



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

**Traditional Chinese medicine therapist referred to Director of Proceedings for multiple breaches of Code
22HDC02896**

A traditional Chinese medicine (TCM) therapist has breached multiple rights of the Code of Health and Disability Services Consumers' Rights (the Code) in his treatment of a woman, the Deputy Health and Disability Commissioner has found. Dr Vanessa Caldwell has referred the practitioner to the Director of Proceedings to determine if further action is required.

The breaches relate to two acupuncture treatments provided to the woman to help alleviate pain from sciatica in her lower back. The woman subsequently made a complaint following the treatments to the New Zealand Police alleging indecent assault. The Police found there was insufficient evidence to prosecute but provided the woman's file to HDC.

In her decision released today, Dr Caldwell found the practitioner breached the woman's right to be treated with respect 1(1), her right to be fully informed of information that a reasonable consumer in the same circumstances would expect to receive 6(1), and, subsequently, her right to make an informed choice and give informed consent 7(1).

Dr Caldwell found the practitioner failed to advise the woman of the necessary information about the techniques used and the intimate areas to be treated before undertaking the treatment, so the woman was effectively unable to give informed consent. He failed to be respectful to the woman at both of her appointments.

The findings of her report were of a serious nature, Dr Caldwell said. "The consumer was in a particularly vulnerable position during the sessions and was not informed of what would be done; nor were any efforts made to actively seek consent for undertaking the procedures, which were of an intimate nature."

Dr Caldwell acknowledged the distress the appointments caused the woman. "It is evident that they have had a deep impact on her, and it would have been difficult to revisit the events. I commend her reasons for bringing this complaint."

"While the practitioner is not a member of the Chinese Medicine Council of New Zealand, or any other regulatory organisation, he is still bound by the Code," Dr Caldwell said. However, she also noted in her decision that currently there are no requirements for TCM practitioners to register with any professional association.

Dr Caldwell has referred the practitioner to the Director of Proceedings, as the breaches identified were serious and he continued to maintain that he did not have

time to inform the woman of what he was going to do or to give her an opportunity to agree to the treatments prior.

Dr Caldwell made several recommendations including that the practitioner register with the Chinese Medicine Council of New Zealand and seek mentoring from a member practitioner who could report back on the content and outcome of the mentoring to HDC. She also advised him to use this case as a basis for further training and education on informed consent and appropriate communication and treatment methods for staff at the practice. HDC will follow up on these recommendations to ensure they have been met.

She has asked the Chinese Medicine Council of New Zealand to consider a review of the practitioner's competence in the event that the practitioner seeks registration with them.

Dr Caldwell says HDC encourages anyone who has received substandard treatment from a practitioner to contact them if they wish to submit a complaint about the treatment they received.

"We also recommend people check the credentials of any health and disability service provider before they seek treatment - this includes checking their registration status online."

11 December 2023

Editor's notes

The full report of this case will be available on HDC's [website](#). Names have been removed from the report to protect privacy of the individuals involved in this case.

The Commissioner will usually name providers and public hospitals found in breach of the Code, unless it would not be in the public interest, or would unfairly compromise the privacy interests of an individual provider or a consumer.

More information for the media, including HDC's naming policy and why we don't comment on complaints, can be found on our website [here](#).

HDC promotes and protects the rights of people using health and disability services as set out in the [Code of Health and Disability Services Consumers' Rights](#) (the Code).

In 2021/22 HDC made 402 recommendations for quality improvement and providers complied with 98% of those recommendations.

Health and disability service users can now access an [animated video](#) to help them understand their health and disability service rights under the Code.

Learn more: [Education](#)