

# **Massage Therapist, Mr B**

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

**(Case 04HDC17805)**



Health and Disability Commissioner  
*Te Toikey Hauora, Hauātanga*



## Parties involved

Ms A	Consumer
Mr B	Provider/Massage therapist
Ms C	Friend of Ms A

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## Complaint

On 26 October 2004, the Commissioner received a complaint from Ms A on referral from New Zealand Police. As a result, the following issue was identified for investigation:

- *The appropriateness of the massage treatment provided by Mr B to Ms A on 31 July 2004.*

Mr B has not provided any information during the investigation. To obtain a comprehensive account of events, investigators from the Commissioner's Office reviewed a tape of Mr B's interview with New Zealand Police. From the information supplied by Mr B, the investigation was extended on 25 July 2005 to include the following issue:

- *Whether Mr B fully informed Ms A about the therapeutic massage and gained her informed consent to proceed before commencing the massage on 31 July 2004.*
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## Information reviewed

- Ms A's complaint to New Zealand Police
  - Mr B's interview with New Zealand Police
  - Information on course requirements from a College.
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## Information gathered during investigation

On or about Wednesday, 28 July 2004, Ms A attended a breakfast meeting at a city club. Also in attendance was therapeutic masseur Mr B, who had recently begun a new therapeutic and relaxation massage business. Mr B was studying massage at a College and had one more module/paper to complete before obtaining a qualification in relaxation massage.

Mr B gave a short presentation to the group. Ms A was interested and, after the meeting, made an appointment with him for a therapeutic massage on the following Saturday, 31 July 2004. A friend, Ms C, also made an appointment for a massage after Ms A's presentation.

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Mr B advised the Police that Ms A had booked a full body aromatherapy relaxation massage, which he described as a light massage of the muscles on the legs, back, buttocks, arms, shoulders, upper chest and head.

*Massage*

On 31 July, Ms A attended Mr B's rooms. Mr B told New Zealand Police that he did not explain the procedure before beginning Ms A's massage because she had told him she had had a number of massages in the past and he presumed that she would be familiar with the technique.

Mr B began the massage with Ms A lying on her stomach, clad only in her underwear and covered with warm towels. In Ms A's statement to the Police, she described Mr B's actions:

“The massage started with strokes over my back and over my buttock area, which I had not had from other masseurs but I was not alarmed about at the time. He then proceeded to massage my back and then started on my legs. He stated to me ‘you are blessed with beautiful skin’. I thanked him and tried to relax into my massage. As I had previously completed an ultra relaxation course I am familiar with allowing my body to fully relax while maintaining mental alertness.

When he moved to my upper leg area he tucked the towel into my G-string and worked closer to my inner thigh region than I was used to.

He then turned the towel leaving me for approximately 2 to 3 seconds with no covering below my waist. The other 7 to 10 masseurs I have visited over the years have always made sure my rear was covered. Since contacting the Therapeutic Massage Association I have discovered draping is an essential part of the professional masseur's displayed skills.

When I turned onto my back the work on my upper legs was more exaggerated. He lifted my underwear to tuck the towel into them and pushed the material back getting very close to my groin area. From his position when lifting my underwear he would have viewed my pubic region on both sides. I was uncomfortable but thought I would wait until the end of the massage to discuss this with him. Providing him with feedback and letting him know that I would not return.

Although he was viewing and massaging very close to my pubic region he hadn't physically ‘touched’ me and I was trying to give him the benefit of the doubt.

Then he moved to my belly again tucking the towel into the top of my underwear and pushing the material back.

He then massaged my right arm. When he finished there he exposed my right breast and began to rub it. I immediately said, ‘please don't do that’ in a firm tone. He quickly covered me up and said ‘it's just important to get all the muscle groups and it is part of the 60 minute service.’ I said ‘I don't think so and you were getting far too close to my panty region’.

When he exposed and groped my breast he used one hand and took my breast completely in his hand and squeezed — much like you would with a stress ball is that only analogy I can think of. He did touch my nipple, by default of having my complete breast in his hand.

He massaged my other arm and part of my hand before I could gather myself enough to tell him I was finished and to stop. He tried to rub the oil off my arm and I asked him to leave the room so I could dress.”

Mr B, in his video interview with New Zealand Police, described the massage as above with some exceptions. He said when massaging Ms A’s belly he kept his hand one hand’s breadth above her pubic region, as he was taught to do at the College. He denied that he cupped her breast in his complete hand and described massage to the upper part of the breast only, not exposing the breast completely but bringing the towel to nipple level. He denies touching Ms A’s nipple.

After Ms A stopped the massage, Mr B left her to dress and went into the waiting room where Ms C was awaiting her appointment.

Ms C said that when Ms A came into the waiting room she looked distressed and Ms C knew something was wrong. Ms A asked to speak to Mr B in his office and soon emerged, advising Ms C that she should not keep her appointment with Mr B. After leaving the premises, Ms A told Ms C what had happened. When Ms A arrived home she emailed her friends who had attended the breakfast meeting, telling them what had happened and recommending that they not go to Mr B for a massage.

Ms A made a complaint about Mr B to the Police on 31 July. On or about 12 September 2004, Constable Richards notified Ms A that Mr B denied touching her breast in the way she described. The Police decided not to lay charges of indecent assault, but the New Zealand Police referred the matter to the Health and Disability Commissioner.

#### *The College policy*

The College advised that it offers a certificate course and a diploma course. Mr B is currently studying for the Diploma.

The student notes provided by the College specifically exclude the “Groin (femoral triangle)” area in its teachings. Breast massage, although included in certificate courses, is not taught to students at diploma level.

When describing specific massage techniques, the *upper* buttocks are included when the full leg is being massaged. Mr B explained to the Police that he had been instructed not to massage any lower than one hand’s breadth from the pubic bone when massaging the lower abdomen. Although this is not specifically noted in the documentation provided by the College, it may have been demonstrated by individual tutors during learning and practise massage sessions.

The documentation provided by the College outlines requirements for informed consent, the Code of Health and Disability Services Consumers’ Rights and “special considerations” when massaging. It states the following:

**“Special considerations:**

Be very conscious and respectful of the increased sensitivity that is often present in this area.  
...

- Ensure that you drape women’s breast / upper body areas securely when working on the abdomen or pectorals. Do not work under draping.
- If doing any breast / chest massage on a male or female be careful to avoid the nipple area with deeper strokes. Individual preference varies widely. Some people consider a full massage to include the abdomen chest / breast area, other[s] do not. A full body massage means different things to different people — To some people missing out the breasts could feel that you are missing out an important part of the massage. However to others a full body massage may not include the breast or even the abdomen. Always check carefully to find out what the client wants.
- Be very careful and check with each person. Give clients informed choice in their options so that they don’t feel pressured into receiving something they are uneasy about.

There are additional ethical issues for male practitioners who are massaging breasts for women. Full information is needed for client choice and it is important that you obtain a signed consent to do breast massage, with the reasons for this massage being outlined. This is valuable protection in the case of a client, who choose[s] breast massage but who after talking about this to family, partner or friends and getting a reaction from these people, feels uneasy. ...

**Ethical considerations:**

The dignity of the receiver needs to be respected at all times. Effective draping and the use of only positive comments gives the receiver a feeling of being respected, allowing them to trust and relax. The use of the term massage by massage parlours has blurred the boundaries for safe touch so it is vital that you only massage areas of the body as outlined in this course and that you stay away from any areas of the body where touch could be misinterpreted. An exception may be between partners in a relationship where massage can be a very beautiful addition to loving touch. ...

There is no difference between paid or unpaid work under the [Health and Disability Commissioner] Act and clients must be advised of the process for complaints should they wish to register a complaint. In the past, some of the massage clinics in New Zealand have not necessarily followed correct and professional procedures and this has lead to a downfall in the acceptance by the public of massage as a professional modality. Most complaints acted on are where professional boundaries are ‘blurred’. It is extremely important that you ensure no massage you do could be misinterpreted, i.e. of a sexual nature, and that you gain consent for all massage.

A simple feedback tool is very useful — e.g. tick box on an evaluation form — as people will tend to be polite if you ask them to tell you verbally about the massage they have just received.

At this time of enormous expansion in the popularity of massage it is important to maintain a professional image and attitude at all times. This assists in supporting the highest standards of massage in NZ. ...

**During the massage session:**

...

- Discuss your **style and scope of massage**. For people who have never had a massage, discuss the basic concepts of massage. At all times leave the person feeling that they make the choices in their massage plan e.g. duration, pressure and areas to be massaged.
- Give the person very clear **instructions** on what clothing to remove and how you wish them to lie on the table. Respect client **dignity** and provide **privacy** for changing. Provide a large towel or similar for the person to wrap themselves in. ...
- **Drape** (cover) the body to maintain comfort and warmth and to respect client dignity. Warm towels feel wonderful. Drape so that you can have easy access to the area(s) needing massage, while leaving other areas covered. Ensure feet are kept warm.
- Before asking a person to turn over drape in such a way that they may change position without the upper body being exposed.
- **Do not massage beneath the draping**. You may at times massage over clothing or draping.
- **Tuck the sheet or towel into client clothing** to protect it from lubricant and to stop draping from slipping.
- Be especially careful with **draping of sensitive areas** such as breasts or buttocks.”

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## Relevant legislation

The following provisions of the Code of Health and Disability Services Consumers’ Rights (the Code) are applicable to this complaint:

*RIGHT 4*

*Right to Services of an Appropriate Standard*

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- 2) *Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*

...

*RIGHT 6  
Right to be Fully Informed*

- 1) *Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, ...*

*RIGHT 7  
Right to Make an Informed Choice and Give Informed Consent*

- 1) *Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise. ...*

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**Opinion: Breach — Mr B**

Therapeutic massage is, by definition, a form of therapy. It falls within the statutory description of “health services”, since it is a service intended “to promote health” (s 2, Health and Disability Commissioner Act 1994). A massage therapist or professional masseur is a health care provider, subject to the obligations implied by the Code, since he “provides or holds himself ... out as providing health services to the public ...” (s 3(k), HDC Act). It follows that Mr B’s actions in providing a massage to Ms A fall within the Commissioner’s jurisdiction.

*Inappropriate massage*

Ms A attended Ms B’s room for a massage on 31 July 2004. During Ms A’s massage she asked him to stop and left before the massage was completed because she found his actions inappropriate. She had had several massages in the past and believed Mr B’s technique left her unnecessarily exposed because he was able to see her pubic region and cupped her breast and brushed her nipple.

Ms A acted immediately in response to Mr B’s actions. She advised Mr B that his behaviour was not appropriate and recommended that her friend not keep her appointment with him. She reported the matter to the Police soon after, giving a full statement, and later that evening emailed her friends who had attended the breakfast meeting.

Mr B, who has not responded to my investigation, gave New Zealand Police in September 2004 an almost identical description of the massage, with the exception of two issues: he said that he kept his hand one hand’s breadth above the pubic line and that, as he did not expose Ms A’s breast below the nipple, he could not have fully cupped the breast or brushed the nipple.

There was no other person in the room at the time and therefore there is no independent corroboration of either account of the massage. However, Ms A’s demeanour (as described by Ms C) and her actions after the massage tend to corroborate her account.



I am satisfied on the balance of probabilities that Mr B did not ensure that Ms A was properly draped at all times, and made her feel uncomfortable by massaging too close to her pubic region and right breast. In these circumstances, Mr B failed to comply with appropriate standards for a professional masseur, and breached Right 4(2) of the Code.

#### *Lack of informed consent*

Under the Code, massage services could be provided to Ms A only if she had been given adequate information about the proposed massage (Right 6(1)) and gave her consent to the massage (Right 7(1)). Mr B's statement to the Police casts doubt on whether he provided Ms A with sufficient information about the massage to enable her to be properly informed and to give her consent.

Mr B told the Police that he did not explain to Ms A what he was going to do because she told him she had had several therapeutic massages in the past and he thought she would have known. She carried out his instructions about preparing herself for the massage, which in his opinion signified her consent.

The College where Mr B studies is very clear about the need to give clear instructions about which parts of the body will be massaged and to gain consent from all clients before commencing the massage.

Although it was not necessary to have a signed consent from Ms A, Mr B should not have assumed consent simply because Ms A carried out his instruction to undress and lie on the massage table. It is very obvious from her response that she was totally unprepared for a therapeutic massage of the nature provided by Mr B.

The fact Mr B knew Ms A had had massages before does not absolve him of the responsibility to clarify the nature and extent of the massage he proposed to give. In my opinion Mr B breached Rights 6(1) and 7(1) of the Code by not fully explaining the intended therapy and by not gaining Ms A's consent before commencing the massage.

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## **Recommendations**

I recommend that Mr B take the following action:

- Apologise to Ms A for breaching the Code. This letter is to be sent to the Office of the Health and Disability Commissioner for forwarding to Ms A.
- Review his practice in light of my report.

## **Follow-up actions**

- A copy of my final report will be sent to the New Zealand Police, the College of Massage, and the Therapeutic Massage Association.
  - A copy of my final report, with details identifying the parties removed, will be placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.
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