

Massage Therapist, Ms B

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

(Case 13HDC00172)



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Table of Contents

Executive summary.....	1
Complaint and investigation	1
Information gathered during investigation.....	2
Opinion: Breach — Ms B	11
Recommendations.....	15
Follow-up actions.....	15

Executive summary

Background

1. On 23 December 2012, Miss A (then aged 16 years) consulted Ms B for Bowen therapy, to assist with muscle pain, migraines and period problems. Miss A attended the appointment with her mother, Mrs A, and her aunt, Ms C. Miss A reported feeling better following the appointment.
2. Miss A attended a further appointment with Ms B on 10 January 2013 for Bowen therapy. Ms C accompanied Miss A to the appointment. Mrs A was not present at the consultation.
3. The parties have differing recollections of the events that took place at the 10 January 2013 appointment. However, it is accepted that Ms B was concerned at Miss A's lack of progress since the previous appointment, and that she therefore considered that Miss A's presentation might not have only a physical cause. Ms B "observed" what she considered to be Miss A's auric field, and identified what she considered to be blockages in Miss A's auric field. Ms B recommended and referred Miss A to a Tohunga from a local Iwi, Mr D, for further treatment.
4. The referral took place immediately and involved Miss A (together with Ms C) meeting Ms B and Mr D at the nearby river, where Miss A was then immersed in the river. Miss A then returned to Ms B's house, where a second Bowen therapy session took place.

Findings

5. Ms B did not provide sufficient information to Miss A to enable her to make an informed choice and give her informed consent to the examination of her auric fields and the referral to Mr D. In these circumstances, Ms B breached Rights 6(1)¹ and 7(1)² of the Code of Health and Disability Services Consumers' Rights 1996 (the Code).

Complaint and investigation

6. The Commissioner received a complaint from Mr A about the services Ms B provided to his daughter, Miss A. Miss A supports the complaint.
7. The following issue was identified for investigation:
 - *The appropriateness of the treatment provided to Miss A by Ms B.*

¹ 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 ..."

² 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."

8. An investigation was commenced on 23 August 2013. This report is the opinion of Ms Theo Baker, Deputy Commissioner, and is made in accordance with the power delegated to her by the Commissioner.

9. The parties directly involved in the investigation were:

Miss A	Consumer
Mr A	Complainant, consumer's father
Mrs A	Consumer's mother
Ms B	Provider
Ms C	Consumer's aunt

Also mentioned in this report

Mr D Tohunga

10. Information was reviewed from Miss A, Mr and Mrs A, Ms C and Ms B.

Information gathered during investigation

Miss A

11. As at December 2012, Miss A was a 16-year-old girl who lived with her parents in a main centre.³ She had family in another town, including her aunt, Ms C, and grandmother.

12. Miss A advised HDC that she has a lot of sports injuries. Accordingly, she went to see Ms B for muscle therapy based on recommendations from her family in the other town. Miss A's mother, Mrs A, advised HDC that Miss A also suffered severe migraines and period problems.⁴ They hoped that treatment from Ms B would also assist with those issues.

Ms B

13. Ms B advised HDC that she runs her own business as a provider of Bowen therapy and Ortho-Bionomy therapy,⁵ and that she has been a provider for 12 years. Ms B advised:

“Bowen therapy is a technique of gentle manipulation of specific parts of the patient's body by the therapist usually used to realign the body. Ortho-Bionomy is a similar technique involving gentle manipulation to correctly align the physical structure of the body. However, Ortho-Bionomy is more patient specific than its

³ The family is not of Māori descent.

⁴ At the time of Miss A's first appointment with Ms B, endometriosis had been raised (but not confirmed) as a possible diagnosis for Miss A's problems.

⁵ Ms B does not belong to any professional health body, nor is she obliged to belong to such an association. Bowen therapy is not a profession covered by the Health Practitioners Competence Assurance Act 2003.

sister therapy osteopathy. Ortho-Bionomy works with what the patient considers to be the most comfortable position and aligns and reinforces this comfort position through the body of the patient.”

14. Bowen Therapy is described in more detail as:⁶

“... a cross fibre muscle release technique that balances and stimulates energy flows, resulting in a deep sense of overall relaxation. There are regular pauses between the series of gentle moves to give the body the required time to allow the body to reset and heal itself.

There are various schools of protocols originating from the teachings of Mr Tom Bowen, the founder of the Bowen Technique. The healing is not considered massage but rather a non invasive muscle release technique consisting of a series of gentle cross fibre moves that have long term benefits so long as the injury or pain is not reagravated.

Bowen Technique strives to find the origin of a problem and is therefore very effective for muscular-skeletal problems, including ankle, knee, lower back and neck pain. Other problems addressed by the Bowen Technique include:

- Asthma
- Dizziness
- Frozen shoulder
- Headaches
- Repetitive stress injury (RSI)
- Whiplash
- Dental or Facial pain
- Many muscle or joint pains of unknown origin
- Emotional stress and anxiety

A treatment usually requires the client to lie on a bed or treatment couch and can be performed through light clothing. Sessions can last from 30 minutes to an hour. It is usually recommended to have two to three sessions of the Bowen Technique with a break of five to ten days between each session.”

15. Ortho-Bionomy therapy is described in more detail as:⁷

“a gentle, non-invasive form of body therapy which is highly effective in working with chronic stress, injuries and pains or problems associated with postural and structural imbalances.

The practitioner uses gentle movements and positions of the body to facilitate the change of stress and pain patterns. A strong focus is placed on the comfort of the individual — no forceful manipulations are used.”

⁶ See: www.naturaltherapypages.co.nz/massage/Bowen_Technique (accessed on 7 December 2013).

⁷ See: www.ortho-bionomy.co.nz (accessed on 24 September 2013).

Miss A's first appointment with Ms B

16. On 23 December 2012, Mrs A took Miss A to Ms B for Bowen therapy. Miss A's aunt, Ms C, was also present at the consultation.⁸ This appointment was the first time that Miss A had met Ms B.
17. Miss A advised HDC that, prior to her first appointment, she understood that the Bowen therapy treatment Ms B was offering would involve gentle touching of her body and moving her muscles back into place. Miss A advised that she understood Ms B to be a qualified Bowen therapist, and said that she had certificates on her wall.
18. Ms B advised HDC that Miss A presented to her with an extensive history of migraines and recent endometriosis. Ms B explained that Miss A's grandmother was one of her clients and had previously advised her of concerns about Miss A, including her history of migraines and endometriosis. Ms B recalls that Miss A had been on medication for her migraines since she was nine years old. Miss A advised HDC that, at the first appointment, Ms B was already aware of her history of migraines and period problems.
19. Ms B said that she explained to Miss A that the treatment she offered was to realign the physical structure of the body. Ms B said that she showed Miss A and Mrs A how Miss A's pelvis was not in balance, in that one hip was slightly higher than the other and rotated forward, and there was an imbalance in Miss A's shoulder. Ms B said that she explained to Miss A that the imbalance could be contributing to Miss A's migraines.
20. Miss A recalls that Ms B asked her to lie on a table and touched her body, asking her where her muscles felt comfortable. Miss A recalls that Ms B also realigned her neck, and that her body felt better following the appointment. Ms B advised that she treated Miss A with Ortho-Bionomy. Ms B recalls that Miss A said she felt she was standing more squarely and that there was less pressure in her head following the treatment.
21. Mrs A recalls that the appointment lasted about one and a half hours, and that Ms B did not take any notes during the consultation. In terms of follow-up, Mrs A recalls that Miss A was to return in two weeks' time for further Bowen therapy with Ms B.

Second appointment with Ms B

22. The family scheduled a follow-up appointment for Miss A with Ms B on 10 January 2013. Ms C attended the appointment with Miss A. Mrs A was not present at the appointment.
23. The parties who were present have different recollections of the consultation, and these are set out below.

Miss A's recollection

24. Miss A advised HDC that she went to Ms B's house with Ms C for the appointment on 10 January 2013. She recalls that Ms B seemed "rushy" and that it was "really, really weird". Miss A said that Ms B did not do an assessment of her body alignment,

⁸ Ms C had previously sought treatment from Ms B.

- as she had done during the first consultation. Rather, Miss A recalls that Ms B touched her “everywhere”, including her forehead, upper arms, stomach, back and legs, each time asking her if it felt hot or cold. Miss A stated, “I had absolutely no idea what was going on but I just went with it and told her whether it felt hot or cold.”
25. Miss A recalls that Ms B then asked her to lie down on the treatment table, and Ms B telephoned a man (who Miss A later found out was Mr D) and began talking to him. Miss A recalls that she overheard Ms B say, “Oh six entities inside of her,” and that a comment was made about the way she was lying on the table with her palms facing up.
 26. Miss A recalls that, after Ms B had finished her telephone conversation with Mr D, Ms B told her that she had six entities inside her, and that was the reason why she was experiencing migraines and period problems. Miss A recalls that Ms B told her that adults usually have one or two entities, but that she had six, and she was a very sick girl. Ms B told Miss A that if they did not get the entities out she was going to get worse and worse, and that they needed to go to see Mr D. Miss A became upset and started crying. She asked Ms C why her mother (Mrs A) had not told her (Miss A) about this. Miss A recalls that Ms C said that her mother did not know.
 27. Miss A said that Ms B and Ms C were pressuring her to “go along with what was happening”, and she was never asked for her consent. Miss A advised HDC that there was no discussion with her about whether she wanted to call her mother at that time.
 28. Miss A said that Ms B gave her a pair of shorts and a t-shirt to change into, but did not tell her why. Miss A said, “I was really confused and really, really upset and I had no idea what was going on.” Miss A said that she got into the car with Ms C and they drove to a river, where they met Ms B and Mr D (whom Ms B had picked up in her car on the way to the river). Miss A stated that she “had no idea what was going to go down”.
 29. Miss A said she cannot recall much of what happened at the river. She said that there was no discussion with Mr D about what he was going to do, and that he immediately started chanting. She stated, “I know that he had a random stick and he was waving it around and saying random things and he said that I had a fireball in my back caused by my conflict between my mother and I.” Miss A advised HDC that there is no conflict between her mother and herself.
 30. Miss A recalls that she went deep into the water of the river and it was cold. She recalls that Mr D was in the water with her. She said that she was standing, but could barely stand up, and then was “made to go under” multiple times. She said, “I had to dive under and I felt like I was being drowned.” Miss A recalls that Mr D told her that she was not staying under the water for long enough.
 31. Miss A recalls that after she got out of the water, Mr D told her to put a piece of jewellery in some water, and that that would keep her safe. She said, “Then he kept touching me all over my body and I had no idea what was going on.”

32. Miss A recalls that, throughout these events, Ms B and Ms C were at the river, and that when she got out of the water Ms B and Ms C were “standing there talking”.
33. Miss A said that she, Ms C and Ms B then returned to Ms B’s house. Miss A noted that Mr D also came to the house later and gave Ms B some homeopathic medicines to give to Miss A. At Ms B’s house, a therapy session similar to that at the first appointment on 23 December took place. Miss A recalls that she fell asleep on the table because she was cold, tired and had a headache. She was still in her wet clothes.
34. Miss A advised HDC that, at that time, she was “really, really confused and [she] felt like it hadn’t happened and [she] was absolutely terrified”.
35. Mrs A said that she received a telephone call from Ms C to tell her that the treatment had gone well and that Miss A was feeling really good. Mrs A did not speak to Miss A at that time.
36. Miss A said that she texted her mother after she had returned to Ms C’s house, asking her mother to call her. Mrs A recalls receiving texts from her daughter stating that she had had “the crappiest day ever”. Mrs A said that she then called and spoke to Ms C, who advised her that Miss A was fine. Mrs A then spoke to her daughter, who told her what had happened.
37. Miss A advised HDC that, since this incident, she has had trouble sleeping, and has experienced nightmares about what happened.

Ms B’s recollection

38. Ms B advised that Miss A attended the second appointment with Ms C, who was Miss A’s “acting guardian”. Ms B said that she examined Miss A’s physical alignment and noted that Miss A’s pelvis was “still not in balance”. Ms B said that she would have expected a better result from Miss A’s first treatment, and therefore she suggested that Miss A’s presentation might have not only a physical cause.
39. Ms B said that she then observed Miss A’s “auric field”. Ms B submitted to HDC that she discussed with Miss A that the auric field is an electromagnetic field that surrounds the body, and described it to Miss A as being “her own bit of space”. Miss A told HDC that Ms B did not use the term “aura fields” during the consultation, and she had not heard the term before speaking to HDC. Ms B advised HDC that she is not trained in auric fields and does not offer auric field manipulation as a service or profess to be able to offer treatments on a person’s auric field; however, she is able to feel blockages in a person’s auric field. Ms B advised HDC that she explained to Miss A that auric fields can be felt by temperature, and that an auric field should be a constant temperature over the body, as the body itself has a constant temperature.
40. Ms B said that she observed Miss A’s auric field by running her hands just above the surface of Miss A’s body. She stated that she identified blockages in Miss A’s auric field, in that she observed significant temperature changes through Miss A’s auric field. She said that she discussed her findings with Miss A, but she did not diagnose or treat them. Ms B said that Miss A was also able to feel her temperature changes.

41. Ms B's representative submitted:

“The blockages in the auric field are usually described as disrupted energies. It is believed that blockages occur through either physical, emotional, mental or spiritual means or a combination. [Ms B] explained these possible reasons for blockages and in terms of a spiritual cause that spiritual entities can be involved.”

42. In response to my provisional opinion, Ms B's representative stated that this explanation was given before Ms B “attempt[ed] to feel the auric field”, and:

“[t]he benefits, risks and side effects of the auric [field] examination were explained in terms of [Ms B] running her hands above [Miss A]. There was no actual physical contact. [Ms B] did not manipulate the auric field or say that she was going to, just observed the field. There are no risks or side effects to this observation [...] It was explained to [Miss A] that [Ms B] was simply observing [Miss A's] auric field and [Miss A] had the opportunity to decline such an observation.

In the circumstances [Ms B] believes that she gave adequate information to [Miss A] to allow her to consider whether it was possible to observe her auric field. From [Ms B's] observation of the auric field she believed that this may be where the problem lay.”

43. Ms B submitted that she explained to Miss A and Ms C that Miss A could consider seeing a practitioner who could understand and treat what was affecting her auric field. Ms B recommended Mr D, a Tohunga from the local Iwi. Ms B advised HDC that she has known Mr D for many years, and she refers clients to him when she believes his expertise can aid her client's treatment. Mr D had previously treated Ms C. Ms B recalls that Miss A was keen to meet with Mr D, and that although Ms B suggested to Miss A that she might like to discuss the referral with her mother, Miss A declined to do so and said that she would tell her mother when she got home.
44. Ms B said that she telephoned Mr D, who said that he could feel that Miss A had an energy block and it seemed to be from the emotional side of the body, originating from “the mental pressure that [Miss A] was under”.⁹ Ms B recalls that Mr D asked to meet with Miss A that day.
45. In response to my provisional opinion, Ms B stated that it was Mr D's diagnosis that Miss A “had six entities inside her” and that she was “merely the informant of this diagnosis”. Ms B stated that she “knew of only one treatment option for possible blockages in an auric field”.
46. Ms B said that she explained to Miss A what she had witnessed of Mr D's treatment. Ms B said that she was not attempting to gain informed consent on Mr D's behalf. In particular, Ms B submitted to HDC that she explained to Miss A that Mr D “can see

⁹ Ms B submitted that it is her experience and understanding that Mr D can “sense blocks in an auric field at distance. In this instance Mr D sensed blocks in [Miss A] whilst [Ms B] was on the phone to him.”

what is blocking the auric field”, and that Mr D “sometimes takes clients [to the river]”, where he “invites the client to stand in the river, recites a Maori prayer and uses a willow stick to put water over the client”. Ms B further explained, “The client is then invited to walk further out into the river and put their head under the water.” Ms B stated that Ms C and Miss A discussed Ms C’s experience as a client of Mr D.

47. Ms B advised HDC that an appointment was made with Mr D with Miss A’s consent and the consent of Miss A’s “acting guardian [Ms C]”. Ms B’s representative further advised that Ms B was:

“... under the impression that [Miss A]’s mother had entrusted the care of her daughter to [Ms C] for the duration of [Miss A]’s visit to [the area]. [Ms B] knew that legally [Miss A] was old enough to consent to [Ms B]’s treatment and to consent to the referral to [Mr D]. However, [Ms B] did consider that [Ms C] was in a position of responsibility being the senior member of the family with [Miss A] and as such was ‘acting guardian’.”

48. Ms B stated that at no time did Miss A appear distressed or upset; she had no obvious cognitive disability and, because of her age, Ms B presumed that Miss A was able to give valid consent to the treatment and it was not necessary for Ms B to seek the consent of Miss A’s parents, either to her treatment or the recommended referral to Mr D. Ms B submitted that Miss A “knew it was her choice, whether she agreed to a referral and she knew it was her choice whether to accept [Mr D]’s treatment”.
49. Ms B recalls transporting Mr D to the river. Initially she said that she was not present when Mr D treated Miss A; however, Ms B later said that although she has no recollection of being present, if Miss A and Ms C said that she was, then she must have been.
50. Ms B said that when Miss A returned to her house for her treatment, Miss A appeared happy and relaxed. Ms B said that she then treated Miss A with Ortho-Bionomy, and aligned Miss A’s physical structure. Ms B also recalled that, during that treatment, Mr D came into the treatment room and gave Miss A a naturopathic remedy for endometriosis.
51. Ms B also provided undated and unsigned handwritten notes of her consultation with Miss A, which set out the events of the consultation as described by Ms B above. Ms B submitted that these notes were written “near to the time of the treatments”.
52. Ms B’s representative submitted:

“[Ms B] was treating [Miss A] within her scope of expertise. [Ms B] found a problem with [Miss A]’s condition which [Ms B] was not qualified to deal with and as such suggested to [Miss A] that a referral to [Mr D] may help. [Miss A] consented to that referral and [Miss A] had capacity to consent to that referral. Informed consent goes to the treatment itself and [Ms B] treated [Miss A] with Bowen and Ortho-Bionomy therapy with full informed consent. [Ms B] did not treat [Miss A]’s auric field, she referred [Miss A] to another practitioner whose

practice was in that area. It was not [Ms B's] professional obligation to gain [Miss A]'s informed consent to [Mr D's] treatment.”

Ms C's recollection

53. Ms C attended the appointment on 10 January 2013 with Miss A. Ms C advised HDC that, on arrival at the appointment, Ms B examined Miss A in the same manner as she had at the consultation on 23 December, and asked her how she had progressed since the previous appointment. Ms C recalls that Miss A advised Ms B that she was still experiencing migraines and stomach pain. Ms C advised HDC:

“[Ms B] explained to [Miss A] that she had treated her once already for her migraines and [Miss A] did not seem to respond as well as [Ms B] would have expected to her first treatment. [Ms B] said that she thought perhaps there were some deeper issues going on that were affecting her overall health and perhaps this could be helped by [Mr D]. [Ms B] also explained that her treatment would possibly not be fully effective until [Miss A] had addressed these issues. [Ms B] clearly explained what kind of deeper issues she was referring to and also explained what might be expected from a typical appointment with [Mr D].”

54. Ms C further explained to HDC that Ms B advised Miss A that the “deeper issues” related to the “spiritual side of things”, and that this happened after Ms B had “examined” Miss A’s body temperature. Ms C recalls that Ms B asked Miss A whether she had lived in a house that “didn’t feel right” or that had a “bad vibe”, and that Miss A confirmed that she had.
55. Ms C recalls that Ms B then held her hands over Miss A’s legs and stomach, and asked whether it was hot or cold, which took about five minutes. During that assessment, Ms B explained that it was possible to pick up “negative vibes” from houses or people, and that those vibes can attach to a person. Ms C stated that Ms B advised Miss A that there was a possibility that a negative vibe from the house had attached to her. Ms C recalls that Ms B asked Miss A if she could check Miss A’s “auric fields”, and that Miss A agreed to that. Ms C recalls that Ms B said that there were six entities in Miss A, and that normal people have only one or two.
56. Ms C advised HDC that Ms B then asked if she could contact Mr D to get his assessment about whether it was an entity affecting Miss A. Ms C recalls that Ms B explained to Miss A that she would need to wade into the stream and dip down under the water. Ms C recalls that Ms B lent Miss A clothes to wear into the river.
57. Ms C said that Miss A “appeared to fully grasp the concept of the referral and what was involved and appeared keen to see [Mr D]”. Ms C said that Miss A agreed to see Mr D and, when Ms B suggested that Miss A phone her mother to discuss the referral and to obtain her mother’s “approval”, Miss A declined to do so. Ms C recalls that both she and Ms B asked Miss A on several occasions before meeting Mr D whether she would like to call her mother. Each time Miss A declined and said she would tell her mother later. Ms C recalls that Miss A was “adamant” about this, and she therefore decided to respect Miss A’s decision. Ms C advised HDC that Miss A “seemed quite responsive and positive throughout the whole experience”.

58. Ms C explained that it was about a 20-minute drive to the river, where the session with Mr D took place. The session involved Miss A wading into waist-deep water holding a small branch from a nearby tree, and diving under the water two or three times under the direction of Mr D, who was standing on the bank of the river. Ms C recalls that Miss A was in the water for no longer than five minutes. Ms C told HDC that the experience was consistent with what Ms B had explained to Miss A before the appointment with Mr D. Ms C recalls that Ms B was also present at the session.
59. Ms C advised HDC that after the appointment they returned to Ms B's house, and the rest of the session with Ms B proceeded without incident. The session lasted about another hour. Ms C advised that Mr D arrived halfway through the session with a homeopathic remedy for Miss A.

Responses to the provisional opinion

60. The following responses were received to the provisional opinion, in addition to the responses incorporated into the "information gathered" section above.

Miss A

61. Miss A disputes a number of aspects of Ms B's and Ms C's recollection of the events that took place on 10 January 2013. In particular, Miss A stated that Ms B did not ask for her consent before contacting Mr D. Miss A stated, "She didn't ask if she could contact him, she just did it and I had no clue what was happening." Miss A further stated that the appointment was made by Ms B whilst she was speaking with Mr D by telephone, also without Miss A's consent, and that she (Miss A) was "a crying train wreck" and "bawling [her] eyes out" as Ms B explained that she had "six entities" inside her. Miss A also disputes that she was keen to meet Mr D.

Ms B

62. Ms B submitted that Miss A was not coerced or pressured into having her auric field observed. Ms B also said that she "provided adequate information for [Miss A] to consent to the examination of her auric field and the referral to [Mr D]". Ms B further submitted that the treatment provided by her to Miss A remained within the scope of Ortho-Bionomy and that this was the only treatment that she provided.
63. Ms B "categorically denies that she had any professional involvement with the treatment administered by [Mr D]". She submitted that the referral to Mr D was a "communication between practitioners" rather than a health or disability service provided to Miss A.
64. Ms B further submitted that she can "only give options on what she has some knowledge about". Ms B suggested that it is neither practical nor realistic to expect practitioners to "have a range of knowledge of different specialism [sic] to suggest to clients" and stated that she "is not trained in conventional medicine, physiotherapy, chiropractic or osteopathy so how can these be options that [she] can give to clients". Ms B submitted that it puts "too much onus on practitioners if a practitioner such as [herself] must give a client a range of options which they know nothing about".

Opinion: Breach — Ms B

Introduction

65. Miss A consulted Ms B for treatment of various health-related concerns, including muscle pain, migraines and period problems. Ms B advised HDC that she provides Bowen therapy and Ortho-Bionomy therapy, both of which she described as involving manipulation to realign the body. During the course of her assessment and treatment of Miss A's health-related concerns, Ms B examined Miss A, and Ms B identified what she considered to be a blockage in Miss A's auric fields. On that basis, Ms B referred Miss A to Mr D.
66. Ms B held herself out as a health provider who had the training and skills to treat a wide range of health conditions. I am satisfied that Ms B's assessments and treatment of Miss A fall within the definition of health services in the Health and Disability Commissioner Act 1994 (the Act).
67. This report is concerned with the events that took place during Miss A's second consultation with Ms B on 10 January 2013, which resulted in Ms B referring Miss A to Mr D for treatment for what she considered to be a blockage in Miss A's auric fields. In particular, this report is concerned with the issue of whether Ms B provided Miss A with adequate information and obtained her informed consent to the examination of her auric fields and the referral to Mr D.
68. Ms B submitted that her referral of Miss A to Mr D was not a health service but rather a "communication between practitioners". I disagree. By Ms B's own account, she observed Miss A's auric field, where she believed that "the problem" might lie, following which she referred Miss A to Mr D to address that "problem". A referral between practitioners in these circumstances plainly falls within the meaning of a health service under the Act. Accordingly, Ms B is obliged to comply with the Code (including in relation to her referral to Mr D).

Information and consent

69. With any health service, treatment should be provided only with the informed consent of the consumer. This is affirmed in Right 7(1) of the Code, which states that services can be provided to a consumer only if that consumer makes an informed choice and gives informed consent (unless another law, or any other provision of the Code provides otherwise).
70. Right 7(2) of the Code provides that every consumer must be presumed to be competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing otherwise.
71. At the time of the consultation on 10 January 2013, Miss A was 16 years old. A young person aged 16 years or over may give or withhold consent to medical treatment.¹⁰ There is no evidence that Miss A was not competent to consent to the provision of health services in this case. In addition, for the avoidance of doubt, I note

¹⁰ See section 36 of the Care of Children Act 2004.

that Ms C had no status as a legal guardian for Miss A, and no right to make decisions about health services on Miss A's behalf.

72. Pursuant to Right 6 of the Code, prior to making an informed choice and giving informed consent, a consumer needs to be fully informed about the services he or she is being asked to consent to. Right 6(1) of the Code states that consumers have the right to receive information that a reasonable consumer, in that consumer's circumstances, would expect to receive about his or her care and treatment, including an explanation of his or her condition and the treatment options available. Patients are also entitled to receive an assessment of the expected risks, side effects, benefits and costs of each option. This is necessary in order for the patient to make an informed choice and/or provide informed consent about the treatment being offered.

Information provided and consent to auric field examination

73. Although the parties have differing accounts of the events that took place during the consultation on 10 January 2013, Ms B accepts that Miss A's lack of response to the treatment she provided on 23 December 2012 caused her to question whether there was a non-physical cause for Miss A's symptoms. Accordingly, Ms B decided to "observe" what she has described as Miss A's auric field.
74. By Ms B's own account, she is not trained in auric fields and does not offer auric field manipulation as a service, or profess to be able to offer treatments on a person's auric field. Nevertheless, she proceeded to run her hands just above the surface of Miss A's body and, in doing so, identified what she considered to be blockages in Miss A's auric field. In particular, Ms B said that she observed significant temperature changes through Miss A's auric field. The identification of auric field blockages formed the basis of Ms B's recommendation for a referral to Mr D for treatment. I am concerned about the adequacy of the information Ms B provided to Miss A prior to examining what she considered to be Miss A's auric field. In my view, Ms B did not provide sufficient information to Miss A to enable her to make an informed choice or give her informed consent to the examination.
75. In particular, Miss A presented to Ms B on 10 January 2013 for Bowen therapy, in line with her previous treatment on 23 December 2012. The treatment plan took an unexpected turn when Ms B determined that there was a non-physical cause for Miss A's lack of progress in response to her initial treatment. I do not accept Ms B's submission that the treatment provided by her to Miss A remained within the scope of Ortho-Bionomy. Ms B proposed a different treatment plan, which included her examining what she considered to be Miss A's auric field. Ms B stated that she is not trained in auric fields.
76. Ms B advised that she discussed with Miss A what she meant by auric fields and how they can be felt. Ms C recalls that Miss A agreed to Ms B examining her auric field.
77. In response to my provisional opinion, Ms B submitted that prior to her attempt "to feel" Miss A's auric field, the benefits, risks and side effects of the examination were explained to Miss A "in terms of [Ms B] running her hands above [Miss A]". However, Ms B then stated that "[t]here are no risks or side effects to this observation".

78. Miss A advised HDC that Ms B provided no explanation of what she was doing. Miss A stated, “I had absolutely no idea what was going on but I just went with it and told her whether it felt hot or cold.”
79. It appears that there was some discussion about auric fields, but I accept Miss A’s evidence that she did not understand what was going on during the examination, and that she just “went with it”. Acceding to an examination is not the same as giving informed consent to an examination. Similarly, I do not accept that having an opportunity to decline an examination can be equated with actively making an informed decision to proceed with the examination.
80. Even if I accept that Ms B explained to Miss A what an auric field examination involved, that information, in itself, would not have been sufficient for Miss A to make an informed choice to the examination. Having considered Ms B’s submissions, it remains unclear to me that Miss A was aware that she had a choice not to proceed with the examination, that she was aware of Ms B’s experience and expertise in auric fields, the benefits, risks and side-effects of an examination of her auric field, or of the other options for investigating her lack of response to the therapy she received on 23 December.
81. Ms B submitted that it is neither practical nor realistic to expect practitioners, such as herself, to have a “range of knowledge” of different practice areas to suggest to clients. In particular, Ms B stated that she does not have formal training in “conventional medicine, physiotherapy, chiroprathy or osteopathy” and therefore was not in a position to present these as potential treatment options to Miss A. I note that Ms B, by her own account, is also not trained in auric fields but nonetheless presented this as a treatment option for Miss A. In any event, I do not accept that Ms B’s lack of training in other practice areas circumvents her duty to ensure that Miss A was provided with sufficient information to consider her treatment options in the circumstances.
82. A reasonable consumer in Miss A’s circumstances could expect to receive the above information and, without this information, Miss A was not in a position to make an informed choice to undergo the examination. Accordingly, I find that Ms B breached Right 6(1) and Right 7(1) of the Code.

Information and consent to referral to Mr D

83. Miss A recalls that, following the examination, Ms B told her that she was a very sick girl and that she had six entities inside her, which was the reason why she was experiencing migraines and period problems. Ms C also recalled that Ms B advised Miss A that she had six entities in her, and that normal people have only one or two. Miss A further recalls that Ms B told her that if they did not get the entities out she was going to get worse and worse. Ms B then said that they needed to go to see Mr D. Miss A was immediately referred for treatment by Mr D.
84. Miss A stated that she became upset and confused, and had no idea what was happening, although she felt she was being pressured to “go along” with it. Miss A stated that she was never asked for her consent, and there was no discussion with her about whether she wanted to call her mother.

85. Ms B advised HDC that, following the examination of Miss A's auric field, she advised Miss A of her findings, and stated that Miss A could consider seeing a practitioner who could understand and treat whatever was affecting her auric field. Ms B recommended Miss A consult Mr D, and said that she explained to Miss A what she had witnessed of Mr D's treatment. Ms B advised that she suggested to Miss A that she might like to discuss the referral with her mother, but Miss A declined to do so. Ms B submitted that a referral was made to Mr D with Miss A's consent, and that at no time did Miss A appear distressed or upset.
86. Ms C recalls that Miss A "appeared to fully grasp the concept of the referral and what was involved and appeared keen to see [Mr D]". Ms C also recalls that Miss A declined to call her mother to discuss the referral, despite Ms B suggesting that she do so.
87. I am satisfied that Ms B told Miss A that she had six entities inside her (as Miss A and Ms C both recall). It also appears that there was some discussion with Miss A about whether she would like to contact her mother (as Ms B and Ms C recall). However, regardless of what information Ms B provided about the results of her examination and the referral to Mr D, there is no evidence that Ms B discussed with Miss A other treatment options, other than a referral to Mr D. Ms B submitted that she only knew of one treatment option for possible auric field blockages and could only give options of which she had some knowledge. As stated, I do not accept in the circumstances that Ms B's lack of formal training in or understanding of other practice areas relieves her of her responsibilities in this regard.
88. I am particularly concerned by the urgency with which the referral took place. Miss A was referred and driven to meet Mr D for treatment immediately, without having had sufficient time to consider the information she was provided or the implications of such a referral. Miss A was 16 years old, and suffered a number of health-related issues that she was eager to have treated. Miss A had just been informed that her problems might be caused by "spiritual entities". Following Ms B's discussion with her, it was Miss A's understanding that she would get worse and worse unless she got rid of the entities. In those circumstances, I accept Miss A's evidence that she was confused, and that she felt pressured to "go along" with the treatment being recommended.
89. While I acknowledge Ms B's comment that it was not her professional obligation to gain Miss A's informed consent to Mr D's treatment, the referral took place in the midst of Ms B's treatment of Miss A. I note Ms B's submission that she was "merely the informant of [Mr D's] diagnosis" and that she "categorically denies that she had any professional involvement with the treatment administered by [Mr D]". Nonetheless, I remain of the view that Ms B had a continuing involvement in the referral, in that she transported Mr D to the river and was present throughout the session, following which she completed the Bowen therapy session with Miss A, as had been scheduled initially. I consider that in these circumstances it was unwise for Ms B to refer Miss A to Mr D immediately, without allowing her sufficient time to consider the referral.

90. In my view, Ms B should have been meticulous about giving sufficient information to enable Miss A to make an informed choice about whether or not to go ahead with the referral to Mr D. I am not satisfied that Ms B did so in this case. In particular, on the available evidence, it is not clear to me that Miss A was aware that she had a choice not to proceed with the referral proposed by Ms B, or of the alternatives to that referral. This is information that a reasonable person in Miss A's circumstances would expect to receive, in order to make an informed choice about whether to consent to the referral. By failing to provide this information, I find that Ms B breached Right 6(1) of the Code.
91. Because Ms B did not give Miss A sufficient information, Miss A was not able to make an informed choice and give her informed consent to the referral to Mr D. Ms B therefore also breached Right 7(1) of the Code.
-

Recommendations

92. I recommend that Ms B:
- Apologise to Miss A for her breaches of the Code. Ms B's written apology to Miss A should be sent to HDC within one month from the date of this report, for forwarding to Miss A.
 - Review her practice and provide HDC with a report outlining her learning about the Code and her learnings from this complaint, within one month from the date of this report.
-

Follow-up actions

93. • A copy of this report with details identifying the parties removed will be sent to the District Health Board, and it will be advised of Ms B's name.
- 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.