

**Shiatsu Practitioner, Mr B**

**A Report by the  
Deputy Health and Disability Commissioner**

**(Case 09HDC02122)**



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## Executive summary

### *Background*

1. On 7 November 2009, Ms A visited Mr B, a qualified Shiatsu practitioner, because she was in pain following a fall four days earlier. Mr B provided Ms A with a Shiatsu massage and then she left. She returned shortly afterwards as she was still in pain. He provided her with a non-Shiatsu massage, during which he assisted her to undress, touched her breasts, and made inappropriate comments. A few days later, Ms A was diagnosed by her general practitioner with a rib fracture resulting from her original fall.

### *Summary of findings*

2. Mr B breached the following provisions of the Code of Health and Disability Services Consumers' Rights (the Code):
  - Right 2<sup>1</sup> for inappropriate touching and language.
  - Rights 4(1)<sup>2</sup> and 4(2)<sup>3</sup> for not obtaining a clinical history, consuming alcohol at the consultation, and unethical conduct.
  - Rights 6(1)(b)<sup>4</sup> and 7(1)<sup>5</sup> for not explaining what he intended to do during the non-Shiatsu massage and failing to obtain informed consent.

## Investigation process

3. On 27 November 2009 the Commissioner received a complaint from Ms A about the services provided by Shiatsu practitioner Mr B.
4. An investigation was commenced on 22 February 2010. HDC obtained further information and statements from Ms A, Mr B, a Shiatsu practitioner and the Shiatsu College Aotearoa.
5. The scope of the investigation was:
  - *The appropriateness of the care provided to Ms A by Mr B on 7 November 2009.*

<sup>1</sup> Right 2 of the Code states: "Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation."

<sup>2</sup> Right 4(1) of the Code states: "Every consumer has the right to have services provided with reasonable care and skill."

<sup>3</sup> Right 4(2) of the Code states: "Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards."

<sup>4</sup> Right 6(1) of the Code states: "Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including — ...

(b) an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; ..."

<sup>5</sup> Right 7(1) of the Code states: "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."

6. Independent expert advice was obtained from Shiatsu practitioner and teacher Michael Christini (**Appendix A**).
  7. This report is the opinion of Deputy Commissioner Tania Thomas in accordance with the power delegated to her by the Commissioner.
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## **Information gathered during investigation**

### *Mr B*

8. Mr B holds a Diploma of Shiatsu<sup>6</sup> from the Shiatsu College Aotearoa, which he obtained approximately 10 years ago.<sup>7</sup> It is unclear how long Mr B has practised Shiatsu, and I note that he is not affiliated with the Shiatsu Practitioners Association of Aotearoa (New Zealand).
9. Mr B has provided very little information to HDC.
10. Due to the lack of information Mr B has provided HDC, the following account is based on Ms A's recollection of events except where otherwise noted.

### *Background*

11. On the night of 3 November 2009, Ms A fell and hurt her back. The next day, she was in mild discomfort, but the pain increased dramatically during the night.
12. By 5 November 2009, Ms A was in a great deal of pain and was treated by an acupuncturist. Unfortunately, the pain did not resolve with the treatment.
13. The next night Ms A and her friend were at a local tavern. Ms A was still in pain, and her friend suggested she see Mr B, who practised Shiatsu. He also happened to be at the tavern that evening.
14. Ms A had met Mr B a few times before, so she approached him. She told Mr B that she was experiencing pain, even though she had received acupuncture. Ms A recalls Mr B saying that: "[the acupuncturist] wasn't very good and if [she] was still in pain after seeing [him], [she] should have gone back and told him".
15. Mr B then said he could have her "out of pain in half an hour". He asked her whether she had had Shiatsu before and she said she had not. He explained that her clothes stayed on for the session and that it was like acupuncture, but without the needles, as it worked on pressure points. He said he was "the best Shiatsu Practitioner in NZ". She asked about the cost of the treatment and he quoted \$40 for half an hour. They arranged an appointment at Mr B's home for 10.30am the following day.

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<sup>6</sup> Shiatsu involves elements of oriental diagnosis, abdominal massage, pressure application to various parts of the body using fingers, thumbs, knees and elbows, and gentle stretches and joint articulation.

<sup>7</sup> The College confirmed that Mr B attended the three-year part-time Diploma of Shiatsu Training at the Shiatsu College Aotearoa and obtained his diploma.

*Shiatsu massage*

16. On 7 November 2009, Ms A arrived at Mr B's home at 10.30am. He showed her around his house and then directed her to a mattress on the lounge floor. Mr B told her that this was the best way for him to give her a Shiatsu massage. He asked Ms A to lie face down and get comfortable.
17. Mr B then locked the front door. He explained that he needed to lock the door so that nobody came in during the session.
18. Mr B put on some quiet music, and then checked that Ms A was lying correctly. He checked that the pillows under her were correctly positioned. Mr B checked that Ms A was lying straight by placing his hands on her hips and then moving down her legs, finishing at her ankles. He told her that her left leg was longer than her right, as her hips were out of alignment and had been for years. He commented that this was the cause of her back pain.
19. Mr B asked Ms A to roll onto her back. He explained to her that he needed to free up the hip joint by rocking her leg. Mr B sat cross-legged, bent her left leg and then held her lower leg against his stomach area. He gently rocked her leg up and down, then straightened the leg out to check whether it was the same length as the other leg. He repeated the process on her right leg. Mr B carried out a similar treatment on Ms A's arms, and then once again returned to her legs.
20. Mr B told Ms A that it might take another session to correct her hips, as they had been unaligned for so long. However, Mr B repeated his claim from the night before, that she would be pain free by the end of the session.
21. While Ms A was lying on her back, Mr B talked about her breathing technique. He asked if she minded him putting his hand on her bare stomach to feel her breathing. She said that was OK. He then asked her to put her hand in the middle of her chest and used this hand as a guide to finding her sternum. He then advised her how to breathe better. Ms A told Mr B that she thought her anxiety contributed to her breathing problem. He replied that it was her inability to breathe correctly that had caused her anxiety.
22. During the session, Mr B repeated his claim that he was the best Shiatsu practitioner in New Zealand. Ms A told HDC that at no time during the Shiatsu massage did she consider that he acted unprofessionally or that she could not trust him.
23. Ms A said that Mr B did not ask about her past physical history, and advised HDC that she had previously "had 6 abdominal surgeries and have 2 lower lumbar disk problems. Although he never asked, I may have told [Mr B] in conversation about these situations." Mr B has not provided any information regarding what enquiries he made into her physical history or the examinations he undertook, other than to say he "followed all the traditional methods of Shiatsu".
24. After Mr B had finished, he told Ms A that he had gone over time. She offered him another \$20. He said that she did not need to give him more money but accepted it.

25. Ms A was still sore but Mr B told her it would pass. He offered her a drink of water and said that it was important to drink water after Shiatsu. He had a drink from a “rigger”,<sup>8</sup> which she thought looked like beer. She asked him about this, and he confirmed that it was beer, and said that it was good for him.
26. Mr B took her hands and told her that the pain would be OK now. He walked her to the door and unlocked it. When outside, she asked if she could give him a hug. He said, “I see you waited till we got outside, that’s good,” and gave her a hug. She said goodbye and got into her car.

*Non-Shiatsu massage*

27. When Ms A was in her car, she again experienced intense pain. She got out of her car, and knocked on Mr B’s door. He opened the door and she told him of her ongoing pain. He said it was good she had come back and that his next client had cancelled, so she could have the next session. He told her that as she had paid extra for her Shiatsu massage it would cover the cost of a massage. Ms A stated: “[Mr B] asked me about my footwear and said they were probably the cause of the pain now.”
28. Mr B followed her to the mattress on the floor. He said that the massage would relieve the back spasm and returned to saying that her pain was probably due to her hips still being out of line.
29. Mr B gave Ms A a back rub while she was still fully clothed. He then asked her to take off her shirt, which she did, and after a few minutes he said, “and the bra has to go”. Without seeking Ms A’s prior permission, he undid her bra.
30. Mr B said that he needed to get some oil and went to the kitchen. On his way back, he locked the front door but did not close the curtains.
31. Mr B began by massaging Ms A’s back. His hands moved progressively lower down her back, until he reached the top of her jeans. Ms A said that he then told her to “lose the pants” (meaning her jeans). She started to take off her jeans but Mr B quickly pulled them off her. He then said, “And those can go,” and took off her underpants. He continued to massage her back, then buttocks and legs. Mr B remarked that he had not massaged for years and thought he would get back into it.
32. During the massage, Ms A apologised for taking up his time. Mr B said he could think of worse things than massaging her. Ms A said that Mr B kept massaging her very firmly down both sides of her hips with his fingers underneath her body. She recalls his hand getting closer to her pubic area.
33. Mr B asked Ms A to roll over onto her back so he could check her hips. Each time he said that, she did not say anything or move. He asked her three times before she finally turned over.
34. When Ms A rolled over onto her back, Mr B first checked her hips with both his hands. He then put both his hands on her breasts and rubbed them. When she pushed

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<sup>8</sup> A rigger is a modern replacement for a flagon and holds a standard metric volume of two litres.



his hands away he said, “Nice tits.” She told him that his behaviour was not on. He then said, “You don’t want them to be the only things not massaged do you?”

35. Ms A got up and dressed, feeling stunned by what he had done. He gave her a glass of water and then asked if she would like a beer. She said no and left Mr B’s house. When Ms A got into her car she was still experiencing pain, and she was upset by what had occurred.
36. At approximately 12.45pm, Ms A drove to an after-hours medical centre to make an appointment to see a doctor.
37. Soon afterwards, Ms A rang Mr B and told him that he had been very unprofessional. She stated that Mr B told her he could hear that she was breathing rapidly and told her to slow down and breathe better as she sounded stressed. Ms A replied that she was in a lot of pain and she felt that he had taken advantage of her vulnerability. Mr B said that it was a joke and he would not do that with her again. Ms A hung up the telephone.
38. At 2pm Ms A was seen by a general practitioner at the after-hours medical centre. The GP told her that she was having back spasms and prescribed painkillers.

*Subsequent events*

39. On 9 November 2009, Ms A went to her usual GP, as she was still in pain. She was diagnosed with a broken rib.
40. On the same day, she rang another Shiatsu practitioner and told her what had occurred. When an HDC investigator later spoke to the Shiatsu practitioner she was able to recall Ms A’s phone call. The Shiatsu practitioner provided the details of that conversation to the investigator. This was a similar account of events to that contained in Ms A’s written complaint to the Commissioner.

*Mr B’s account of events*

41. On 10 December 2009, an HDC investigator contacted Mr B by telephone. The investigator told Mr B that HDC had received a complaint from Ms A, who said she had visited him on 7 November 2009. Mr B confirmed that he had treated Ms A on that day.
42. On 8 February 2010, HDC received a response from Mr B concerning Ms A’s complaint. He wrote that the statements Ms A made were completely false and that he followed only traditional methods of Shiatsu massage. Mr B said that Ms A was experimenting with not taking her prescribed medication for mental illness. He also wrote that she was “experimenting with controlled drinking” during set hours to control alcoholism.
43. On 15 February 2010, the HDC investigator contacted Mr B by telephone and explained that due to his brief response, HDC would like to conduct a telephone interview with him. Mr B declined this invitation and stated that he was not going to provide a further response as he considered the complainant needed to be medicated and that was the end of the matter.

44. HDC requested Ms A's clinical records from Mr B, but he has not provided them. Mr B has not responded to further requests for information, or to expert advice, which he was given an opportunity to comment on.
  45. When HDC contacted Mr B to seek his comments on my provisional opinion, he stated that he had previously responded to the complaint, and that that was the only response he was going to give.
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### **Opinion: Breach — Mr B**

46. HDC has attempted to assist him several times but to no avail. Mr B was contacted a number of times by telephone to discuss the complaint and HDC's process. He was also provided with the opportunity of a telephone interview, but refused. Mr B's response to Ms A's complaint has been less than helpful. Ms A's account was detailed and consistent. I therefore prefer the evidence that has been provided to me by Ms A.

#### **Shiatsu massage**

47. Under Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code), Ms A has the right to services that comply with professional, ethical and other relevant standards. As Mr B had completed a diploma from the Shiatsu College Aotearoa it is appropriate to apply the standards of the Shiatsu Practitioners Association Aotearoa (New Zealand) Code of Conduct and Ethics in this case (**Appendix B**). My advisor, Shiatsu practitioner and teacher Michael Christini, said that:

“[t]here are approximately 40 practitioners registered with the Shiatsu Practitioners Association of Aotearoa (NZ) (SPAA). This body regulates the practice and teaching in New Zealand. While membership is encouraged, there is no requirement to belong in order for someone to practise.”

48. Mr Christini stated that as Mr B completed his training at a school that is accredited by SPAA, he would have been made aware of SPAA's Code of Conduct and Ethics as part of his training.

#### *Physical history*

49. Mr B has not provided any treatment records for Ms A. As noted in a previous HDC opinion, “[a]ll health service providers, including massage therapists, have a professional obligation to document the services provided to consumers”.<sup>9</sup>
50. Mr Christini advised that from the evidence provided he did not believe that Mr B took a case history prior to beginning treatment. However, Ms A recalls that she may have previously discussed some of her pre-existing medical conditions with Mr B, but she is not certain.

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<sup>9</sup> Opinion 06HDC09882, page 11 (25 January 2007).

51. SPAA’s Code of Conduct and Ethics requires its members to “keep accurate and up-to-date records regarding any client’s treatments”. Mr Christini would expect a Shiatsu practitioner to at least document a patient’s previous medical history and to question the patient in detail about her presenting condition. Mr Christini stated:

“[Mr B] was aware that [Ms A] had fallen. It is reasonable to expect that he would question her as to the nature and location of the impact, the pattern and quality of the pain, whether she had visited a doctor or A & E, or whether any medication was taken.”

52. Mr Christini advised that “[a]s well as attempting to understand the patient’s situation as fully as possible in order to treat them, case-taking and documentation assists the therapist in ascertaining whether the patient’s condition is within their capabilities, is suitable for their treatment, and falls inside their area of expertise”.
53. Mr B has not provided any evidence that he made any treatment notes in regard to Ms A, or that he took a basic physical history from her. I find he did neither. Furthermore, he made claims that she would be pain free by the end of the session, without making enquiries into her previous and current condition.

#### *Alcohol*

54. Ms A said that Mr B drank beer after her Shiatsu session and then offered her beer after the second massage. My expert advised that “[i]t is very inappropriate for alcohol to be present and consumed in a clinical situation and would represent a clear breach of professional conduct”. Mr Christini is concerned about Mr B’s ability to maintain clear professional boundaries with his clients. In my opinion, once Mr B had consumed alcohol he should not have provided further massage services to Ms A. In addition, it was entirely inappropriate to offer Ms A alcohol in these circumstances.

#### **Non-Shiatsu massage**

55. When Ms A returned to Mr B’s house he proposed treating her with a non-Shiatsu massage. I asked my advisor whether this was appropriate. In Mr Christini’s opinion, Mr B does not appear to have previously told Ms A that he was qualified in massage or was a service provider of this therapy. He later told her that he had not practised massage for years. Mr B has not provided any evidence that he is a qualified or trained massage therapist. As Ms A had returned to Mr B still in pain, it would have been appropriate for Mr B to consider that perhaps the source of her pain could not be resolved with massage, and that she should be referred to a more appropriate provider.

#### *Lack of information provided and informed consent*

56. Mr B said that he had not massaged for years and thought he would get back into it. My advisor considered that such a revelation was unlikely to instil confidence in a patient. Unlike the Shiatsu session, Mr B did not explain to Ms A what he was going to do during the massage. Mr Christini believes that “[s]uch an explanation could have made her aware that she would be required to remove all her clothing, and allowed her the right to reject the proposed therapy at the outset”. Mr B also does not appear to have explained any of the risks, benefits and side effects of the massage he was proposing.

57. As stated in a previous HDC opinion concerning a natural therapies practitioner, “[p]roviders who do not adequately explain the services being provided run the risk of making the consumer feel confused and uncomfortable”.<sup>10</sup> In a subsequent HDC opinion about a neuromuscular therapist it was stated that making a consumer feel comfortable “is particularly important when treating sensitive areas of the body such as the chest”.<sup>11</sup>
58. Mr B failed to provide Ms A with appropriate coverings or a screened area in which to change. Mr B locked the door but did not close the curtains. It is important to provide consumers with a level of dignity for their own comfort. This lack of amenities was unprofessional.
59. It was entirely inappropriate for Mr B to have provided a non-Shiatsu massage in the manner he did, and his conduct was unprofessional and inappropriate. In my opinion, Mr B misrepresented what he was able to achieve for Ms A, and did not adequately explain to her what he was going to do during the non-Shiatsu massage session. Therefore, he did not provide adequate information to Ms A for her to provide informed consent.

*Inappropriate touching and comments*

60. Ms A said that during the massage Mr B removed her clothing, touched her breasts, and used inappropriate language. Mr B said that Ms A’s statements were completely false. I consider that Ms A’s account is more likely than not to be true.
61. My advisor, Mr Christini, said that Mr B’s conduct during the massage constituted “the most severe of the deviations from professional conduct and appropriate care” and was “a grave violation of the trust and respect required in the patient–therapist relationship”.
62. The Code of Health and Disability Services Consumers’ Rights states that “any abuse of a position of trust” amounts to exploitation. Not only was Mr B’s actions an abuse of Ms A’s trust, but his behaviour was unethical and unprofessional.

**Breaches of the Code**

63. Ms A was in pain and went to Mr B seeking help. He provided her with a Shiatsu massage, but he did this without first obtaining a clinical history from Ms A. He kept no records of the treatment he provided. When Ms A returned to Mr B, she was still in pain. He took advantage of her trust by performing a massage during which he touched her breasts, and made inappropriate comments.
64. Prior to and during the Shiatsu appointment Mr B misrepresented what he could achieve for Ms A. Mr B made promises to Ms A that she would be fixed and pain free, which were inappropriate given the lack of information he gathered about her past physical history and current condition. While Mr B was not expected to diagnose Ms A’s fractured rib, he should have considered the possibility that Ms A could have

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<sup>10</sup> Opinion 06HDC09882, page 11 (25 January 2007).

<sup>11</sup> Opinion 08HDC07644, page 10 (21 November 2008).

suffered a significant injury that required more specialised treatment. Mr B had also consumed alcohol prior to providing the non-Shiatsu massage. Given this, he should not then have provided Ms A with a massage, or offered her alcohol. His behaviour clearly amounts to inappropriate treatment, unethical conduct,<sup>12</sup> and unprofessional behaviour. In light of these failings, it is my opinion that Mr B breached Rights 4(1) and 4(2) of the Code.

65. Prior to beginning the non-Shiatsu massage Mr B did not inform Ms A that he lacked recent experience in massage, what the massage would involve, and that she would be required to remove her clothing. Due to the lack of information Mr B provided her, it would not have been possible for Ms A to give her informed consent to the massage. Therefore, he breached Rights 6(1)(b) and 7(1) of the Code.
  66. Mr B touched Ms A's breasts, assisted in undressing her, and made inappropriate comments. This was unprofessional behaviour, and a serious breach of Ms A's trust. In my opinion, Mr B breached Right 2 of the Code.
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### **Other comment**

67. I am very concerned about Mr B's unethical and unprofessional behaviour. His lack of cooperation with HDC's investigation, and his limited response to the complaint, indicates to me that he does not appreciate the inappropriateness of his actions, and the impact this has had on Ms A.
  68. As the Shiatsu and massage industries in New Zealand are unregulated there are limited options available to me to ensure that Mr B is safe and competent to practise.
  69. Due to these factors, and that his conduct represents a serious breach of the Code, I have decided that it is in the public interest to refer him to the Director of Proceedings.
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### **Recommendations**

70. I recommend that Mr B provide a written apology to Ms A for his breaches of the Code. The apology is to be forwarded to HDC by **28 March 2011** for sending to Ms A.
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<sup>12</sup> *Director of Proceedings v Mogridge* [2007] NZHRRT 27 (21 December 2007) at [102].

## 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 with details identifying the parties removed, except the name of Mr B and the expert who advised on this case, will be sent to the district health board.
  - A copy of this report with details identifying the parties removed, except the name of the expert who advised on this case will be sent to the Shiatsu Practitioners Association of Aotearoa (New Zealand) and Massage New Zealand.
  - I will place a copy of this report on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.
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## Addendum

The Director of Proceedings 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>

## Appendix A

The following expert advice was obtained from Michael Christini:

### **“1. PURPOSE OF THIS REPORT**

The Commissioner has asked me to provide an opinion in case 09/02122, on the appropriateness of the standard of care that was provided to [Ms A] by [Mr B].

### **2. ACKNOWLEDGEMENT**

I have read and agreed to follow the Commissioner's Guidelines for Independent Advisors.

### **3. ADVISOR'S BACKGROUND and EXPERIENCE**

My name is Michael Christini. I have been practising and teaching shiatsu in New Zealand and Australia for the past 12 years, during which time I have owned and operated the Shiatsu Works Clinic in Auckland. It offers shiatsu therapy for pain, injury and general health imbalances. I completed three years of practitioner training in Japan in the Tao style and received a Practitioner Diploma in 1998. I graduated from Auckland University in 1990 with a B.A. In 2000, I was certified as an instructor and established the Oceania School of Tao Shiatsu.

### **4. BACKGROUND**

[This has been omitted for the purpose of brevity as it is covered in the “information gathered” section of the opinion.]

### **5. COMPLAINT**

[This has been omitted for the purpose of brevity.]

### **6. SUPPORTING INFORMATION**

- Letter of complaint from [Ms A] dated 24 November 2009 (Appendix A, pages 1–2)
- Notes of phone call with [Ms A] on 8 February 2010 (Appendix B, page 3)
- Notes of phone call with [Ms A] on 9 February 2010 (Appendix C, page 4)
- Notes of phone call with [Ms A] on 16 February 2010 (Appendix D, page 5)
- Letter from [Ms A] dated 17 March 2010 (Appendix E, pages 6–9)
- Notes of phone call with [Mr B] on 10 December 2009 (Appendix F, page 10)
- Letter from [Mr B] on 2 February 2010 (Appendix G, page 11)
- Notes of phone call with [Mr B] on 15 February 2010 (Appendix H, page 12)

## **7. REFERRAL INSTRUCTIONS FROM THE COMMISSIONER — EXPERT ADVICE REQUIRED**

1. Please comment generally on the standard of care provided to [Ms A] by [Mr B]. If not already covered above, please answer the following questions, giving reasons for your advice.

2. Was the information provided by [Mr B] to [Ms A] appropriate?

3. Should [Mr B] have been able to diagnose [Ms A's] broken rib?

4. Was it appropriate for [Mr B] to provide a massage after the Shiatsu massage?

5. Describe an appropriate standard of documentation for the service provided by [Mr B] to [Ms A].

6. Are there any aspects of the care provided by [Mr B] that you consider warrant additional comment?

If, in answering any of the above questions you believe that [Mr B] did not provide an appropriate standard of care, please indicate the severity of his departure from that standard.

## **8. APPROACH TO THE COMMISSIONER'S REFERRAL**

I have firstly provided a definition of shiatsu therapy detailing what someone may generally expect to experience in a shiatsu treatment. I have then outlined the codes that apply to those practising shiatsu in New Zealand. Following this, I have taken the relevant sections from the Code and positioned these in relation to the questions asked by the commissioner. The supporting information about [Ms A's] treatment was then looked at in terms of the requirements of appropriate care and professional conduct outlined in the code. I have then stated my opinions on whether the therapist has worked in accordance with these. Or to what degree individual events and outcomes are at variance with the Code. Finally, when taken into account in combination, I have offered my advice as to whether I consider there was mild, moderate or severe deviation from appropriate care.

## **9. SHIATSU THERAPY — DEFINITION and BACKGROUND**

*Shiatsu is a form of bodywork which, at its highest level, combines a finely tuned intuition with a thorough understanding of the bodymind. Shiatsu was developed in Japan from a synthesis of Chinese massage called Anma and Western techniques of physical manipulation. As a complete system of healing through touch it draws extensively on key aspects of Traditional Oriental Medicine.*

*Shiatsu technique involves stretching, holding and leaning body weight into various parts of the recipient's body to improve energy flow, blood*



*circulation, flexibility and posture. Pressure and contact is applied through the hands, thumbs, fingers, forearms, knees and feet with the recipient sitting or lying in various positions.*

*Treatment is focused along specific Channels (“meridians”) of subtle bodily energy called Ki. Ki is the life force which sustains every activity of the body, mind and spirit. Although Shiatsu literally means “finger pressure”, the spirit of Shiatsu is one of communication through touch. (2)*

From: Shiatsu The Complete Guide — Chris Jarmey and Gabriel Mojay

## **9.1 SHIATSU ASSOCIATION’S CODE OF CONDUCT AND ETHICS**

The Shiatsu Practitioners Association of Aotearoa NZ (SPAA) is the body that regulates the practice and teaching in New Zealand. SPAA is affiliated under the Natural Therapies Board of the New Zealand Charter of Health Practitioners. It is governed by its Code of Conduct and Ethics (1994) (3) whose purpose, as stated in the introduction is:

*... to provide a common standard for all Ordinary Members and Practitioners and Teachers to follow. This has the advantage of giving confidence to the public by enabling them to know the ethical standards of the Association.*

While membership is encouraged, there is no requirement to belong in order for someone to practise shiatsu. There are approximately 40 practitioners throughout N.Z. registered with SPAA.

[Mr B], the subject of this complaint, is not, and has never been, a registered member of SPAA. However, as he completed his training at a school that is accredited by SPAA, he would have been made aware of the Code of Conduct and Ethics as part of his training.

And as the Code states:

*A Shiatsu therapist, by becoming either a Student, Associate or Registered Practitioner of the Shiatsu Association, agrees to be bound by and to observe this Code of Conduct and Ethics and to submit to the jurisdiction of SPAA (NZ) Inc in relation to it.*

Hence the Code would have been taught as part of [Mr B’s] training. He would have been made aware of the obligations and responsibilities that training in an accredited school bound by the Code, placed upon him. And that these were the standards required of a practitioner.

Furthermore, in his capacity as a Health provider he is also subject to the requirements of the Health and Disability Code.

## 10. EXPERT ADVICE REQUIRED

**Question 1. Please comment generally on the standard of care provided to [Ms A] by [Mr B].**

The care provided by [Mr B] to [Ms A] can be divided into four distinct stages:

- 1) the contact and communication that occurred prior to the session
- 2) the shiatsu session
- 3) the massage session
- 4) communication following the complaint.

In each of these stages, I found actions that required consideration and comment because they were at variance with the Code's requirements. When a patient receives a shiatsu treatment that leads her to make a complaint to the Health and Disability Commissioner alleging she has been subject to non-consensual sexual contact, the possibility exists that deviations from an appropriate standard of care may have occurred in a systematic manner.

Based on the information provided to me, I am providing the following advice that numerous incidents — in all of the above stages — may have occurred, where the boundaries that keep the integrity of the patient–therapist relationship intact were eroded. There appears to be a systemic breakdown in both duty of care to [Ms A] and professional conduct by [Mr B].

The answers to the Commissioner's questions that follow outline these in detail.

**If not already covered above, please answer the following questions, giving reasons for your advice.**

**Question 2. Was the information provided by [Mr B] to [Ms A] appropriate?**

***• A member shall not lay claim to services, therapy or cures for which he/she is not specifically trained or suitably qualified.***

In [Mr B's] conversations with [Ms A], she said that he made claims that she would be “fixed in half an hour”, that he was the “best shiatsu practitioner in NZ”, and comments that appear to be critical of an acupuncturist who had treated her. During the session he similarly claimed that she would be pain free at its conclusion.

It is inappropriate, in my opinion, to make claims about “fixing” her symptom, especially prior to any case history being taken, or examination of the presenting symptoms. Therapists are able to indicate that treatment may promote recovery, but not claim to cure or “fix” their clients. Additionally such claims raise potentially unrealistic expectations in the patient.

Furthermore, placing undue emphasis on the therapist's ability is not conducive to best practice. It moves the focus of treatment from the therapy, and its interaction with patient, to the therapist.

It is not appropriate to make excessive claims about self-ability or to be critical of other therapists. Comments such as those attributed to [Mr B] could appear to demonstrate a lack of humility on the part of the therapist. A value seen as especially important in this style of therapy imbued as it is with its Eastern cultural roots.

### **Question 3. Should [Mr B] have been able to diagnose [Ms A's] broken rib?**

***• SPAA members shall obtain an overview or profile of the client's state of being and health history and discuss any problem areas that may contra-indicate Shiatsu in accord with the SPAA guidelines.***

[Ms A] complaint makes no mention of a case history being taken, even verbally after her arrival. She was instructed to lie down and she stated shortly after that [Mr B] told her he could feel straight away that her hips were out of alignment, and had been for years, and that was causing her back pain.

Shiatsu diagnosis is one based on energetic presentation. There is no therapeutic requirement to make a physical diagnosis, neither is a practitioner allowed to by law. A broken rib, suffered under a fall, will have an accompanying energetic profile in terms of the meridian channels. But it would be inappropriate to administer shiatsu if this was suspected, certainly in the localized area, until a medical diagnosis was complete.

In my opinion, the Code makes the course of action clear when pain is presenting from trauma such as a fall. Before formal treatment commences, best practice must be firstly to question the patient in some detail about the accident and nature of the consequent pain. Then to follow with, or in conjunction with, examination of the area affected by the fall through touch, palpation and movement.

By doing so, in communication with the patient, a deeper understanding about the nature of the pain may be possible. It allows for the determining of the *possibility* of a fracture or break being present. And may help identify other physical trauma such as bruising, strains and sprains. This is obviously crucial in arriving at a successful treatment outcome. The pain exhibited by such trauma is usually different to that resulting from misaligned joints causing muscular and nervous tension or vice versa.

No details were provided by the therapist of any form of shiatsu style diagnosis being carried out i.e. palpating the abdomen, by reading the pulse, or through questioning. Then followed by an **energetic** diagnosis being offered that outlined an imbalance of the meridians. Rather [Ms A] was told that her hips were out of alignment, which as pointed out is not a diagnosis a shiatsu therapist is qualified to make.

- *In cases where Shiatsu is, or may be, contra-indicated, members shall acknowledge their professional limitations and refer the client to the appropriate medical or complementary health professional.*

[Ms A] states that she came back to the house, still in considerable pain after the Shiatsu treatment. She said that [Mr B] now suggested that her footwear was probably the cause of the pain, and that massage would relieve the spasm.

This is, in my opinion, **a clear point of departure from appropriate care toward his patient.** [Mr B] at this point, as the Code outlines, should have considered the possibility that there was another cause of [Ms A's] pain and that he may not be able to affect it through his treatment.

In my opinion I don't consider that [Mr B] should have been expected to diagnose a broken rib at the outset of the shiatsu treatment. However, upon the return of [Ms A] in a distressed state and still in pain, at a minimum, [Mr B] should have considered the possibility, given her fall, that there was another cause of her pain. It would have been in line with appropriate care to suggest to [Ms A] that she seek an opinion from a medical doctor.

#### **Question 4. Was it appropriate for [Mr B] to provide a massage after the Shiatsu massage?**

- *A member shall not lay claim to services, therapy or cures for which he/she is not specifically trained or suitably qualified.*

As far as [Ms A's] statement states, [Mr B] had not advised her that he was qualified in massage or that he was a service provider of this therapy. She was seeking his services as a Shiatsu therapist.

It may have been appropriate, if he genuinely believed there would be benefit, to provide her with additional shiatsu. However, in my opinion, offering massage was inappropriate and unprofessional. [Mr B] offers no evidence that he was either trained or qualified to perform massage.

Furthermore, he stated to her during the massage that he hadn't massaged for years and thought he would get back into it. Such a revelation is unlikely to instil confidence in a patient, especially one experiencing significant pain.

- *When a member of the public asks for treatment the practitioner shall ensure that the client understands the nature of the treatment that will be given.*

[Ms A] stated that [Mr B] had given her an explanation of shiatsu prior to the session commencing. In the case of the massage, there is no evidence that he explained to her the nature of the massage or how it would be performed, in advance of starting. Such an explanation could have made her aware that she would be required to remove all of her clothing, and allowed her the right to reject

the proposed therapy at the outset. This adds further weight to my opinion that the massage was inappropriate and in opposition to shiatsu practice.

***• Members of SPAA shall maintain the highest standards of professional conduct and promote the art and science of Shiatsu bodywork.***

In the case notes it is stated that [Mr B] told [Ms A] that because she had paid extra this would cover the massage session. However, he originally had stated that the extra money was because they had gone over time in the shiatsu session. While in isolation it may be considered relatively minor, seen in conjunction with what followed — the increase in the volume of the music and [Mr B] singing loudly during the massage, both being contrary to accepted practice — it is my comment that this precipitates a blurring of professional boundaries and conduct. It is further exacerbated by the treatment space being the therapist’s living room.

I would comment that when the therapist feels it necessary for the treatment time to be extended, good practice involves obtaining the consent of the patient in advance.

When providing professional therapeutic massage that requires the patient to be partially or fully unclothed, it is expected and appropriate practice that they will be offered a private screened area in which to remove their clothing. Towels or a dressing gown will be provided to facilitate dignified passage to the massage table/futon. The therapist will then make use of appropriate coverings as they work around the body. This is especially important when the client is massaged in a face-up position.

[Ms A’s] description of [Mr B’s] approach does not reveal any such courtesy being offered. He participated in removing her clothing, which she described as being “stripped off”, including her bra and underpants. He used expressions such as “lose the pants” and “those can go too”. When [Ms A] apologised for taking up his time, he replied that, “he could think of worse things to do”. In place of professional massage oil, he retrieved cooking oil from the kitchen.

The events that [Ms A] describes are, in my opinion, not in accord with the Code’s requirement for professional conduct. I consider what is alleged to be highly degrading of her dignity and very disrespectful. Shiatsu is characterised by its empathic connection to the receiver — attempting to feel or sense the feeling of another person, and responding to that therapeutically in order to enhance their wellbeing. In my opinion this is clearly absent, and the actions of the therapist could be seen as being more about his own needs than those of the patient.

[...]

***• SPAA members will in no way instigate or tolerate any kind of sexual advance while acting in the capacity of a Shiatsu practitioner.***

In her complaint [Ms A] described her feeling of unease when [Mr B's] fingers attempted to get close to her pubic area. She was lying facedown and he requested she roll over three times. Upon complying, he placed his hands on her breasts and made a lewd comment as she pushed him away. Her response prompted him to question her as to whether she wanted her breasts to be the only things that he hadn't massaged.

The actions ascribed to [Mr B] at this point, in my opinion, constitute the most severe of the deviations from professional conduct and appropriate care. Such action in a therapeutic setting is a grave violation of the trust and respect required in the patient-therapist relationship. It was obviously extremely humiliating for [Ms A]. She described her feelings at the time as, "ashamed, dirty and very sad". She was also still in physical pain from the broken rib.

Sexual behaviour within a therapeutic relationship is always a breach of professional boundaries, even when it is consensual. Even more gravely so when it is not.

• ***Members shall be aware of and abide by the law.***

It is necessary to state the obvious, that non-consensual sexual contact is considered an offence under New Zealand law with clinics and therapeutic spaces no exception.

**Question 5. Describe an appropriate standard of documentation for the service provided by [Mr B] to [Ms A].**

• ***SPAA members shall keep accurate and up-to-date records regarding any client's treatments.***

• ***SPAA members shall obtain an overview or profile of the client's state of being and health history and discuss any problem areas that may contra-indicate Shiatsu in accord with the SPAA guidelines.***

[Ms A] stated that [Mr B] treated her in a professional manner upon her arrival at his residential clinic. However, there was no evidence a case history was taken before she was directed to lie on the futon mattress, nor was any detailed questioning about her condition, or previous medical history noted. She stated that, "At no point did he ask me about my previous medical history. I have had 6 abdominal surgeries and have 2 lower lumbar disc problems." She does qualify this when she comments that although he had never asked, she may have mentioned these in conversation with him at an earlier meeting.

Documenting a case history is considered an integral part of a treatment. Even if details of the patient's situation have been discussed by phone or in another manner before the session. The detail and degree will of course vary in individual situations. A minimum level of documentation as listed above by the Code is required. In [Ms A's] case, she had suffered a fall. She was in considerable pain

and distressed by it. In my opinion, it was imperative for an in-depth form of inquiry or consultation to be carried out. [...]

[Mr B] was aware that [Ms A] had fallen. It is reasonable to expect that he would question her as to the nature and location of the impact, the pattern and quality of the pain, whether she had visited a doctor or A & E, or whether any medication was taken.

A copy of a Shiatsu Client Consultation (4) form has been attached as an example of the kind of questions that may be asked. In addition, it is customary to ask about previous injuries or medical conditions that may be related.

As well as attempting to understand the patient's situation as fully as possible in order to treat them, case-taking and documentation assists the therapist in ascertaining whether the patient's condition is within their capabilities, is suitable for their treatment, and falls inside their area of expertise.

**Question 6. Are there any aspects of the care provided by [Mr B] that you consider warrant additional comment?**

***• Members of SPAA shall maintain the highest standards of professional conduct and promote the art and science of Shiatsu bodywork.***

1) After the session finished [Mr B] offered [Ms A] a drink of water. She noted that she thought [Mr B] had a glass of beer. When questioned about it, he confirmed it was and said it was good for him. She was later offered beer at the conclusion of the massage session.

It is very inappropriate for alcohol to be present and consumed in a clinical situation and would represent a clear breach of professional conduct. The client was still present, and [Mr B] later indicated he was expecting another client following [Ms A]. This would mean he would be performing shiatsu under the influence of alcohol. To in turn offer alcohol to [Ms A] is highly inappropriate.

While insufficient information exists to comment further, I would raise the concern about what role alcohol may play in [Mr B's] practice of shiatsu and ability to maintain clear patient-therapist boundaries. It was also noted in the case notes that [Ms A] had met [Mr B] prior to the treatment at the local pub. She stated that she had subsequently heard that he had a drinking problem.

2) When entering into a therapeutic relationship with a patient, a duty of care is established with that person. Therapists have a responsibility toward it. This extends even to a situation such as this, where a complaint has been made about the service provided. The role of therapist still holds certain duties that must be executed.

A responsibility clearly exists to respond promptly, fully and as openly as possible. Even more the case when the allegations are of such a serious nature.

I observed from reading [Mr B's] response to the complaint that it was brief. It contained little recollection of his actions and comprised a flat denial that anything other than a shiatsu session had taken place. In effect claiming [Ms A] was lying.

No attempt is made to respond to the information provided to him that [Ms A] had in fact been diagnosed subsequently with a broken rib. Or that he had administered shiatsu to her based upon a diagnosis that was incorrect in relation to her presenting symptom. Instead he accused her of having psychological issues from coming off her medication and having a drinking problem herself.

[...] However, as he was facing a serious complaint, it would have been in his interests to present his full recollection of events. Especially if, as he claims, he believes he has acted appropriately.

I would also comment that I would have appreciated having had access to an explanation of his approach to the treatment from a shiatsu therapist's viewpoint. He claims in his response that he followed "all the traditional methods of shiatsu" but does not detail these.

In my opinion, the unwillingness to provide a detailed account, or to comply with a request that he be interviewed, further contributes to an inappropriate standard of care.

Additionally, because the complaint involves the practices of shiatsu and massage, there is I believe a duty to defend and protect the reputation of these therapies in the eyes of the public. Especially if a counter claim is put forward, suggesting a false accusation has been made.

## **CONCLUSION**

I have considered the four stages of this complaint in reference to the Code of Conduct governing shiatsu practice. I have offered comment on where I saw deviations from duty of care and professional conduct. Some incidents can be viewed individually as mild or moderate, while some fall into the category of severe deviations. It is therefore, in my opinion, and based on the materials supplied by the Commissioner in relation to complaint, that [Ms A] received severely inappropriate standard of care by [Mr B] and significant breaches of personal conduct occurred.

I believed this opinion would be a commonly held by my peers, so in keeping with the confidentiality conditions stipulated by the commissioner, I discussed this complaint separately with two colleagues, both shiatsu therapists (5) (6). They were in agreement that actions of this nature constituted a severely inappropriate standard of care in the provision of shiatsu therapy.

## **REFERENCES**

1. Supporting Information — Health and Disability Commissioner.



2. Jarney, C. and Mojay, G. (1991) *Shiatsu The Complete Guide*. London: Thorsons.
3. Shiatsu Practitioner's Association of Aotearoa (NZ) Code of Conduct, 1994.
4. Shiatsu Works Client form.
5. Discussions with colleague — [...], Certified Shiatsu Therapist in [...] between 25–29/06/10
6. Discussion with colleague — [...], Certified Shiatsu Therapist in [...], by phone 29/06/10.”

## **Appendix B**

### **Shiatsu Practitioners Association Aotearoa**

#### **CODE OF CONDUCT AND ETHICS**

##### **Introduction**

This is a written Code of Ethics which provides a common standard for all Ordinary Members and Practitioners and Teachers to follow. This has the advantage of giving confidence to the public by enabling them to know the ethical standards of the Association.

A Shiatsu therapist, by becoming either a Student, Associate or Registered Practitioner of the Shiatsu Association, agrees to be bound by and to observe this Code of Conduct and Ethics and to submit to the jurisdiction of SPAA (NZ) Inc in relation to it.

##### **The Rules**

SPAA (NZ) Inc does not discriminate on the basis of sex, ethnicity, religion or age.

- SPAA members shall obtain an overview or profile of the client's state of being and health history and discuss any problem areas that may contra-indicate Shiatsu in accord with the SPAA guidelines.
- In cases where Shiatsu may be or is contra-indicated, members shall acknowledge their professional limitations and refer the client to the appropriate medical or complementary health professional.
- Member of SPAA shall maintain the highest standards of professional conduct and promote the art and science of Shiatsu bodywork.
- SPAA members should be dedicated to their own self-development and personal growth and maintain the highest standard of professional work and integrity through the on-going renewal of their holistic and technical skills.
- Treatment of a client is legally permitted only with his or her express or implied consent.
- When a member of the public asks for treatment the practitioner shall ensure that the client understands the nature of the treatment that will be given.
- Practitioners shall recognise the client's right to refuse treatment or ignore advice.
- Practitioners shall respect at all times the confidence of the client and diagnostic findings acquired during consultation and/or treatment which shall not be divulged to anyone without the client's consent. [Information] shall only be divulged when failure to take action would constitute a menace or danger to the client or another member of the community. Practitioners shall also abide by the Privacy Act, and specifically not distribute/share any client mailing lists.
- SPAA members shall keep accurate and up-to-date records regarding any client's treatments.
- SPAA members will in no way instigate or tolerate any kind of sexual advance while acting in the capacity of a Shiatsu practitioner.
- A member shall not lay claim to services, therapy or cures for which he/she is not specifically trained or suitably qualified.

- The practitioner shall not countermand instructions or prescriptions given by a medical doctor.
- Practitioners must be familiar with the law relating to the practice of medicine in New Zealand.
- Members shall be aware of and abide by the law.