Physiotherapist, Mr B

A physiotherapy clinic

A Report by the

Deputy Health and Disability Commissioner

(Case 06HDC15374)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Ms A	Consumer/Complainant
Mr B	Provider/Physiotherapist
The clinic	A physiotherapy clinic
Mr C	Owner of the physiotherapy clinic
Ms D	Ms A's flatmate
Ms E	Ms A's counsellor

Complaint

On 16 October 2006 the Commissioner received a complaint from Ms A about the services provided by physiotherapist Mr B. The following issue was identified for investigation:

- *The appropriateness of the service physiotherapist Mr B provided to Ms A on 2 October 2006.*

An investigation was commenced on 27 October 2006.

Information reviewed

Information from:

- Ms A
- Mr B
- Mr C
- Ms A's general practitioner
- Ms E
- Ms D
- A psychologist

Independent expert advice was obtained from physiotherapist Dr Wayne Hing.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

Information gathered during investigation

Overview
Ms A, a university student, received physiotherapy treatment from Mr B for approximately six months. She initially saw Mr B for bilateral shin pain and subsequently for lower back pain.

During an appointment on 2 October 2006, Mr B exposed Ms A's breasts by pulling down the front of her bra. Ms A experienced considerable emotional trauma as a result of Mr B's actions.

Background to incident
Ms A first saw Mr B around May or June 2006 when she presented with bilateral shin pain. Ms A initially saw Mr B regularly for this injury, receiving approximately eight or nine treatments.

Mr B also began treating Ms A for back pain around July 2006.[1] Ms A explained that she had been experiencing ongoing back pain for some time and had received treatment for this all year. She advised that she had been diagnosed with a scoliosis (curvature of the spine).

Ms A advised that Mr B's treatment of her back pain was generally the same. Most of the treatment would be spent lying face down on the plinth (treatment table) and consisted primarily of soft tissue massage, TENS (transcutaneous electrical nerve stimulation) or interferential,[2] and strengthening exercises.

Professional relationship
Mr B stated that he had developed a good professional relationship with Ms A and had also provided her with additional treatment on a number of occasions. He explained:

> "I have regularly, during her netball season, gone out of my way to strap her ankles on Saturday mornings before my rugby commitments with other teams to ensure she could play her games. I have had her arrive at the clinic without an appointment with an acute injury which I have squeezed into my schedule to sort out for her."

Ms A commented that Mr B was already providing strapping for one of her netball team who lived about 200 metres down the road from him. Mr B suggested that Ms A go to her team mate's house so that he could strap her ankle at the same time. This happened on three or four occasions. She confirmed that she had gone to the clinic with a sprained ankle and Mr B had treated her without an appointment.

[1] Mr B has recorded seeing Ms A on 11, 19, 26 July, 2, 18 August, 4, 11, 14, 25 September, and 2 October 2006.

[2] TENS and interferential are treatment modalities used to treat pain by sending a therapeutic electrical current to stimulate the nerve endings.

Ms A agrees that she had a good professional relationship with Mr B. She found Mr B very easy to "chat with" and did not recall any particular aspects of his conduct that made her feel uncomfortable prior to 2 October 2006. However, on reflection, she recalled that during the session before her appointment on 2 October, Mr B commented that her bra did not look as if it would be very supportive for running. Ms A explained:

> "At the time like I wasn't sort of uncomfortable but I sort of went oh, that's a funny sort of comment to make."

Furthermore, it was not Mr B's practice to leave the treatment room while she changed. Ms A commented:

> "… at the time I didn't think anything else of it. I just sort of went with it and assumed that was everything that was done ... but after talking to people that's not really what happens the physio should walk out while you're getting changed …"

Ms A stated that she was not aware that gowns were available and that if she had known this to be the case she would have used them.

Exposure of breasts
On 2 October 2006, Ms A was receiving routine treatment for her back injury. Mr B states:

> "On Monday 2 October 2006 I was treating [Ms A] for a back injury which she had aggravated on the weekend in a [run]. I had been treating her for the previous 6 months for a variety of injuries. On this day the session had involved treatment involving soft tissue therapy of her thoracic and lumbar spine, electrotherapy and heat, and some rotational stretches."

Ms A explained:

> "As he was treating my lower and mid back he asked me to remove my tops, down to my bra, to make it easier for him to treat me, as had occurred in every previous session to enable massage and manipulation to be applied."

During the session Ms A and Mr B made general conversation. Because it was a Monday they discussed what they had done during the weekend. Mr B commented:

> "The session of physiotherapy had involved some '*banter'* between the two of us."

Ms A agreed that they discussed a run she had undertaken the previous weekend with her flatmate. Ms A recalled saying that it started to rain heavily and Mr B made a remark about whether she had been wearing a white t-shirt. Ms A recalled saying that she had not been wearing a white t-shirt but that her flatmate was, in response to which Mr B said either "oh really" or "oh yeah" and patted her upper leg in what she feels was a suggestive manner.

Mr B initially treated Ms A with soft tissue massage and then applied a TENS machine — which he left on for about 10 to 15 minutes. During this time Mr B left the treatment room and Ms A read a magazine. Ms A recalled that the magazine was the latest edition of *Fitness Life*.

Ms A stated that when Mr B returned he commented on the magazine she was reading, asking her whether she had read the article about the fitness life awards, as there was a picture in it that was "quite funny". Mr B then opened the magazine to show Ms A a picture of a woman wearing a "see-through" dress.[3] He commented about it being a picture that the woman may or may not be happy about. Ms A agreed.

Ms A stated that after the completion of the session she was sitting on the plinth. Mr B made another comment referring to the photograph he had drawn her attention to earlier. He then pulled down the left side of Ms A's bra. Ms A stated:

> "[He] made some comment like in reference to this photo in the magazine … I can't remember what he said, but made some comment and then proceeded to pull down like one side of the front of my bra."

Ms A explained that when Mr B let go of her bra it then flicked back into place. She remained sitting on the plinth and was "blown away and shocked" about what Mr B had just done.

Mr B then picked up the magazine and flicked to the picture again making a comment in which he compared her breasts to the photo. Mr B then put down the magazine and pulled down her bra for a second time. Ms A stated that this time he grabbed both sides of her bra, pulling them down, and further commenting on, and comparing her to, the photo. Ms A said that Mr B did not attempt to touch or grab her breasts.

Ms A stated that she didn't really comprehend what had happened. She immediately put on her top and grabbed her things to leave. Mr B then followed Ms A to the reception area as normal, acting as if nothing had occurred, and another appointment was booked. Ms A then left the practice and went home.

Mr B's recollection of the incident differs from Ms A's, but he admits to pulling down her bra. He provided the following account:

> "At the end of the session [Ms A] got up and I handed her her t-shirt. At the time it was raining heavily outside. [Ms A] made some comment about having to run in the rain and that she did not want to get a wet t-shirt look on the way to her car. I reacted to this banter (I accept quite wrongly) by then exposing her breasts. As soon as I did this I realized it was a mistake. I mumbled an apology and proceeded to then ask [Ms A] to make arrangements to come back and see me towards the end of the week."

[3] Ms A has confirmed that the picture was on page 22 of Issue 27.

Ms A denies ever having a conversation in relation to being concerned about getting "a wet t-shirt look" on the way to her car that afternoon, nor does she recall ever hearing Mr B's "mumbled apology".

Mr B stated that he is "extremely apologetic" for the incident and is "truly sorry" about what happened. He explained:

> "At the time of the session with [Ms A] I was run down and generally not myself. For approximately six weeks prior to the incident, I had been extremely busy at work. I had been working long hours and had also been supervising the student which the clinic had for five of those six weeks (two of the other senior physios had been away with other commitments which in turn put more pressure on my work).
>
> I also had commitments to training and management of a rugby team which I was then training three nights a week. I was also working quite long hours during the weekend(s).
>
> The immediate weekend prior to this incident had also been a particularly hectic one. I had only had a couple of hours sleep over that weekend and had to travel nine hours from [another town] on the Sunday."

While Mr B has expressed his apologies, Ms A stated that "I have had no direct contact with [Mr B] or any apology, verbal or written."

Mr B advised that he had "taken professional advice" from a clinical psychologist who has helped provide "further insight to explain what had happened". Mr B also advised:

> "Since this incident I have become more aware of my levels of tiredness and have been monitoring my hours of work to ensure I do not end up in the same situation. I have been taking more time out of my day to ensure that pressure and fatigue does not catch up with me like it did."

Response to complaint

On 4 October 2006, Ms A met with Mr C, the owner of the physiotherapy practice and told him about the incident. Ms A explained that Mr C was shocked and angry. Ms A stated that Mr C was supportive of her and paid for counselling. He also advised her how to make a complaint to this Office.

Mr C advised that on 4 October he "apologised for his [Mr B's] behaviour and assured her this had never happened before and this appeared totally out of character". When he confronted Mr B with Ms A's allegations, Mr B accepted that they were true. Mr C stated:

> "He told me he was very tired and run down. He had not been coping very well for several weeks with the stress of work and life outside of work but he accepted he had been very wrong."

Mr C met with Ms A again on 5 October 2006. Mr C again apologised for the incident and advised Ms A about what action he was taking.

After obtaining legal advice, Mr C gave Mr B a written warning and advised him to seek professional counselling. Mr C advised my Office that it was not practicable (and he could not afford) to institute a chaperone for Mr B or to restrict his practice to male clients. Mr C commented that there are no specific written policies at his practice about this, but that the Code of Physiotherapy Practice is applicable to all his staff. Mr C advised that gowns are available in every treatment room and that Mr B would be reminded about the use of gowns where it is appropriate.

Impact on Ms A

Ms A explained that she was initially shocked by the incident. It was not until approximately half an hour later, when she received a text message from her flatmate asking how the appointment had gone, that the realisation of what Mr B had done sunk in. Ms A responded to the text message, saying that something strange had happened but that she would talk about it later.

Ms A's flatmate, Ms D, arrived home at approximately 7pm that evening. Ms D advised that when she got home Ms A was not herself. However, when asked what was wrong, Ms A would not tell her what had happened. Ms D decided not to push it at that point, but she knew something was wrong. It was not until about 11pm that evening, when Ms D approached her about what was wrong, that Ms A broke down. Ms A explained:

> "I just sort of broke down completely and yeah it took me ages to be able to tell her what happened. I couldn't say it, as to what had happened."

Her flatmate encouraged her to discuss the matter with her mother, which she did the following day.

Ms A said that following the incident she was unable to sleep more than a few hours at night and obtained some sleeping pills from her GP.[4]

Ms A stated that she also attended a counsellor at the University, but that she did not find this very helpful. She later saw another counsellor, Ms E. This was arranged and paid for by Mr C.

Ms E advised that Ms A first saw her on 19 October 2006. During this session Ms A explained what had happened to her, stating that Mr B "assaulted her". Ms E commented that she thought Ms A exhibited symptoms of trauma, and she treated her with desensitising techniques.

[4] On 11 October 2006 Ms A's GP prescribed Ms A oxazepam.

Ms A said that her flatmate also put her in touch with a friend who is a psychologist. Ms A contacted the psychologist by telephone and talked through the incident with her**.**

Ms A advised that while she is now managing much better and no longer requires medication to help her sleep, she is still very upset by what happened.

Independent advice to Deputy Commissioner

The following expert advice was obtained from Dr Wayne Hing:

> ***"Statement***
> I have been asked to provide an opinion to the Deputy Commissioner on case number 06/15374/ML, and I have read and agree to follow the Commissioner's Guidelines for Independent Advisors.
>
> ***Qualifications:***
> Doctorate in Anatomy (PhD),
> Master of Science (MSc(Hons)),
> Advanced Diploma Physiotherapy in Orthopaedic Manual Therapy (ADP(OMT)),
> Diploma in Manipulative Therapy (DipMT),
> Diploma in Physiotherapy (DipPhys)
>
> ***Training and relevant experience related to area of expertise called upon in compiling report***
> - Academic Board of New Zealand College of Physiotherapy
> - Past President of New Zealand Manipulative Physiotherapists Association (NZMPA)
> - Lecturer and Examiner for NZMPA postgraduate courses for past 13 years
> - Medical coordinator for Hockey New Zealand for past 8 years
> - 11 years lecturing and researching at AUT University at undergraduate and postgraduate level
> - Coordinator of Postgraduate Masters programme — Musculoskeletal Physiotherapy."
>
> **Expert Advice Required**
>
> 1. In your professional opinion was [Mr B's] treatment of [Ms A] appropriate?
> 2. What professional standards apply in this case?
> 3. Were those standards complied with?
> 4. Did [Mr C] take appropriate action in response to the complaint by [Ms A]?

If not covered above, please answer the following:

5. Please comment on the appropriateness of [Mr B] treating [Ms A] with no gown or cover on her.
6. Please comment on the appropriateness of [Mr B] not leaving the treatment room when [Ms A] was undressing/dressing.
7. Do you consider [Mr B's] explanation that he was tired and "not himself" to be a reasonable explanation for his actions.

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.

To assist you on this last point, I note that some experts approach the question by considering whether the providers' peers would view the conduct with mild, moderate, or severe disapproval.

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

Supporting Resources Provided

- [Ms A's] complaint logged on the website on 16 October 2006, marked 'A' (pages 000–003).
- Investigation letters to [Mr B] and [the clinic] dated October 2006, marked 'B' (pages 004–007).
- Letter from [Mr B] to the Commissioner dated 28 November 2006, marked 'C' (pages 008–010).
- Record of telephone conversation with [Mr C] on 18 November 2006, marked 'D' (page 011).
- Letter from [Mr C] to the Commissioner dated 31 October 2006 with attachments, marked 'E' (pages 012–015).
- Copy of [Ms A's] patient notes, marked 'F' (pages 016–020).
- Copy of interview transcript with [Ms A], marked 'G' (pages 021–041).
- Letter from [Ms A's GP] to the Commissioner dated 19 February 2007, marked 'H' (pages 042–043).
- Record of telephone conversation with [Ms D] on 14 February 2006, marked 'I' (page 043).

Additional Information

- Standards of Ethical Conduct. The Physiotherapy Board of New Zealand, March 2006.

- Standards of Physiotherapy Practice, 3rd Edition, July 2006, from the New Zealand Society of Physiotherapists Inc.
- Guidelines for the NZSP Code of Ethical Principles, from the New Zealand Society of Physiotherapists Inc.
- NZSP Policy on Professional Sexual Boundaries, from the New Zealand Society of Physiotherapists Inc.

Opinion regarding specific questions posed by the Commissioner

1. In your professional opinion was [Mr B's] treatment of [Ms A] appropriate?

In my professional opinion [Mr B's] treatment of [Ms A] was not appropriate.

2. What professional standards apply in this case?

I have based this report on two main documents:

1. The Standards of Ethical Conduct produced by The Physiotherapy Board of New Zealand (Appendix A).
2. The Standards of Physiotherapy Practice produced by The New Zealand Society of Physiotherapists Inc. (NZSP). (Appendix B for relevant parts of Standards).

The Physiotherapy Board of New Zealand, who under section 118(1) of the Health Practitioners Competence Assurance Act 2003 are responsible for the setting of standards of ethical conduct to be observed by practitioners of Physiotherapy.

The New Zealand Society of Physiotherapists Inc. (NZSP) is the professional body representing physiotherapists. The NZSP provides a national focus for the educational issues, quality assurance, public relations and a wide range of professional issues. The Standards of Practice provide the basis of physiotherapy practice, cover the profession's expectations of all practising physiotherapists.

Associated documents that relate and underpin the Standards of Physiotherapy Practice are:

3. Guidelines for the NZSP Code of Ethical Principles, From the New Zealand Society of Physiotherapists Inc. (Appendix C)
4. NZSP Policy on Professional Sexual Boundaries, From the New Zealand Society of Physiotherapists Inc. (Appendix D)

3. Were those standards complied with?

The aforementioned standards relating to [Mr B's] conduct were not complied with. See below for details.

The Physiotherapy Board of New Zealand, Standards of Ethical Conduct, March 2006.

Act in the best interests of the patients.

- The relationship between the physiotherapist and their patient is one of trust.

[Mr B] abused this relationship of trust — refer overall case and [Mr B's] admission of his actions. Refer:

Resource 'C' page 00009 [see page 4, paragraph 5]
Resource 'G' page 00037, line 29–35 [a relationship of trust had developed between [Mr B] and [Ms A]]

Practise in accordance with acceptable professional standards.

- Equipment, premises and personal behaviour should be of an acceptable standard.

[Mr B's] personal behaviour was not of an acceptable professional standard.

Apply principles of best practice of physiotherapy to their professional activities.

- Ensure that comprehensive, accurate and up-to-date clinical records are kept.

Poor, inaccurate and insufficient assessment and notes recorded of [Mr B's] management overall and in particular on the date of the 2nd October when treating [Ms A's] back complaint — refer reference marked 'F' pages 00016-00020 [[Ms A's] clinical records].

Respect the rights and dignity of all individuals.

- Patients shall have the right to:
  — *Be free from discrimination, coercion, harassment and sexual, financial or other exploitation.*

- Expect the physiotherapist to provide:
  — *Appropriate personal privacy.*

The rights and dignity of the patient were clearly not respected within this case.

Standards of Physiotherapy Practice, 3rd Edition, July 2006, From the New Zealand Society of Physiotherapists Inc.

Standard Three — Ethics

The physiotherapist adheres to principles for acceptable standards of professional behaviour.

- Responsibilities to the patient:

The relationship between the physiotherapist and their patient is one of trust and must never be abused — physically, emotionally or morally.

Trust was abused within this relationship and [Mr B's] actions were not of an acceptable standard of professional behaviour.

Standard Thirteen — Standards of Clinical Practice

At each clinical encounter physiotherapists will combine clinical skills with current best evidence and place these in a context that is meaningful to the client.

Criteria:

- The physiotherapist completes an assessment of the patient and formulates a treatment plan.

- To facilitate patient management and satisfy legal requirements, every patient who receives physiotherapy must have a record. Patient records must conform to the following requirements:
  - — Accurate
  - — Providing adequate detail of the intervention given

As mentioned previously the records kept are poor and reflect an insufficient assessment and notes recorded of [Mr B's] management overall and in particular on the date of the 2nd October when treating [Ms A's] back complaint — refer resource 'F' pages 00016–00020 [[Ms A's] clinical records].

Guidelines for the NZSP Code of Ethical Principles, From the New Zealand Society of Physiotherapists Inc.

Responsibilities to the patient

- The relationship between physiotherapists and their patient is one of trust and must never be abused.
- A physiotherapist shall not enter into a sexual relationship with a current patient.
- Physiotherapists have the ultimate responsibility for all aspects of physiotherapy clinical care.

Standards of care

- Physiotherapists shall ensure that comprehensive, accurate and up-to-date clinical records are kept.

Rights of the Patients

- To expect the physiotherapist to provide:
  - — Appropriate personal privacy

These aforementioned Ethical Principles were not followed with regard to [Mr B's] actions.

NZSP Policy on Professional Sexual Boundaries, From the New Zealand Society of Physiotherapists Inc.

Breaking Professional Sexual Boundaries

Varying degrees of sexual harassment may occur which break professional boundaries. Such behaviour can be grouped into the following three categories:

- Sexual impropriety
- Sexual transgression
- Sexual violation

Sexual impropriety means any behaviour such as gestures or expressions that are sexually demeaning to a patient, or which demonstrate a lack of respect for the patient's privacy, including but not exclusively:

- Inappropriate disrobing or inadequate draping practices.
- Inappropriate comments about or to the patient such as making sexual comments about the patient's body or underclothing.

Sexual transgression includes any inappropriate touching of a patient that is of a sexual nature, short of sexual violation, including but not exclusively:

- Touching of breasts or genitals except for the purpose of physical examination or treatment.
- Inappropriate touching of other parts of the body that may be construed as sexual transgression.

[Mr B's] actions can be clearly grouped under both sexual impropriety and transgression:

- refer resource 'A' pages 00002.[5]
- refer resource 'G' page 00029, line 22-24, 41–46 [see quotations page 3].
- refer resource 'G' page 00039, line 23–47 [[Mr B's] actions on 2 October 2006].

Warning signs that may indicate potential for breaking of professional sexual boundaries.

Particular care must be taken to preserve the boundaries in the professional relationship which can be broken in an insidious way. Although the following actions

[5] Deputy Commissioner's note: Reference "A" refers to the statement in Ms A's complaint "… when he grabbed one side of the front of my bra and pulled it down so my breast was revealed. He then picked up a fitness magazine and commented about a photo of a young woman."

are not necessarily transgressions, they are warning signs which should alert a physiotherapist that the boundaries are being blurred. They include:

3. Sexualising the atmosphere by sexual talk or using sexual remarks to praise the patient.

Please refer to:

4. refer resource 'F' pages 00016–00020 [[Ms A's] clinical records].
5. refer resource 'G' page 00024, line 19–26 [see page 2 paragraph 6].
6. refer resource 'G' page 00027, line 14–25 [see page 3 paragraph 4].
7. refer resource 'G' page 00028, line 19–24 [see page 3 paragraph 6].
8. refer resource 'G' page 00029, line 1–8, 22–24 [see first quotation page 4].

4. Did [Mr C] take appropriate action in response to the complaint by [Ms A]?

[Mr C] took the appropriate action and steps regarding [Ms A's] complaint. [Mr C] was familiar with the appropriate standards, and acted accordingly regarding informing [Ms A] of the legislation and rights, and of her options regarding making a complaint.

- refer resource 'A' pages 00002 [see footnote 5].
- refer resource 'E' page 00013, 00015 [[Mr C] advised [Ms A] of her right to make a formal complaint to this Office].
- refer resource 'G' page 00033, line 16–17 [as above].
- refer resource 'G' page 00038, line 31–36 [[Mr C] arranged counselling for Ms A].

Please refer to the following standards and requirements listed below that were complied with.

Standards of Ethical Conduct, produced by the Physiotherapy Board of New Zealand.

Comply with the legislation that governs and impacts upon the practice of, and research in the field of physiotherapy.

Physiotherapists shall:

5.1 Be familiar with and comply with, for example the Health Practitioners Competency Assurance Act 2003, Code of Health and Disability Services Consumers' Rights and the Health Information Privacy Code 1994. Accept the responsibility to uphold the integrity of the profession.

5.2 Accept responsibility to ensure that behaviour, whether in another physiotherapist or in another health professional, which may be considered unprofessional, is brought to the attention of the appropriate authority.

Standards of Physiotherapy Practice, 3rd Edition, July 2006, From the New Zealand Society of Physiotherapists Inc.

Standard Five — Communication with patients

The physiotherapist is familiar with and meets the requirements of the Code of Health and Disability Services Consumers' Rights.

Criteria:

5.2 The physiotherapist must display and have available for patients, copies of the Code of Health and Disability Services Consumers' Rights and brochures issued by the Health and Disability Commissioner's Office and must have procedures in place to meet the requirements of the Code. This includes facilitating the fair, simple, speedy, and efficient resolution of complaints.

5.3 The physiotherapist must ensure patients are aware of their rights and enable them to exercise these.

Guidelines for the NZSP Code of Ethical Principles, From the New Zealand Society of Physiotherapists Inc.

Rights of the Patients

3.12 To make a complaint

5. Please comment on the appropriateness of [Mr B] treating [Ms A] with no gown or cover on her.

In general terms the therapist must in all circumstances, a) have a gown available for the patient to wear and b) offer and inform the patient that a gown is available to be worn. This is often readily encouraged when the circumstances include a male therapist treating a female patient.

In some circumstances where a therapist has treated a patient for a period of time and they are familiar with one another gowns are not utilised as they can be cumbersome and impeding to the treatment.

In these cases however, it is common practice for the physiotherapist to ask the patient to wear 'appropriate' clothing for example a sports bra or shoulderless top.

6. Please comment to the appropriateness of [Mr B] not leaving the treatment room when [Ms A] was undressing/dressing.

It is appropriate that a therapist should leave a treatment area when the client is undressing particularly when the circumstances consist of a male therapist and a young female patient.

7. Do you consider [Mr B's] explanation that he was tired and 'not himself' to be a reasonable explanation for his actions.

I do not believe the explanation of being tired and 'not himself' is a reasonable explanation for [Mr B's] actions.

[Mr B] did not provide an appropriate standard of care and illustrates a very severe departure from the standards listed previously in this report.

In conclusion I view the conduct of [Mr B] with severe disapproval.

Additional comments regarding the care provided by [Mr B]

I would like to comment that the actual management of [Ms A's] back pain/ complaint gave rise to further concerns. These arise from the correspondence and medical notes that were received.

It appears that [Ms A] presented to the clinic for treatment under ACC and subsequently received nine treatments for her shin splints diagnosis from the 11th July to the last treatment that the patient received for this condition on the 20th September. Under a 'Lower limb' claim anything from 8–12 treatments would be covered, and anything more would require an ACC32 extension to be applied for (which all fits in the context of the shin ACC claim).

However, I am not sure how this particular one lumbar treatment (recorded on the 2nd October) fits in with this particular ACC referral for the shin splints? Was there another referral for [Ms A's] back complaint? And if so was it active? Or was this a private consultation? And when was the last treatment for her back?

Overall, I have the opinion that the general management of her back complaint was poorly presented and recorded. See previous report content regarding appropriate assessment and recording of assessment and treatment.

Under the Standards of Physiotherapy Practice produced by the NZSP, Standard Thirteen (Standards of Clinical Practice) states under the Criteria:

13.2 The physiotherapist completes an assessment of the patient and formulates a treatment plan.

13.7 To facilitate patient management and satisfy legal requirements, every patient who receives physiotherapy must have a record. Patient records must conform to the following requirements:

- Accurate,
- Providing adequate detail of the intervention given.

Further, the Guidelines for the NZSP Code of Ethical Principles states:

Standards of care

2.7 Physiotherapists shall ensure that comprehensive, accurate and up-to-date clinical records are kept.

It is clear from the patient notes that these standards were not followed."

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 1
Right to be treated with Respect

(2) Every consumer has the right to have his or her privacy respected.

RIGHT 2
Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

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.

Other relevant standards

The Physiotherapy Board of New Zealand's *The Standards of Ethical Conduct 2006.* The most relevant standard in this case is:

"1. Act in the best interests of their patients.
1.1 The relationship between the physiotherapist and their patient is one of trust.
...
1.3 The relationship of trust must never be abused. This includes not entering into a sexual relationship with a current patient."

The New Zealand Society of Physiotherapists Incorporated:

- *NZSP Policy on Professional Sexual Boundaries 2003*
- *Guidelines for the NZSP Code of Ethical Principles 2003*
- The Standards of Physiotherapy Practice (3rd ed) 2006

Opinion

This report is the opinion of Rae Lamb, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

Opinion: Breach — Mr B

Right 1(2) of the Code of Health and Disability Services Consumers' Rights (the Code) required [Ms A's] privacy to be respected, while Right 2 provides that Ms A had the right to be free from any sexual exploitation. Also, under Right 4(2) of the Code Ms A had the right to receive physiotherapy care that complied with professional and ethical standards.

In my opinion, Mr B breached both Right 2 and Right 4(2) by exposing Ms A's breasts during a treatment session on 2 October 2006. He also breached Right 4(2) in relation to the standard of his clinical documentation, and Right 1(2) for his failure to respect Ms A's privacy. The reasons for my decision are set out below.

Conduct
Mr B admits to inappropriately exposing Ms A's breasts at the completion of a physiotherapy session on 2 October 2006 during which he was treating her lower back.

Ms A had been seeing Mr B for treatment for approximately six months, initially for the treatment of shin splints, then later for the treatment of her lower back. During this time, Mr B and Ms A had developed a good professional relationship.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

Ms A stated that the incident occurred after Mr B had made a comment about a picture in the magazine she was reading. This comment was in relation to a woman wearing a see-through dress. Ms A said that, while she was changing, Mr B made a comment about the picture and then proceeded to pull down the front of her bra on two occasions, partially, and then fully, exposing her breasts.

Mr B's recollection of the conversation leading up to the incident was slightly different. He recalled that at the end of the session Ms A made a comment about having to run to her car in the rain and hoping that she did not get "a wet t-shirt look" on the way. Mr B advised that he reacted to the "banter" by then pulling down the front of Ms A's bra and exposing her breasts. Mr B said that he reacted this way owing to the stress he was under, coupled with the fact that he had had only a couple of hours sleep over the weekend.

Overall, I consider Ms A's account of the details of what occurred to be more credible — particularly in light of her ability to identify the specific magazine picture concerned, as well as the statements of her flatmate and others about her reaction at the time and the impact this event has had on her.

Mr B's actions were clearly contrary to the professional and ethical standards applying to physiotherapists. Any relationship between a health professional and patient involves trust. It is this fundamental principle that allows such intimate physical contact. This is recognised under the *Standards of Ethical Conduct*, which stipulate that a physiotherapist should at all times act in the best interests of his or her patients. Principle 1.1 states:

> "The relationship between the physiotherapist and their patient is one of trust."

Principle 1.3 provides that this relationship of trust must never be abused. The New Zealand Society of Physiotherapists (NZSP) Policy on Professional Sexual Boundaries clearly states that any sexual impropriety or sexual transgression with a current patient breaches professional boundaries and is unethical. [Mr B's] actions amount to both sexual impropriety (behaviour that is sexually demeaning to a patient, or that demonstrates a lack of respect for the patient's privacy) and sexual transgression (any inappropriate touching of a patient that is of a sexual nature).

Mr B's conduct on 2 October 2006 was clearly unethical. That Mr B inappropriately exposed Ms A's breasts was clearly an abuse of the relationship of trust that had been built up. His attempt to suggest that Ms A was somehow compliant in what occurred is manifestly unconvincing. While Mr B may have been tired and busy at work, these factors do not provide an even slightly compelling explanation or excuse for his actions. Dr Hing considered that Mr B's actions can be categorised as both sexual impropriety and sexual transgression. He advised that this amounted to a severe departure from the acceptable standard of professional behaviour, and I agree. Accordingly it is my opinion that Mr B breached Right 4(2) of the Code.

Furthermore, the Code states that any abuse of a position of trust amounts to exploitation. Mr B's actions were a clear abuse of the trust that Ms A had placed in him as her physiotherapist, and therefore amounts to exploitation in breach of Right 2 of the Code.

Personal privacy
Ms A advised that when receiving treatment to her lower back it was normal for her to undress the top half of her body down to her bra. Ms A said that while she was undressing Mr B would remain in the treatment room, although prior to 2 October, Ms A never felt uncomfortable or felt that he was staring at her. Throughout the treatment Ms A would generally remain lying on her front.

According to the New Zealand Board of Physiotherapists *Standards of Ethical Conduct* a patient has the right to expect the physiotherapist to provide appropriate personal privacy. Dr Hing advised that it is appropriate that a therapist should leave a treatment area when the client is undressing, particularly when the circumstances involve a male therapist and a young female patient. Dr Hing stated:

> "In general terms the therapist must in all circumstances, a) have a gown available for the patient to wear and b) offer and inform the patient that a gown is available to be worn. This is often readily encouraged when the circumstances include a male therapist treating a female patient."

Mr C advised that gowns are available in all treatment rooms, but there is no evidence that Mr B ever used these, or even offered one to Ms A. Indeed Ms A has stated that she was unaware that gowns were available. Dr Hing considered that this was a departure from the Board's *Standards of Ethical Conduct*. I have also noted Dr Hing's advice that:

> "in some circumstances where a therapist has treated a patient for a period of time and they are familiar with one another gowns are not utilised as they can be cumbersome and impeding to the treatment.
>
> In these cases however, it is common practice for the physiotherapist to ask the patient to wear 'appropriate' clothing for example a sports bra or shoulderless top."

In my view, Mr B failed to take relatively simple steps to respect Ms A's right to privacy. He remained in the room while she undressed and did not offer her a gown. I consider that these omissions amount to a breach of Right 1(2) of the Code.

Clinical documentation
Dr Hing advised that Mr B's clinical documentation of his assessment and treatment of Ms A was "insufficient". The Physiotherapy Board of New Zealand *Standards of Ethical Conduct* require a physiotherapist to apply principles of best practice to their professional activities, including ensuring that comprehensive, accurate and up-to-date clinical records are kept.

Dr Hing considers Mr B's clinical records for Ms A were:

> "poor, inaccurate and insufficient assessment and notes recorded of [Mr B's] management overall and in particular on the date of the 2nd October when treating [Ms A's] back complaint".

Furthermore the development of a treatment plan is considered an appropriate standard of practice. There is no evidence of the development of a treatment plan for either Ms A's lower back injury or her shin splints. Overall I consider that, from the evidence provided, Mr B's clinical documentation, particularly in relation to Ms A's back injury and her treatment on 2 October 2006, failed to meet professional standards. Therefore Mr B breached Right 4(2) of the Code.

Opinion: No Breach — The physiotherapy clinic

Vicarious liability
Under section 72(2) of the Health and Disability Commissioner Act 1994 (the Act), an employing authority may be vicariously liable for acts or omissions by an employee.

As Mr B is an employee of the clinic, consideration must be given as to whether it is vicariously liable for his breaches of the Code. Under section 72(5), it is a defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent acts or omissions leading to an employee's breach of the Code.

Mr C, the owner of the clinic, explained that there are no specific written policies and that he considered such matters to be covered by the Code of Physiotherapy Practice. Mr C said that Mr B's behaviour was totally out of character, a statement that is consistent with Ms A's account. In the absence of any prior concerns, I accept that the clinic could not reasonably have been expected to prevent Mr B's actions.

Mr C responded promptly and appropriately to Ms A's complaint. He has also taken steps to address Mr B's behaviour, giving him a written warning and arranging counselling for him. I have noted Mr C's undertaking to remind Mr B about the use of gowns.

Overall, my view is that the clinic is not vicariously liable for Mr B's breaches of the Code.

Action taken

Mr B advised that he has reviewed his practice in light of this incident and is more conscious of his levels of fatigue. He has been monitoring his hours of work to ensure that a similar situation does not occur again.

Recommendations

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

The physiotherapy clinic
I recommend that the clinic monitor Mr B's practice to ensure his safety to practise. It may be helpful for Mr B to have regular meetings/debriefing sessions with Mr C to ensure that he remains fit to practise.

In addition, I recommend that the clinic provide in-service training to all staff in relation to the importance of maintaining personal privacy for patients.

Progress on both these recommendations should be reported to me by **2 August 2007**.

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.

- Mr B will be referred to the Physiotherapy Board of New Zealand for consideration of whether a competence review is warranted or whether there are health issues to be addressed.

- A copy of this report, with details identifying the parties removed, will be sent to the New Zealand Society of Physiotherapists Incorporated.

- 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.

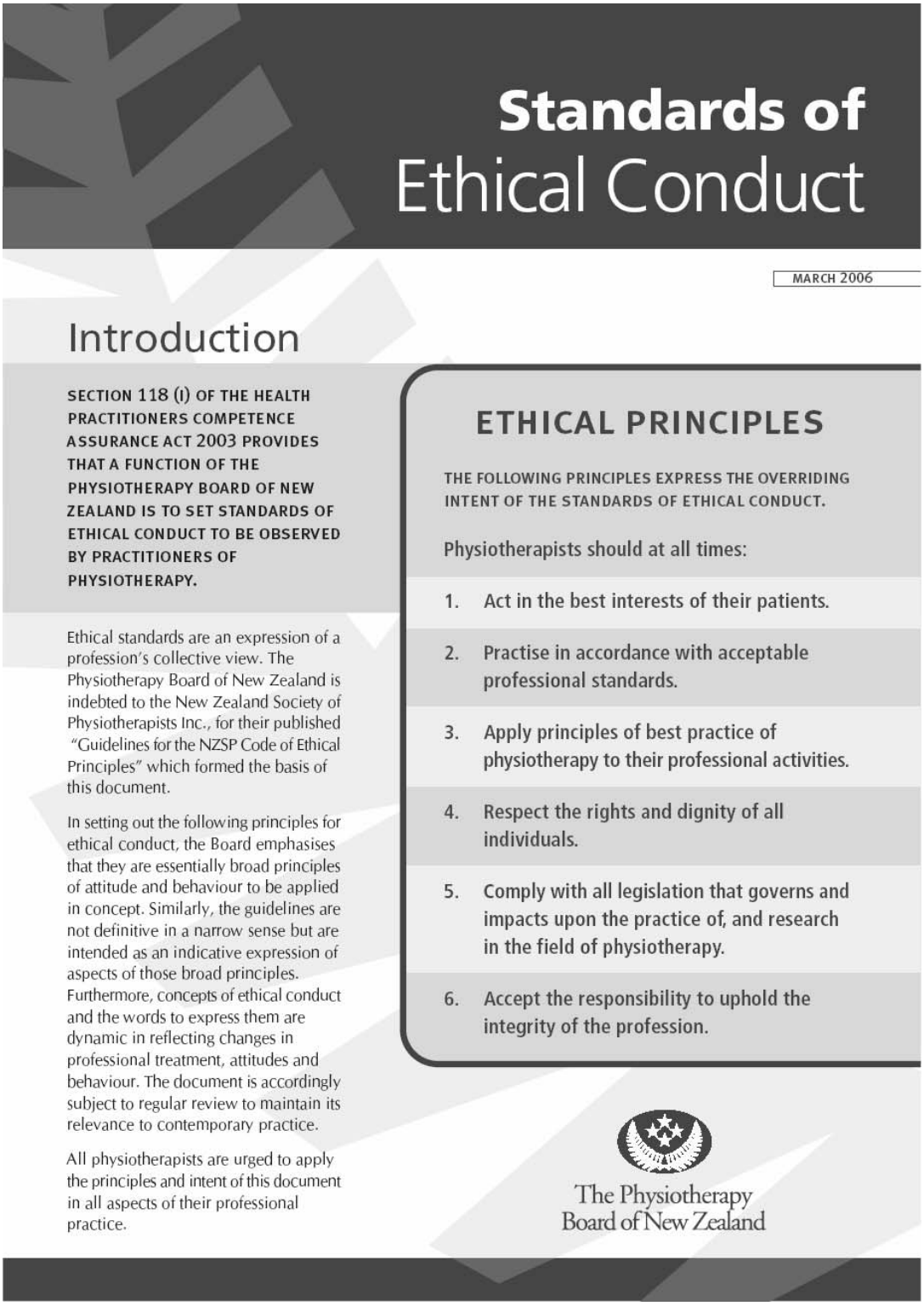
Addendum

On 21 December 2007 the Health Practitioners Disciplinary Tribunal upheld a charge of professional misconduct against Mr B. The Tribunal imposed the following conditions on Mr B's practice for a period of 12 months: that a chaperone be present during consultations with female patients, that he undertake a mentoring programme, and that he ensure that his physiotherapy workload does not become excessive.

Mr B was censured, fined $5,000.00 and ordered to pay $5,000 costs.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

Appendix A



Standards of Ethical Conduct

MARCH 2006

Introduction

SECTION 118 (I) OF THE HEALTH PRACTITIONERS COMPETENCE ASSURANCE ACT 2003 PROVIDES THAT A FUNCTION OF THE PHYSIOTHERAPY BOARD OF NEW ZEALAND IS TO SET STANDARDS OF ETHICAL CONDUCT TO BE OBSERVED BY PRACTITIONERS OF PHYSIOTHERAPY.

Ethical standards are an expression of a profession's collective view. The Physiotherapy Board of New Zealand is indebted to the New Zealand Society of Physiotherapists Inc., for their published "Guidelines for the NZSP Code of Ethical Principles" which formed the basis of this document.

In setting out the following principles for ethical conduct, the Board emphasises that they are essentially broad principles of attitude and behaviour to be applied in concept. Similarly, the guidelines are not definitive in a narrow sense but are intended as an indicative expression of aspects of those broad principles. Furthermore, concepts of ethical conduct and the words to express them are dynamic in reflecting changes in professional treatment, attitudes and behaviour. The document is accordingly subject to regular review to maintain its relevance to contemporary practice.

All physiotherapists are urged to apply the principles and intent of this document in all aspects of their professional practice.

ETHICAL PRINCIPLES

THE FOLLOWING PRINCIPLES EXPRESS THE OVERRIDING INTENT OF THE STANDARDS OF ETHICAL CONDUCT.

Physiotherapists should at all times:

1. Act in the best interests of their patients.
2. Practise in accordance with acceptable professional standards.
3. Apply principles of best practice of physiotherapy to their professional activities.
4. Respect the rights and dignity of all individuals.
5. Comply with all legislation that governs and impacts upon the practice of, and research in the field of physiotherapy.
6. Accept the responsibility to uphold the integrity of the profession.

The Physiotherapy Board of New Zealand

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

Guidelines for Code of Ethical Principles

THE FOLLOWING GUIDELINES ARE PRESENTED TO PHYSIOTHERAPISTS TO PROVIDE A MORE DETAILED EXPLANATION OF THE INTENT OF THE ETHICAL PRINCIPLES. THEY ARE NOT EXHAUSTIVE BUT ARE INCLUDED TO EXPAND ON AND ILLUSTRATE THE APPLICATION OF THE PRINCIPLES.

*(**Note:** The following guidelines should be read in conjunction with the Code of Health and Disability Services Consumer's Rights.)*

1. Act in the best interests of their patients.

1.1. The relationship between the physiotherapist and their patient is one of trust.

1.2. Patients are entitled to be treated without discrimination on the basis of nationality, religion, age, gender, race, creed, politics, social status, sexual orientation, health status or disability.

1.3. The relationship of trust must never be abused. This includes not entering into a sexual relationship with a current patient.

1.4. Physiotherapists must practice only in those areas in which they are personally competent.

1.5. When a patient's needs are beyond the scope of a physiotherapist's expertise or the scope of physiotherapy, (as defined by the Physiotherapy Board of New Zealand), the patient should be informed and assisted in identifying a person qualified to provide the necessary services.

1.6 Physiotherapists should make provision for continuity of care when planning to be absent from their place of practice.

1.7 Physiotherapists should limit their work, or stop practising, if their performance or judgement is affected by their health.

2. Practise in accordance with acceptable professional standards.

2.1. Equipment, premises and personal behaviour should be of an acceptable standard.

2.2. Financial transactions shall be carried out with honesty and recorded fully and accurately.

2

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

3. Apply principles of best practice of physiotherapy to their professional activities.

PHYSIOTHERAPISTS SHALL:

3.1 Accept the ultimate responsibility for all aspects of their physiotherapy clinical care.

3.2 Ensure that treatments do not conflict with any other known treatment the patient is receiving.

3.3 Maintain adequate and appropriate professional development and competency.

3.4 Ensure that comprehensive, accurate and up-to-date clinical records are kept.

3.5 Keep the patient's referring health professional informed of the patient's progress and any concerns the physiotherapist may have, subject always to the consent of the patient.

Note: Where patients are deemed not competent to make an informed choice and give informed consent, refer to Right 7 clauses (2), (3) and (4) of the Code of Health and Disability Services Consumers' Rights for guidance.

4. Respect the rights and dignity of all individuals.

4.1 **PATIENTS SHALL HAVE THE RIGHT TO:**

- Be provided with sufficient information, including:
  – diagnosis
  – treatment plan
  – significant benefits, risks and side effects
  – prognosis
  – timeframes
  – results of tests
  – any costs to the patient
  in a manner they can understand in order to make an informed choice and give informed consent.
- Discuss treatment during its course.
- Voice any concerns about the state and quality of the service.
- Withdraw from or refuse treatment at any stage.
- Ask about treatment alternatives and to be told what is available in a manner which they can understand.
- Know the name and qualifications of the person giving the treatment.
- Have all information pertaining to them kept confidential and only divulged with their permission, except when the law otherwise permits.
- Seek a second opinion without prejudicing their subsequent treatment.
- Select or change their physiotherapist where practicable.
- Be free from discrimination, coercion, harassment and sexual, financial or other exploitation.
- Make a complaint.
- Expect the physiotherapist to provide:
  – appropriate personal privacy
  – clean and safe facilities and equipment.

4.2 **PHYSIOTHERAPISTS SHALL:**

- Practice in a manner which is culturally safe and in recognition of principles under the Treaty of Waitangi.
- Ensure that patients give informed consent to treatment by the physiotherapist or by any other health professional under their direct supervision.

3

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THE PHYSIOTHERAPY BOARD
OF NEW ZEALAND

5. Comply with all legislation that governs and impacts upon the practice of, and research in the field of physiotherapy.

PHYSIOTHERAPISTS SHALL:

5.1 Be familiar with and comply with, for example the Health Practitioners Competency Assurance Act 2003, Code of Health and Disability Services Consumers' Rights and the Health Information Privacy Code 1994.

5.2 Obtain approval from the appropriate Ethics Committee before undertaking research.

6. Accept the responsibility to uphold the integrity of the profession.

PHYSIOTHERAPISTS SHOULD:

6.1 Accept responsibility to ensure that behaviour, whether in another physiotherapist or in another health professional, which may be considered unprofessional, is brought to the attention of the appropriate authority.

6.2 Ensure that patient safety is not undermined by the indiscriminate teaching of physiotherapy skills to non physiotherapists.

6.3 Behave towards members of other health professions as they would members of their own profession.

6.4 When involved in promotion:

- Claim only those qualifications to which they are entitled.
- Use advertising methods and/or material which do not bring the profession into disrepute.
- Not engage in any conduct that is misleading as to the nature, characteristics and/or suitability for a purpose of any product and/or service.

STANDARDS OF ETHICAL CONDUCT
MARCH 2006

CONTACTING THE PHYSIOTHERAPY BOARD

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WEBSITE: www.physioboard.org.nz

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Appendix B

THE NEW ZEALAND SOCIETY OF PHYSIOTHERAPISTS INC.

STANDARDS

OF

PHYSIOTHERAPY PRACTICE

3rd Edition - July 2006

Date of issue: July 2006
Validated by: NZSP National Executive
Review date: July 2008

New Zealand Society of Physiotherapists, PO Box 27 386, Wellington
Email: nzsp@physiotherapy.org.nz Website: www.physiotherapy.org.nz

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Standard Three

Ethics

The physiotherapist adheres to principles for acceptable standards of professional behaviour.

3.1 Responsibilities to the patient:

3.1.1 The relationship between the physiotherapist and their patient is one of trust and must never be abused - physically, emotionally or morally.

3.1.2 The physiotherapist has the ultimate responsibility for all aspects of physiotherapy clinical care.

3.2 Rights of patients

Patients have the right:

3.2.1 To be treated without discrimination on the basis of nationality, religion, age, gender, race, creed, politics, social status, sexual orientation, or health status or disability.

3.2.2 To know the name and qualifications of the person giving treatment.

3.2.3 To select or change their physiotherapist.

Supporting Legislation	Cross References
Tiriti O Waitangi 1840 (Treaty of Waitangi)	Cultural Competence in Physiotherapy Education and Practice in Aotearoa/New Zealand 2004
The HDC Code of Health and Disability Services Consumers' Rights Regulation 1996	Standards of Ethical Conduct (Physiotherapy Board of New Zealand 2006)

bear no relationship to the person's name.

Supporting Legislation	Cross References
Health and Disability Commissioner Act 1994	Code of Ethics 2003 • Guidelines for the NZSP Code of Ethical Principles • Policy on Professional Sexual Boundaries
Human Rights Act 1993	Prevention of Sexual Harassment Guidelines 2003
Privacy Act 1993	NZSP Bicultural Policy
Health Information Privacy Code 1994	NZSP Policy on Treatment of Family Members and Self-Treatment

Standards of Physiotherapy Practice, 3rd Edition – July 2006
Review date: July 2008

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

Standard Thirteen

Standards of Clinical Practice

At each clinical encounter physiotherapists will combine clinical skills with current best evidence and place these in a context that is meaningful to the client.

Criteria:

13.1 The physiotherapist completes an assessment of the patient and formulates a treatment plan.

13.2 The physiotherapist identifies, discusses and formulates functional, measurable treatment goals and outcomes in conjunction with the active participation of the patient. The use of standardised outcome measures is encouraged.

13.3 The physiotherapist practises only in those areas in which she/he is competent.

13.4 Where a patient's needs lie outside the scope of the physiotherapist's expertise, the patient shall be informed and assisted in identifying a qualified person to provide the necessary services. If appropriate a referral letter will be written.

13.5 The physiotherapist ensures that clinical practice does not conflict with any other known treatment the patient is receiving.

13.6 To facilitate patient management and satisfy legal requirements, every patient who receives physiotherapy must have a record. Patient records must conform to the following requirements:

- Legible
- Dated
- Accurate
- Providing adequate detail of the intervention given
- Signed or initialled after each entry/attendance. The physiotherapy practice owner or manager must have a record of the signatures of all their staff so the signatures can be clearly identified.
- No correction fluid is used
- Written in permanent ink
- Any errors are crossed with a single line and initialled
- Patient identification details are recorded on each page
- Acronyms/abbreviations are used only within the context of a locally agreed abbreviations glossary

13.7 The physiotherapist undertakes progressive reviews of clinical practice outcomes with the patient.

13.8 The physiotherapist keeps the patient's referring health professional e.g. General Practitioner, informed of the patient's progress and any concerns the physiotherapist may have. If the patient has self-referred, the physiotherapist

Standards of Physiotherapy Practice, 3rd Edition – July 2006
Review date: July 2008

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should discuss with the patient in advance, which other health professionals e.g. GPs, will receive information. The patient has the right to refuse to allow such sharing of information, but the implications of such refusal should be discussed and documented.

13.9 The physiotherapist ceases intervention if the physiotherapy clinical practice does not achieve identified goals within a time frame appropriate to the condition or injury, or does not enable the patient to maintain health or lifestyle.

13.10 The physiotherapist ceases intervention when the physiotherapy clinical practice has achieved and sustained agreed defined functional goals.

Supporting Legislation	Cross references
	New Zealand Guidelines Group
	ACC Physiotherapy Treatment Profiles
	Allied Health Services Sector Standard – Physiotherapy Services Audit Workbook SNZ HB 8171.1:2005
	Allied Health Services Sector Standard NZS 8171:2005 (Standards New Zealand)
	New Zealand Standards Health Records 2002 NZS 8153:2002

bear no relationship to the person's name.

Appendix C

NEW ZEALAND SOCIETY OF PHYSIOTHERAPISTS INC.

GUIDELINES FOR THE NZSP CODE OF ETHICAL PRINCIPLES

(Ratified at the NZSP AGM - 17 May 2003)

Introduction

These guidelines have been developed by the New Zealand Society of Physiotherapists Inc. (NZSP). The guidelines are required to be observed by NZSP members. Physiotherapists must also comply with relevant New Zealand legislation including the Code of Health and Disability Consumers' Rights and the Health Information Privacy Code 1994.

NZSP has determined principles for acceptable standards of professional behaviour for physiotherapists. These are set out as a Code of Ethical Principles in the NZSP Rule Book and are reproduced below.

The guidelines are not definitive and are subject to regular review and changes as the dynamics of the profession change, and as new patterns of physiotherapy treatment and management are developed and accepted by the profession and the public.

The paramount intent of the code and guidelines is to protect patients. *(Note: In this guideline the word patient may be substituted for clients or their designates.).*

Extract from the NZSP Rules Book 2002

CODE OF ETHICAL PRINCIPLES

56. Physiotherapists act in the best interests of their patients.

57. Physiotherapists respect the rights and dignity of all individuals.

58. Physiotherapists comply with all legislation that governs and impacts upon the practice of physiotherapy.

59. Physiotherapists practise in accordance with acceptable professional standards.

60. Physiotherapists accept responsibility to uphold the integrity of the profession.

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GUIDELINES FOR CODE OF ETHICAL PRINCIPLES

1. Responsibilities to the Patient

1.1 The relationship between physiotherapists and their patients is one of trust and must never be abused.

1.2 A physiotherapist shall not enter into a sexual relationship with a current patient (see also the NZSP Policy on Professional Sexual Boundaries).

1.3 Physiotherapists have the ultimate responsibility for all aspects of physiotherapy clinical care.

2. Standards of Care

2.1 Physiotherapists shall practice only in those areas in which they are competent.

2.2 When a patient's needs are beyond the scope of the physiotherapist's expertise or the scope of physiotherapy [as defined in the Physiotherapy Act 1949 or as may be defined by the Physiotherapy Board of New Zealand] the patient shall be informed and assisted in identifying a qualified person to provide the necessary services.

2.3 Physiotherapists shall practice in a manner which is culturally safe in recognition of obligations under the Treaty of Waitangi.

2.4 Physiotherapists are encouraged to participate in peer review.

2.5 Physiotherapists shall ensure that treatments do not conflict with any other known treatment the patient is receiving.

2.6 Physiotherapists shall ensure that comprehensive, accurate and up-to-date clinical records are kept.

2.7 Physiotherapists shall ensure that patients give informed consent to treatment by a physiotherapy student.

2.8 Provision should be made for continuity of care if the physiotherapist is planning to be absent from their place of practice.

2.9 Physiotherapists should keep the patient's referring health professional informed of the patient's progress and any concerns the physiotherapist may have.

3. Rights of Patients

(*Note: The following guidelines should be read in conjunction with the Code of Health and Disability Consumer's Rights*)

Patients have the right:

3.1 To be treated without discrimination on the basis of nationality, religion, age, gender, race, creed, politics, social status, sexual orientation, health status or disability.

3.2 To expect the physiotherapist to provide:
- appropriate personal privacy
- clean and safe facilities and equipment

3.3 To be provided with sufficient information, in a manner they can understand in order to make an informed choice and give informed consent including:
- diagnosis
- treatment plan
- significant benefits, risks and side effects
- prognosis
- timeframes
- results of tests
- costs to the patient

(*Note: Where patients are deemed not competent to make an informed choice and give informed consent, refer to Right 7 clauses (2), (3) and (4) of the Code of Health and Disability Services Consumers' Rights for guidance.*)

3.4 To discuss treatment during its course.

3.5 To voice any concerns about the state and quality of the service.

3.6 To withdraw from or refuse treatment at any stage.

3.7 To ask about treatment alternatives and to be told what is available in a manner which they can understand.

3.8 To know the name and qualifications of the person giving the treatment.

3.9 To confidentiality of all information provided and that it shall only be divulged with their permission except when the law otherwise permits.

3.10 To seek a second opinion without prejudicing their subsequent treatment.

3.11 To select or change their physiotherapist where practicable.

3.12 To make a complaint.

4. Responsibilities to the Profession

4.1 Physiotherapists accept responsibility to ensure that behaviour, which may be considered unprofessional, is brought to the attention of NZSP.

4.2 The profession has the right to expect that the practice of physiotherapy shall not be undermined by the indiscriminate teaching of physiotherapy skills to other individuals or groups.

4.3 Physiotherapists shall behave towards members of other health professions as they would members of their own.

5. Research

5.1 When involved in research physiotherapists shall:

- use an acceptable scientific approach
- follow an acceptable code of ethics for research on human or animal subjects
- obtain approval from the appropriate Ethics Committee

6. Advertising

6.1 Physiotherapists shall claim only those qualifications to which they are entitled.

6.2 Physiotherapists when advertising shall not use methods or material which brings the profession into disrepute.

6.3 Physiotherapists when advertising shall ensure that claims made are verifiable.

6.4 Physiotherapists shall not use any testimonials or endorsements when advertising.

6.5 Physiotherapists shall not use comparative advertising.

7. Endorsement

7.1 Physiotherapists shall not engage in any conduct that is misleading as to the nature, characteristics or suitability for a purpose of a product or service.

8. Responsibilities to the Community

8.1 Physiotherapists shall not knowingly be involved in any arrangement which is illegal or unethical.

8.2 Financial transactions shall be carried out with absolute honesty and recorded fully and accurately.

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bear no relationship to the person's name.

Appendix D

NEW ZEALAND SOCIETY OF PHYSIOTHERAPISTS INC.

NZSP POLICY ON PROFESSIONAL SEXUAL BOUNDARIES

(Ratified at the NZSP AGM - 17 May 2003)

1. Introduction

NZSP considers that a sexual relationship with a current patient breaks professional boundaries and is unethical. (*Note: in this policy the word patient may be substituted for clients or their designates.*)

Physiotherapists, like a number of other professionals, are involved in relationships in which there is a potential imbalance of power. The physiotherapist to patient relationship is not one of equality. In seeking assistance, guidance and treatment the patient is vulnerable. Sexual exploitation of the patient is an abuse of power. Because of the power imbalance, patient consent is not considered a defence.

The term "sexual relationship" is not restricted to sexual intercourse but may include any conduct which has as its purpose some form of sexual gratification, or may be reasonably construed by the patient as having that purpose.

2. Definition of a Patient

A person should be considered to be a current patient until that person ceases to receive professional advice, treatment or support from the physiotherapists. The point at which she/he ceases to be a patient will vary according to the:

- Nature of the professional consultation.
- Length of the patient/physiotherapist professional relationship.
- Reason for seeking professional treatment.
- Degree of dependency involved in the professional relationship.
- Degree of knowledge and personal disclosure that has occurred during the therapeutic relationship.

It is not possible to be definitive regarding these issues. Each situation will require careful judgment of the individual circumstances.

3. Breaking Professional Sexual Boundaries

Varying degrees of sexual harassment may occur which break professional boundaries. Such behaviour can be grouped into the following three categories:

- Sexual impropriety
- Sexual transgression
- Sexual violation

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's name.

Sexual impropriety means any behaviour such as gestures or expressions that are sexually demeaning to a patient, or which demonstrate a lack of respect for the patient's privacy, including but not exclusively:

- Inappropriate disrobing or inadequate draping practices.
- Inappropriate comments about or to the patient such as making sexual comments about the patient's body or underclothing.
- Making sexualised or sexually demeaning comments to a patient.
- Displaying negative attitudes or making negative comments regarding the patient's sexual orientation.
- Making comments about sexual performance during an examination or consultation (except where pertinent to professional issues of sexual function or dysfunction).
- Requesting details of sexual history or sexual preference not relevant to the type of consultation.
- Any conversation regarding the sexual problems, preferences or fantasies of the physiotherapist.
- Examining the patient intimately without the patient's informed consent.
- Conducting an intimate examination of the patient in the presence of students or other parties without the patient's consent to their presence.

Sexual transgression includes any inappropriate touching of a patient that is of a sexual nature, short of sexual violation, including but not exclusively:

- Touching of breasts or genitals except for the purpose of physical examination or treatment.
- Touching of breasts or genitals when the client has refused or withdrawn consent for the examination or treatment.
- Inappropriate touching of other parts of the body that may be construed as sexual transgression.
- Proposing a sexual relationship to a patient.
- Manual internal examination without gloves.

Sexual violation means physiotherapist/patient sexual activity whether or not initiated by the physiotherapist, including:

- Masturbation or clitoral stimulation.
- Other forms of genital or other sexual connection.

NOTE: ***Actions within any of the three categories above may contravene the law and invoke criminal charges in the event of non-consent. The important distinction is that ethical considerations apply whether there has been consent or not.***

4. Warning Signs That May Indicate Potential for Breaking of Professional Sexual Boundaries

Particular care must be taken to preserve the boundaries in the professional relationship which can be broken in an insidious way. Although the following actions are not necessarily transgressions, they are warning signals which should alert a physiotherapist that the boundaries are being blurred. They include:

- Extending personal social invitations.
- Failing to manage seductive advances by a patient in an appropriate professional manner.

- Giving inappropriate special status to the patient e.g. appointments at odd hours especially when other staff are unlikely to be present.
- Stating an attraction to the patient.
- Confiding in a patient about the physiotherapist's personal problems.
- Offering to drive the patient and "see him/her in".
- Giving patient significant gifts.
- Not charging or billing for treatment.
- Sexualising the atmosphere by:
  - sexual talk
  - using sexual remarks to praise the patient

Prohibited behaviour includes actions which inevitably break through professional boundaries. These include:

- The physiotherapist acting on feelings of sexual attraction towards a patient.
- Making any suggestion that a sexual relationship with the patient is part of treatment.

5. Safety and Protection

To avoid any misunderstandings or inappropriate conduct the physiotherapist should employ the following safeguards:

- Keep to relevant personal detail in history taking.
- Provide adequate information and explanation which helps to avoid misunderstandings and misinterpretation.
- Honour confidentiality.
- Maintain proper appointment systems.
- Provide suitable facilities with screens for undressing, draping.
- Offer and encourage the presence of chaperone/whanau/friend during intimate examinations.
- Be aware of what is culturally acceptable to patients, especially those of a different race or religion.
- Never use sexually demeaning words or actions or jokes in doubtful taste.
- Refrain from undue familiarity.
- Be cautious of the context and intent if accepting a gift from a patient.
- Be aware that people may be vulnerable at times of crisis in their personal life.
- Get help early for personal crises.
- Do not involve patients in personal problems.
- Consult with colleagues about difficult situations.
- Maintain strong support and self monitoring systems within the physiotherapy practice.
