

Unprofessional and unethical behaviour with a client (09HDC02122, 28 February 2011)

Shiatsu practitioner ~ Massage ~ Unprofessional and unethical behaviour ~ Informed consent ~ Rights 2, 4(1), 4(2), 6(1)(b), 7(1)

A woman complained that a Shiatsu practitioner performed a non-Shiatsu massage during which he touched her breasts and made inappropriate comments.

The woman visited the Shiatsu practitioner because she was in pain following a fall four days earlier. The practitioner did not take a basic physical history prior to providing the Shiatsu massage. At the end of the session the practitioner drank beer. The woman left the practitioner's house but returned shortly afterwards as she was still in pain. The Shiatsu practitioner provided her with a non-Shiatsu massage without first explaining what he was going to do, and told her that he lacked recent experience with this form of massage. During the massage he assisted in undressing the woman, touched her in an inappropriate manner, and made inappropriate comments. A few days later the woman was diagnosed with a rib fracture from her fall.

It was held that the Shiatsu practitioner breached Right 2 for his inappropriate touching and language. As he did not obtain a basic physical history and consumed alcohol prior to performing a massage he breached Right 4(1). His unethical behaviour breached Right 4(2). The Shiatsu practitioner was also held to have breached Rights 6(1)(b) and 7(1) for not explaining what he intended to do during the non-Shiatsu massage and for failing to obtain informed consent.

The Shiatsu practitioner was referred to the Director of Proceedings. The Director brought a claim before the Human Rights Review Tribunal, which was heard on 14 and 15 November 2011. By decision dated 25 February 2013, the Tribunal made a declaration under s 54(1)(a) of the Health and Disability Commissioner Act 1994 that the provider's actions were in breach of the Code, in particular Right 2 (sexual exploitation), Right 4(1) (failing to provide services with reasonable care and skill), Right 4(2) (failing to provide services that complied with ethical and other relevant standards), Right 6(2) (not providing information a reasonable consumer would need to make an informed choice or give informed consent), and Right 7(1) (failure to obtain informed consent).

Damages of \$15,000 were awarded against the provider under ss 54(1)(c) and 57(1)(c) of the Health and Disability Commissioner Act 1994 for humiliation, loss of dignity and injury to the feelings of the aggrieved person.

The Tribunal's decision is available at:

<http://www.nzlii.org/nz/cases/NZHRRT/2013/5.html>