'. [Mr B] also states several times in his statement [dated 30 November 2007] that his 'normal' protocol of procedure includes why the work is expected to be beneficial, states recognition of possible discomfort client may feel and encouragement to the client to let him know of any and all discomfort and an assurance that the client is always in charge. He states 'I understood them to have agreed to the work after having showed them what was required' [letter dated 30 November 2007].

[25 April 2007] Email from [Mr B] to [Miss A] and [Mrs A] outline some of his findings, his recommendations and possible length of time of treatment (6 weeks). At this point he has not carried out ROM assessment so has not come to the conclusion that the 'groin' needs treatment.

[Record of meeting dated 17 January 2008] [Miss A] says that [Mr B] explained what he would do on a skeleton, but that she does not recall the details of the discussion and also that on visit 4 that [Mr B] massage 'higher up her leg' and that she felt 'uncomfortable'.

[Letter of complaint dated 25 October 2007] [Mrs A] states that [Mr B] never explained to either herself or [Miss A] why exactly the groin treatment was being performed ... he should have showed me exactly as a parent exactly where he was massaging and explained clearly why and that [Mr B] did not inform them of how many treatments he would be completing [letter dated 25 October 2007].

[Letter dated 30 November 2007] [Mr B] claims very strongly that he talked about the potential beneficial results of working the laterally rotated hips and that he showed [Mrs A] and [Miss A] the specific groin area that he would be working.

Conclusion
Clearly there is much conflicting information here. If [Mr B] informed his client of his intentions, rationale for treatment, established a clear feedback scale and gained [Miss A's] consent as he suggests he did as above, then he would be working within the code of ethics and standard expected of a MNZ RMT. If he did not then he would be in breach of the industry standard and MNZ Code of Ethics and this would be considered by his peers to be a severe breach of conduct.

Accompanying Adult
[Mr B's] choice to have an adult present during [Miss A's] treatment was a totally normal and acceptable one and given the age of the client would have been appropriate even if the treatment had not been dealing with an area of privacy.

I am unsure why [Mr B] recommended that [Miss A] present at treatments with her mother and specifically not with her father. There is no standard practice on this issue but if clear communication and rationale for treatment was given and consent was gained it should have been irrelevant who accompanied her.

Note taking
It is my understanding that 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 B's] notes either easy to read or interpret and this does not comply with industry expectations and standards.

Clinical Justification of [Mr B's] proposed treatment
A range of movement (ROM) assessment was carried out on the 4 visit [clinical records dated 7 May 2007]. This chart shows findings for:

i. most AROM measurements (active range of movement, where the client carries out the movement themselves), but not for extension but has no recordings for

ii. PROM (passive range of movement where therapist carries out movement, no client muscle engagement)

iii. resisted tests (client tries to move against a resistance).

Standard practice is for all AROM for a joint to be assessed, and usually PROM and resisted movements to be assessed and carried out in conjunction with AROM as they can give information that cannot be gained from the AROM and help to complete the picture as to what structures could be involved. It was noted that there were some restricted AROM measurements and this would have supported PROM and resisted tests being done to elicit more information.

[Clinical records] [Mr B] carried out a postural analysis on the first visit (dated chart) on which he charts laterally rotated hips on both sides. His statement [letter

dated 30 November 2007] states that the hip range of movement carried out on the 4th visit identified restricted medial rotation on the left hip and restricted lateral rotation in the right hip. It is possible that between the 1 and 4 treatments some change could have occurred but it would be unlikely that the laterally rotated right hip noted in visit 1 would change in that time without treatment to become a restricted lateral rotation right hip in visit 4 [letter dated 30 November 2007] (eg stands normally with foot and leg turned towards the outside but client has decreased ability to turn the leg that way — this is conflicting).

1. [Letter dated 30 November 2007] states short hip lateral rotators left and right but assessment notes [clinical records dated 5 May 2007] don't necessarily support this.

2. States that short right hip medial rotators but in 1 have just said that the right lateral rotators are short. This can't be both as these muscles oppose each other.

3. States that left hip adductors shorter than right but on form has noted adduction on left and right was fine as indicated by a tick.

[In letter dated 30 November 2007] [Mr B] suggests that perhaps some of his rationale for treatment was based on expectations learnt through training rather than actual findings. This is not an acceptable rationale for treatment.

[In the clinical records] [Mr B] has noted that there was a 5 degree R and 9 degree L anterior tilt in the pelvis and later noted [in the clinical records] short hip flexors and adductors. Both of these can contribute to an anterior tilt and would justify their treatment. However in this case all that is recorded against the adductors is a tick which would suggest that they were normal in length. While a 4 degree greater anterior tilt was recorded on the left side, in my professional opinion neither a 4 nor 9 degree is clinically significant for a female. This raises the question as to what rationale there was for treating the adductors and specifically the amount of treatment time that they were alleged to have been given by [Mrs A].

Conclusion
Treatment rationale has in my opinion been based on assessment information that is neither conclusive nor consistent. This would not be considered standard or best practice of an MNZ RMT. For many chronic conditions that clients present with, two different therapists could assess the same client and come up with a slightly different rationale and approach for treatment, but it should still be based on them gaining the same information by going through a thorough clinical assessment.

Treatment time
[Letter dated 25 October 2007] [Mrs A] makes reference to [Mr B] on the final visit spending 1 hour 10 minutes on the groin area and then 10 minutes on the foot and that treatment of the groin area seemed to dominate the session. Although hard to know if this was in fact the length of time he spent in this area, 70 minutes is an

excessive amount of time to treat these muscles in my professional opinion even if it did include the lateral rotators that can also be accessed in the supine position.

Conclusion
An inappropriate amount of time spent treating groin area.

Professional Conduct
[In meeting record dated 17 January 2007] [Mrs A] claims that [Mr B] 'rubbished' trained health professionals including physiotherapists, osteopaths. If this is in fact the case, it is totally unacceptable behaviour and directly contravenes the MNZ Code of Ethics, 'a practitioner shall not criticise the work of other therapists'.

[In record of meeting dated 17 January 2007] [Mrs A] also claims that [Mr B] attended the weekly [business networking] meetings and at one such meeting stated that he had decades of massage experience although he only started his business in 2005. [In letter dated 30 November 2007] [Mr B] states he completed his Massage Diploma in 1995 and his Diploma in Massage and Clinical NMT in 2006, neither of which would suggest that professionally as a qualified therapist he has had decades of massage experience. This would appear to me to be a misrepresentation of his experience which also contravenes the MNZ Code of Ethics.

Conclusion
Misrepresentation of experience and misconduct by dishonouring other health professionals.

SUMMARY

- Conflict of opinion as to degree of communication and explanation by [Mr B] as to proposed treatment, its rationale and gaining of consent.
- Request for [Miss A] to have an accompanying adult acceptable.
- Difficult treatment notes to read and interpret.
- Treatment rationale based on inconclusive and inconsistent assessment findings.
- Inappropriate and unjustified amount of time spent in 4 visits in groin area.
- Misrepresentation of experience and misconduct by dishonouring other health professionals.

COMMENT

There is considerable conflict of information about who said what during [Miss A] visits to [Mr B] which makes it extremely difficult to make a final judgement as to whether [Mr B] provided an appropriate standard of care. As a profession still trying to establish credibility with other health and medical professionals the conduct of [Mr B] would not be seen in a favourable light by his peers.

If [Mr B] explained the purpose of the treatment and gained consent as he claims he did, then the treatment carried out is still questionable in the sense that it was based on inconclusive and inconsistent assessment findings. Having read all the material I am still uncertain that the treatment carried out was done with any other intention than to address what he truly believed were contributing postural anomalies to [Miss A's] foot issues. This raises the question as to whether he had the clinical experience or understanding that he really needed to be working at such a level and treating such cases. This combined with dishonouring the name of physiotherapists etc and misrepresenting his experience as a qualified therapist is unacceptable and would be seen I believe by his peers with moderate to severe disapproval."

Appendix B

Code of Ethics

massage new zealand

Client Relationships

- A practitioner shall endeavour to serve the best interests of their clients at all times and to provide the highest quality service possible.
- A practitioner shall at all times respect the confidence of their client, and diagnostic finding acquired during consultation and/or treatment shall not be divulged to anyone without the client's consent, except when required by law or where failure to do so would constitute a menace or danger to the client or another member of the community.
- A practitioner shall not enter into an intimate or sexual relationship with a patient whilst the patient is under their care.

Professionalism

- A practitioner shall not knowingly interfere with any ongoing treatment instigated by another practitioner.
- A practitioner shall not criticise the work of other therapists.A practitioner shall refrain from using any mind-altering drugs, alcohol or intoxicants prior to or during treatments.
- A practitioner shall maintain their premises in a clean, hygienic condition at all times.
- A practitioner shall not be affiliated with, or employed by, any therapeutic massage business that utilizes any form of sexual suggestiveness or explicit sexuality in its advertising or promotion of services, or in the actual practice of its services.

Scope of Practice/Appropriate Techniques

- A practitioner shall represent their education, training, qualifications, and abilities honestly.
- A practitioner shall at all times ensure that the treatment they provide conforms 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.

Image / Advertising Claims

- A practitioner shall strive to project a professional image for themselves, their business or place of employment, and the profession in general.
- A practitioner shall display this Code of Ethics in a prominent position for public viewing within their clinic at all times.

Any person believing the above Code of Ethics has been breached should address their complaint in writing to:

Executive Secretary
Massage New Zealand Inc
PO Box 4131
Hamilton, New Zealand

Names have been removed (except the expert who advised on this case to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.