Chinese Medicine Practitioner, Mr B

A Report by the
Deputy Health and Disability Commissioner

(Case 20HDC01271)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

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Executive summary

1. A woman underwent cupping treatment for a shoulder injury at a clinic owned and operated by a Chinese medicine practitioner. She suffered a blister as a result of the treatment, which the practitioner then treated with a traditional herbal plaster of unknown ingredients, which was likely not sterile and stuck to her wound.

2. This report examines the care provided by the practitioner, and in particular his informed consent procedure, the treatment with the herbal plaster, aspects of his clinical documentation, and his complaint management. The report also considers his policies and procedures.

Findings

3. The Deputy Commissioner found that the practitioner failed to explain the risks and side effects of the cupping treatment to the woman, and therefore breached Right 6(1) of the Code. Because the woman did not receive a full explanation of the risks and side effects, the consent she gave was not informed, and accordingly the practitioner also breached Right 7(1) of the Code.

4. The Deputy Commissioner also found that it was inappropriate for the practitioner to use a plaster with unknown ingredients and no expiry date, quality, or licensing mark, and likely not sterile, to treat the woman's blister. The Deputy Commissioner found that he failed to provide services to the woman with reasonable care and skill, and therefore breached Right 4(1) of the Code.

5. The Deputy Commissioner found that the practitioner's clinical record-keeping did not meet the standard required by the New Zealand Acupuncture Standards Authority Code of Safe Practice (Acupuncture), and therefore he was found to have breached Right 4(2) of the Code in not providing the woman with services that complied with professional standards.

6. The Deputy Commissioner also commented that the practitioner could have managed the woman's complaint better, and reminded him not to take actions that could be interpreted by a consumer as subverting a complaints process and/or avoiding accountability for any perceived deficits in the care provided.

Recommendations

7. Prior to the Deputy Commissioner's investigation, the practitioner's registration body, the New Zealand Acupuncture Standards Authority (NZASA), carried out its own investigation and report, which contained a number of recommendations, including further education. Following a visit from the NZASA assessor, the NZASA considered that those recommendations had been met.

8. Noting the action already taken by the NZASA, the Deputy Commissioner recommended that the practitioner apologise to the woman, develop a full suite of policies and procedures including an informed consent and a complaints procedure that are compliant with the Code, and arrange an NZASA audit of his patient notes.

Complaint and investigation

9. On 15 July 2020, the Health and Disability Commissioner (HDC) received a complaint from Ms A about the services provided by Mr B at his clinic. The following issue was identified for investigation:

- *Whether Mr B provided Ms A with an appropriate standard of care between 22 June 2020 and 9 July 2020.*

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

11. The parties directly involved in the investigation were:

Ms A	Consumer
Mr B	Provider

12. Further information was received from an emergency medical centre, a medical centre, the New Zealand Acupuncture Standards Authority (NZASA) (Mr B's standards-based registration authority), and the Accident Compensation Corporation (ACC).

Information gathered during investigation

Background

13. On 3 July 2020, Ms A attended Mr B's clinic, where she received fire cupping[1] treatment from Mr B for a shoulder injury. This was Ms A's seventh cupping treatment from Mr B. During the treatment she felt pain at one of the treatment sites on her back. When she returned home, she discovered that there was a large and painful blister at the site.

14. Ms A returned to see Mr B that afternoon. At the appointment, Mr B burst the blister with a needle and applied what he described as a traditional plaster to the wound. Before application, the plaster was heated over a flame, then allowed to cool.

15. Ms A returned daily for the next four days for Mr B to redress the wound with the same type of plaster.

16. On 8 July 2020, Ms A found the plaster itchy and uncomfortable and asked her husband to remove it. Ms A told HDC that her husband was shocked to see a sticky dark substance stuck to the wound.

[1] Cupping therapy is a form of Chinese traditional medicine in which local suction is created on the skin with the application of heated cups.

17. On 9 July 2020, Ms A returned to Mr B to show him the wound. He asked her if he could redress it, but she would not let him treat the wound again.

18. On 10 July 2020, Ms A visited her GP, who recommended that Ms A visit an emergency medical centre for treatment of the wound. Between 10 July 2020 and 7 August 2020, Ms A made multiple visits to the emergency medical centre for treatment of the wound. Ms A told HDC that a sticky residue from the plaster had become stuck in the wound, and was difficult and painful to remove. The wound also became infected, and Ms A required antibiotics to resolve the infection.

19. In response to the provisional opinion, Ms A provided HDC with a photograph of her wound following the removal of the plaster, which shows a brown substance covering the wound and which appears adherent to it. She also provided an extract from her patient notes completed by a nurse who treated her, which includes the comment: "Sticky dark patches from original natural component that acupuncturist applied. Some able to be removed with gentle wiping but sore and unable to remove all."

20. On 15 July 2020, Ms A emailed Mr B to complain about the blister and his subsequent treatment of it. Mr B replied, asking Ms A for her thoughts on how to resolve the issue.

21. On 17 July, Mr B sent an email to Ms A offering his apology and $500 in compensation. Ms A did not respond to this email. Mr B telephoned Ms A on 20 July, and during the conversation Mr B repeated the offer of compensation. Ms A told HDC:

> "I told [Mr B] I had already filed a complaint and preferred to deal with this issue more formally, and not in any 'under the table' kind of way. [Mr B] then asked me who I had complained to, but I only told him I had complained to the relevant authority. I reiterated to him that I did not want to deal with anything directly with him just to cover his mistakes, and that I only wanted to recover, and for my scarring to heal, and this was my reason for laying a complaint."

22. Mr B emailed Ms A again on 21 July. The 21 July email contained several apologies, an explanation of his treatment decision, and an offer for further treatment, and it repeated the offer of compensation.

NZASA investigation and report

23. On 15 July 2020, Ms A also made a complaint to NZASA[2] about the same incident. Pending an investigation, on 23 July 2020 NZASA wrote to Mr B advising him that he was restricted from performing any form of fire cupping or moxibustion[3] until the investigation had been completed, at which time the restriction would be reviewed.

[2] The New Zealand Acupuncture Standards Authority is a standards-based registration and disciplinary body for practitioners in acupuncture and/or traditional Chinese medicine. Mr B is a registered member.
[3] A form of Chinese medicine that entails the burning of mugwort leaves close to the skin's surface using a stick to apply heat.

24. NZASA carried out an investigation, and the NZASA Complaints Assessment Committee (CAC) issued a report (the NZASA Report) on 25 January 2021. NZASA confirmed that at the time of the investigation, all the assessors involved were practising acupuncturists in New Zealand, and all held registration with NZASA. The NZASA Report made the following findings:

a) There was insufficient evidence to determine whether the blister was caused by a burn from heat versus, for example, a result of suction.[4]

b) While the CAC was unable to comment on whether the herbal patch affected the normal healing process of the wound, best practice would have been to cover the blister with a sterile, non-adhesive dressing. The NZASA Report also noted: "While the medical notes may have provided additional evidence regarding the condition of the complainant's injury on presentation for medical advice on 8 July, the photographic evidence is suggestive of a worsening in the condition of the skin from pre to post herbal patch application."[5]

c) The inability to identify the ingredients in the plaster and the absence of any manufacturing/expiry date or quality mark leads to a lack of certainty around its safe use.

d) The $500 offered by Mr B to Ms A as compensation and to formalise an apology was inappropriate.

25. The cover letter to the NZASA Report also noted:

a) The repeated emails and calls to Ms A were inappropriate as they could be experienced by Ms A as coercion or harassment, even if that was not Mr B's intention.

b) Mr B's clinical notes were inadequate, as there was limited explanation for the original shoulder injury, no recording of factors that ease or aggravate pain, no objective measurement of Ms A's range of shoulder motion, no record of palpation or identification of affected channels,[6] no documented treatment plan (which should include clinical reasoning from either a Western or traditional Chinese medicine perspective), and no explanation for the acupuncture theory used to select the acupuncture prescription.

c) Ms A signed the consent form for the cupping treatment in Mr B's reception area in the presence of his receptionist and not Mr B, precluding the opportunity for discussion with Mr B prior to the signing of the form.

[4] In response to the provisional opinion, Ms A maintained that the blister was caused by burning, and that the scarring caused by the blister will probably therefore be permanent.
[5] It appears that NZASA did not have Ms A's patient notes from her GP or the emergency medical centre when preparing its report; however, the notes do not comment on the cause of the infection, or whether the plaster applied by Mr B hindered Ms A's recovery.
[6] In traditional Chinese medicine, channels are a system of highways through which vital energy, or qi, flows. It is believed that qi can be blocked or depleted, leading to imbalance and disease.

26. A copy of the NZASA Report and cover letter is included at Appendix A.

27. The NZASA Report also made the following recommendations:

a) That Mr B review his cupping technique to minimise the possibility of a blister or other incident.

b) That Mr B refrain from using the herbal plaster on any consumer.

c) That the restriction on fire cupping remain until the completion of the NZASA investigation process and an educational visit by NZASA (see below).

d) That Mr B provide a written reflection on the recommended first aid treatment for a burn, and also on why he offered Ms A the payment of $500.

e) That NZASA conduct an educational visit to Mr B to include discussion of:

i. The safe application of cupping and a demonstration.

ii. How to determine the cause of blisters.

iii. The treatment of a blister as a result of cupping.

iv. The safe use of herbal plasters.

v. Professional obligations with respect to offering payments to consumers and communications with consumers who have made a complaint.

vi. Comprehensive note taking.

vii. Proper informed consent process.

28. On 11 February 2021, an NZASA assessor conducted an educational visit to Mr B. The assessor produced a report of the visit that records discussion of the topics noted in the NZASA Report. The assessor's report (see Appendix B) concludes:

> "Overall I feel the visit went well and [Mr B] came away with a better understanding of what changes he needs to make and how to deal with any such instances in the future."

29. On 16 February 2021, the restriction on cupping imposed on Mr B by the NZASA was lifted.

Further information

30. Ms A provided some further information, and Mr B provided a number of responses to HDC concerning the following matters.

Cupping technique

31. Mr B told HDC that although he feels that the timing and cupping technique he used on Ms A was reasonable, he has reflected on the treatment provided and now realises that he needs to consider the condition and skin type of each patient before starting treatment.

32. Mr B also said that he has reduced his usual cupping times from 10–12 minutes to 5–8 minutes.

Blister treatment

33. Mr B told HDC that when Ms A initially returned to him for treatment of the blister, he asked her whether she wanted to go to a medical centre, and offered to pay for the cost of any such treatment, or whether she wanted him to use his personal herbal dressing to treat her. Mr B said that Ms A told him that her husband had suggested that Mr B treat her, and she then agreed to be treated by Mr B.[7]

34. Ms A provided an email dated 3 July 2020 sent to her from Mr B, in which Mr B offered to treat the blister, but did not mention alternative treatment options.

35. Mr B told HDC that he had completed his updated first aid certificate, which includes burn care. He provided HDC with a copy of the certificate. He also said that he will now follow first aid procedures for any burn or will assist the patient to obtain help from a GP or emergency medicine provider.

Herbal plaster

36. Mr B told HDC that he obtained the plasters from overseas for his own personal use, and that the plasters do not have a list of ingredients because they are made using a private secret formula from a traditional method. He said that there is no expiry date for the plasters, and they are made to treat various external skin issues, including burns. Mr B indicated that the packaging for the plasters states that the plasters will not cause itching and adhesion on the wound area because they are easy to remove.

37. Mr B also said that the use of fire to heat the plasters gives him confidence that they are sterile when used. However, he told HDC that he will not use this kind of plaster on patients again.

Consent process

38. Ms A told HDC that all of the pertinent information relating to the risks of cupping appear on the first page of the consent form, and Mr B never showed her that page, or explained the risks to her. I note that the first page of the form is not signed by Ms A despite having a space for her to initial.

39. In response to the provisional opinion, Ms A told HDC that, in addition, Mr B initially did not explain why he would be providing cupping treatment at all, and that she was under the impression she would be receiving acupuncture and massage.

40. Mr B told HDC that since the incident with Ms A, he has updated his consent form so that the new shorter cupping time is noted. He said that both the practitioner and the clinic manager now need to check the patient's signature on the consent form. He also said that if cupping is to be used, he now ensures that the patient clearly understands the purpose, procedure, and risks.

[7] In response to the provisional opinion, Mr B asserted again that he asked Ms A if she wanted to go to a medical centre to have the blister treated, and that he offered to pay for it.

41. In response to the provisional opinion, Mr B told HDC that the consent form is one piece of paper, printed on both sides. He said that it is possible Ms A did not see the front page, but that this was not due to his unwillingness to show it to her.

Repeated attempts to contact Ms A

42. Mr B explained his repeated attempts to communicate with Ms A after she declined further treatment of the blister as his attempts to apologise, make amends, and help Ms A to recover. However, Ms A took the communications as an attempt to keep her quiet and prevent her from complaining, especially as they commenced when she had already made an initial complaint to Mr B.

General

43. Mr B told HDC that he learned a lot from the NZASA assessor's visit, and he will be more cautious in his future practice.

44. Ms A told HDC:

> "[T]his experience has affected me a lot and totally interrupted my day to day life, with constant repeat visits to [the emergency medical centre]. It's most uncomfortable [and] is totally embarrassing and inconvenient for me. My work has also been adversely affected, the pain of the burn combined with the original shoulder injury, last week prevented me from going to work altogether … I am definitely going to be left with a permanent scar on my back. All of this has cost me not only financially, but also in time I should have been spending with my family. It's even affected the care of my child …"

Responses to provisional opinion

45. Ms A and Mr B were given the opportunity to respond to the Deputy Commissioner's provisional opinion. Their responses have been incorporated into this report where appropriate.

Opinion: Mr B — breach

46. I have undertaken a thorough assessment of all the information gathered, including the various statements made by Ms A and Mr B, the clinical records provided by Mr B, and those provided by the emergency medical centre and the medical centre. I have also considered the NZASA Report, its covering letter, and the educational visit report of its assessor.

Informed consent — breach

47. Mr B treated Ms A seven times between 22 June and 3 July 2020. Ms A received six treatments from Mr B incorporating cupping treatment without any issue. On the seventh session, Ms A experienced a blister following the cupping treatment.

48. Mr B explained that his patients are required to fill in two forms before the initial treatment. One form is the patient's personal details for the clinical record, and the other is an informed consent form. Mr B provided the consent form that Ms A signed on 22 June 2022. Under the heading "Possible and rare reaction and side effect as a result of acupuncture/TCM treatment", burning and blistering of the skin is listed as a risk of cupping treatment.

49. Ms A told HDC that all of the pertinent information relating to the risks of cupping appears on the first page of the consent form, and that Mr B never showed her that page, or explained the risks to her. I note that the first page of the form is not signed by Ms A despite having a space for her to initial.

50. Mr B told HDC that he always explains the treatment and any risks to his patients before beginning any procedure, but he also said that it is possible Ms A did not see the front page of the consent form. He also said that he has reflected on this and now takes extra care to ensure that he provides his patients with a clear explanation of the procedures he is to perform and the risks of the treatment, and that patients have seen both sides of the consent form. He said that if he needs to apply cupping, he will make sure that the patient clearly understands the reasons for doing so and the associated risks of the method. He also told HDC that he has updated the consent process to make sure that the practitioner (ie, himself) and the clinic manager double check the patient's signature on the consent form.

51. NZASA acknowledged that Ms A signed a consent form that states that a possible and rare reaction or side effect of cupping could be a burn or blistering. However, NZASA noted that the consent form was signed in the reception area, with the receptionist required to check whether the client had initialled and signed the consent form. NZASA reminded Mr B that a discussion with the patient regarding the treatment proposed is necessary, as outlined in the NZASA Guidelines for Informed Consent (the Guidelines), in order for consent to be informed.

52. The Guidelines[8] detail how informed consent can be obtained in the context of acupuncture therapies, including cupping. Most relevantly, the Guidelines make it clear that informed consent should be obtained in an ongoing process through discussion between the patient and the treating practitioner. The Guidelines also stress the importance of ensuring that the patient fully understands the treatment and any associated risks, and has an opportunity to ask questions and clarify their understanding.

53. Having considered the evidence from Mr B and Ms A, including the consent form signed by Ms A and the other records provided by Mr B, I find it more likely than not that Mr B failed to discuss the cupping treatment and its associated risks with Ms A prior to commencing the procedure. I agree with the Guidelines and NZASA that consent should be obtained through an ongoing process between the consumer and practitioner. It is not sufficient merely to rely on a signed consent form checked by a receptionist.

[8] https://www.nzasa.org/assets/Uploads/NZASA-Guidelines-for-Informed-Consent-March-2020.pdf. Accessed 28 October 2022.

54. Right 6(1) of the Code of Health and Disability Services Consumers' Rights (the Code) states that every consumer has the right to an explanation of the options available, including an assessment of the expected risks and side effects. As I have found that Mr B failed to discuss the risks and side effects of cupping treatment with Ms A, I find that he breached Right 6(1) of the Code.

55. Further, as Ms A did not receive an explanation of the risks and side effects of the cupping treatment from Mr B, the consent given by Ms A was not informed. Accordingly, I find that Mr B breached Right 7(1) of the Code because he did not obtain informed consent from Ms A prior to commencing the cupping treatment.

Treatment with herbal plaster — breach

56. Mr B treated Ms A's blister with a herbal plaster. Mr B told HDC that he obtained the plasters from overseas for his own personal use, and the plasters do not have a list of ingredients because they are made using a private formula from a traditional method. He said that there is no expiry date for the plasters, and the packaging states that the plasters do not cause itching and adhesion on the wound area because they are easy to remove.

57. Ms A said that the bandages were very sticky and became stuck in the wound, and were very difficult to remove.

58. NZASA's investigation into the care Mr B provided found that the packaging on the herbal plasters does not list the ingredients present, and there is no indication that the bandages were sterile, or an antiseptic product; nor was there an expiry date or a quality, licensing or GMP (Good Manufacturing Practice) mark. NAZSA concluded that it could not comment on whether the herbal patch had affected the normal healing process of the wound, but considered that best practice would have been to cover the blister with a sterile, non-adhesive dressing.

59. I agree that the appropriate course of action would have been to treat Ms A's blister with a sterile, non-adhesive dressing, and I am critical that Mr B did not do so. Accordingly, I consider that Mr B failed to provide services to Ms A with reasonable skill and care and therefore breached Right 4(1) of the Code.

Actions taken after being notified of complaint — adverse comment

60. On 15 July 2020, Ms A emailed Mr B to complain about the blister on her back and his subsequent treatment of it. Mr B replied, asking Ms A for her thoughts on how to resolve the issue. On 17 July, Mr B sent an email to Ms A offering his apology and $500 in compensation. Ms A did not respond to this email. On 20 July, Mr B telephoned Ms A, and during the conversation he repeated his offer of compensation. Ms A stated that she told Mr B that she had already filed a complaint and preferred to deal with the issue more formally, and not in any "under the table" kind of way. On 21 July, Mr B emailed Ms A again to apologise and explain his treatment decision. He also offered to provide further treatment and repeated his offer of compensation.

61. Mr B told HDC that his repeated attempts to communicate with Ms A after she refused further treatment from him were efforts to make amends, apologise, and help her to recover. In the NZASA assessor's report, it is recorded that Mr B assured the assessor that the communication with Ms A was done in good faith, and that he was only trying to compensate her for her pain and distress and potential loss of earnings. The assessor recorded that she explained to Mr B that offering money to Ms A was not appropriate, as it could be seen as an attempt to make the complaint "go away", but that it would be acceptable to offer to cover medical costs associated with the injury. It was recorded that Mr B understood that his behaviour was not acceptable.

62. I note that NZASA considered that Mr B's action of offering Ms A $500 as compensation and to formalise an apology was not appropriate, and recommended that there be a clear discussion of professional obligations in this respect. As discussed above, that conversation was undertaken by the NZASA assessor, and I remind Mr B not to take actions that could be interpreted by a consumer as subverting a complaints process and/or avoiding accountability for any perceived deficits in the care provided.

Documentation — breach

63. The NZASA Code of Safe Practice (Acupuncture) states that acupuncturists are required to maintain clear and accurate clinical records for every treatment. NZASA found a number of issues with Mr B's recording-keeping, including a limited description of Ms A's presenting history, no record of factors that eased or aggravated her pain, no documentation of her range of motion, no record of palpation or identification of affected channels, and no documented treatment plan. NZASA also commented that some of the clinical records did not reflect the treatment times invoiced to ACC.

64. I note NZASA's cover letter regarding Mr B's clinical documentation, and in particular that Mr B's clinical notes were inadequate, as there was an absence of important information that should have been recorded.

65. I consider that in not recording important information in Ms A's patient record, Mr B failed to maintain clear and accurate clinical records, as required by the NZASA Code of Safe Practice (Acupuncture). I therefore find that Mr B breached Right 4(2) of the Code in not providing Ms A with services that complied with professional standards.

Policies and procedures — other comment

66. In the course of HDC's investigation, Mr B was asked for copies of various policies and procedures from his clinic. However, Mr B provided HDC only with a copy of his consent form (in both its original form and as updated following Ms A's complaint). It appears that Mr B does not have written policies and procedures covering the areas in which I have identified failures. I remind Mr B of the importance of robust policies and procedures, including those concerning informed consent. As stated below, I recommend that he work with NZASA to develop a full suite of practice policies and procedures.

Recommendations

67. I recommend that Mr B:

a) Provide a written apology to Ms A. The apology is to be sent to HDC within three weeks of the date of this report, for forwarding to Ms A.

b) Develop and implement a full suite of practice policies and procedures, which, together with the usual healthcare provider policies and procedures recommended by NZASA, should include the following:

i. A complaints procedure that is compliant with the requirements of Right 10(6) of the Code; and

ii. An informed consent policy that is compliant with the requirements of Right 7 of the Code.

Mr B should report to HDC with copies of the implemented policies and his reflections on the consequent changes to his practice, within six months of the date of this report.

c) Arrange an audit by NZASA of his patient notes from his last 12 months of practice, in particular to determine whether the inadequacies identified by the NZASA Report have been remedied. Mr B is to report back to HDC regarding the audit, within three months of the date of this report.

Follow-up actions

68. A copy of this report with details identifying the parties removed will be sent to ACC and NZASA, and they will be advised of Mr B's name.

69. A copy of this report with details identifying the parties removed will be sent to Acupuncture NZ and the New Zealand Chinese Medicine and Acupuncture Society, and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Appendix A: Report of the New Zealand Acupuncture Standards Authority

The following cover letter and report was prepared by the NZASA:

"**25th January 2021**

Complaints Assessment Committee: Confirmation of findings and the disciplinary and remedial recommendations

Dear [Mr B]

As advised to you by email on 20th July 2020, the New Zealand Acupuncture Standards Authority Inc (NZASA) convened a Complaints Assessment Committee (CAC) to review a complaint received from [Ms A], regarding a treatment injury she received following a cupping and acupuncture treatment provided by you. The complaint went on to express [Ms A's] dissatisfaction with your post-injury care.

NZASA would like to formally offer an apology for the length of time taken to reach a conclusion in this matter.

The CAC report is attached. You should read this report in full.

The NZASA Registration Board has accepted the following findings from the CAC review:

1. The injury sustained by [Ms A]

The CAC acknowledges that a blister has resulted due to the cupping treatment (adverse event of treatment). The CAC further acknowledges that in her written statement [Ms A] has referred to the injury area as a burn.

After reviewing the available evidence, the CAC is unable to confirm the cause[1] of the blister. There is insufficient evidence for the CAC to conclude that the blister is a burn from heat versus, for example, a result of suction.

The CAC recommends that [Mr B] reviews his cupping technique to avoid and/or minimise the possibility of a blister or other incident.

Please see the report for a full description of the CAC's findings regarding items 2 and 3 (below).

2. Treatment of the resulting blister

a. Care with piercing of blisters.

b. The herbal plaster that [Mr B] applied was not an appropriate choice of treatment.

With the available evidence the CAC is unable to give further comment as to whether the herbal patch affected the normal healing process of the wound. In the CAC's

[1] The CAC came to a majority verdict that evidence was insufficient to determine causation.

opinion, best practice would have been to cover the blister (with or without piercing) with a sterile, non-adhesive dressing.

3. The offer of payment is not required and is inappropriate

In accordance with these findings, the NZASA Registration Board has formally ratified the CAC recommendations in this case and — as a result — the actions to be taken are outlined below.

Please see the report for a full description of the CAC's Disciplinary and Remedial Recommendations (outlined on the following pages).

The NZASA Registration Board request that you comply with these actions.

Disciplinary and Remedial Recommendations

For full details, refer to the CAC Report.

1. Restriction on Annual Practicing Certificate (APC)

The restriction on fire cupping remains in place.

Once the visit (4a below) is completed, you will be advised on this.

2. Discussion of the professional obligations with respect to offering payment.

(4e below)

3. Use of herbal plaster

The NZASA Registration Board is extending the advice already provided by the CAC regarding the use of the herbal plaster used in this incident. You are advised that this herbal plaster is not to be used on any client. The inability to identify the ingredients within the plaster and the absence of a manufacturing/expiry date or quality mark leads to a lack of certainty around the safe use of this product.

4. Professional and educational visit

The CAC recommends an in-person professional and educational visit be arranged with an NZASA Assessor to include discussion of:

a. The safe application of cupping and demonstration.

b. How to determine the cause of blisters.

c. The treatment of a blister as a result of cupping.

d. The safe use of herbal plasters (as per item 3 above).

e. Professional obligations with respect to offering payment to consumers (as per item 2 above).

The professional/educational visit will be arranged at a time/date appropriate for the Assessor and the practitioner.

Costs to be incurred by the practitioner:

A set fee for the professional visit and clinical audit of $275+ GST will be charged to the practitioner prior to the visit. An invoice is attached. Any recommendations for further education and/or audit as a result of the above visit will incur an additional fee.

During the course of a CAC it is common practice for NZASA to take into consideration any points for guidance and education of the practitioner. The reason for this is twofold. Firstly, NZASA is responsible for the protection of the public, so it is essential that any and all opportunities to promote best practice are acted upon. Secondly, it is beneficial to all involved to use the CAC process in a positive and proactive way in order to support the practitioner in all aspects of their clinical practice.

Any such educational points will be provided to the practitioner in writing by the Registrar, i.e. separate to a CAC report, in order to guide the practitioner in preparing for their NZASA Assessor visit. This ensures that the face-to-face visit provides an opportunity for the practitioner to discuss any areas where they require additional guidance.

As a consequence of this CAC, the clinical notes and your response to CAC questions raised some additional points for guidance during the professional and educational visit. The suggested topics for discussion with the NZASA Assessor are detailed below. These topics provide an opportunity for you to reflect on your practice and it is highly recommended that you take time to reflect on these points and prepare any questions you may have for discussion at your Professional/Educational visit.

Educational opportunities (to be discussed at the Professional/Educational Visit)

a. The offer of payment was not required and in the manner offered could be seen as coercion to avoid a complaint.

   As noted in the CAC report, offering [Ms A] $500 as compensation and to formalise an apology was not appropriate. The repeated emails (and the phone call to discuss 'dealing with the issue peacefully' and texting to seek an email response) could be experienced by the client as harassment and coercion, even if this was not the intent of the practitioner.

   This approach is in breach of NZASA Professional Ethics — Professional Conduct to the patient, point 1.2 (as noted on p. 4 of the CAC report).

b. Lack of comprehensive note taking:

   - Limited explanation for the history of the covered injury (only described as 'heavy lifting, then sprained of her left shoulder').
   - No recording of factors that ease or aggravate the pain.

- No range of motion or other objective measure(s); simply states 'movement is OK'.
- No record of palpation or identification of affected channels; the only record of which part of the shoulder is affected/painful is a diagram with the front of the shoulder circled.
- No documented treatment plan. As advised by ACC, a clinical rationale should be provided by treatment providers from a Western or Traditional Chinese Medicine (TCM) perspective. A treatment plan should outline a clinician's clinical reasoning and consequential records should reflect any changes in the client's condition and resultant updates to the plan.
- Recommended that a clinical rationale or brief explanation is recorded for the acupuncture theory used to select the acupuncture prescription. When asked by the CAC, [Mr B] reported that the 'acu-points I used is based on my invention method which is called '…'.

c. Some of the clinical records do not reflect the treatment times invoiced to ACC.

   Example: Treatment 2.

   The clinical notes record three he-sea points were used on the left side of the knee and that cupping and gua sha was applied to the front side of the left shoulder. It could be assumed that all aspects of this treatment could be carried out at the same time as the treatment position is recorded as face up (supine). This treatment was invoiced for one hour.

d. Informed consent process.

   The CAC acknowledged that the patient signed a consent form which stated that a possible and rare reaction or side effect of cupping could be a burn or blistering. The consent form was signed in reception, with the receptionist assigned to check whether clients initialed and signed the forms. NZASA would like to remind you that a discussion with the patient regarding the treatment proposed as outlined in the NZASA Guidelines for Informed Consent is necessary in order for consent to be informed. Furthermore, there were no clinical notes or consent recorded for the subsequent treatment of the blister.

NZASA recommends that the practitioner refers to the NZASA Guidelines [2] and discusses any questions during the Professional/Educational visit.

Yours sincerely

Registrar
NZASA Inc, www.nzasa.org

[2] Refer to the NZASA Guidelines for Informed Consent: https://nzasa.org/assets/Uploads/NZASA-Guidelines-for-Informed-Consent-March-2020.pdf.

25th January 2021

Introduction

Complainant: NZASA investigating a health consumer complaint from [Ms A]

Registrant: [Mr B]

Issues Presented: Complainant reported a 'burn injury' as a result of a cupping treatment by the registrant and dissatisfaction with treatment of the injury by the practitioner

On 15 July 2020,[3] the NZASA Registrar received a complaint email from client [Ms A]. [Ms A] reported that, on 3 July, [Mr B] gave her a cupping treatment and 'During this cupping, I have sustained a burn injury that blistered quite badly and was very painful.'

The complaint detailed her dissatisfaction with respect to the post-injury care she had received. A copy of the complaint letter with a photo of the blister is attached (as Appendix A) to this report.

Statement of Fact

[Mr B] was advised of the formation of a Complaint Assessment Committee (CAC) and provided a copy of the complaint and the relevant portions of the NZASA Rules concerning the handling of complaints on 20 July. [Mr B] responded as requested by the CAC on 28 July with a copy of the case notes, consent form, an explanation letter of the incident, and a copy of the email he sent to the client on 21 July offering further treatment.[4]

History of Complaint

[Ms A] had received six treatments from [Mr B] incorporating cupping prior to the incident without issue. Then, on the 3 July she 'felt a stinging pain on her upper back' (according to the practitioner's statement) after the cupping treatment.

[Mr B's] explanation stated that he examined the area immediately and could not see a 'wound'. The practitioner sent [Ms A] home as usual without any further instructions. However, one hour after [Ms A] left the clinic, the practitioner received an email from the consumer informing him that a blister had formed accompanied by a photo of a moderate sized blister (which [Mr B] supplied the CAC).

[Mr B] reported that he apologised to [Ms A] and reminded her to keep the blister area dried. The consumer returned to the clinic the same day, whereby [Mr B] disinfected the local area, pierced the blister with a sterile acupuncture needle to release the fluid, and covered the area with a herbal plaster. [Mr B] reports that he then asked [Ms A] whether she would prefer to continue the use of the herbal plaster for the blister, or go to a medical centre (at which point [Mr B] said he would be responsible for her medical

[3] All dates recorded from this point forward within the report relate to 2020.
[4] Practitioner's responses to complainant and CAC were made available to the Registration Board for ratification of this report.

expenses). [Mr B] reports that the consumer took the advice of her husband to continue with ongoing treatment from [Mr B]. However, in the complaint [Ms A] makes no mention of this conversation and instead writes:

'After a quite significant blister appeared during treatment, he [Mr B] assured me he could help to treat it. The following day, I found the blistering was worse, but the provider continued to reassure me that he could treat it.'

The practitioner asked [Ms A] to come back to his clinic for a herbal dressing daily from 3 to 8 July. As the client stated:

'Over the next few days he [the provider] had applied a number of new plaster bandages every day, which I found to be very sticky indeed. They appear to have some kind of traditional medicine substance fused to the plaster, which became stuck in the wound and over my back.'

[Mr B] reports that [Ms A] decided to stop the herbal dressing remedy on the 8 July (confirmed by the complainant in Appendix A) and that he respected her decision. [Mr B] reports that he again offered to pay for her medical expenses if she wanted to be treated in a medical centre for the blister. The consumer does not make mention of this conversation in her complaint. [Ms A] reported that:

'During the last few days, I didn't feel the wound was improving and I had grown quite concerned whether it could heal properly, or if there would be long term scarring.'

On the 10 July, the consumer sought advice from her GP and received initial and ongoing treatment at her local emergency clinic for the wound (ACC injury claim). Several requests were made by the CAC to [Ms A] for relevant medical/ACC information, but unfortunately no response was received.

While the medical notes may have provided additional evidence regarding the condition of the complainant's injury on presentation for medical advice on 8 July, the photographic evidence is suggestive of a worsening in the condition of the skin from pre to post herbal patch application.

[Ms A] emailed [Mr B] on 15 July to state her frustration, but did not respond to [Mr B's] reply. On this same day [Ms A] contacted NZASA to lodge a complaint. [Mr B] emailed the consumer again on 17 July offering a payment of $500 'as … compensation and apologize [sic]', but received no response from [Ms A].

[Mr B] reports that he rang [Ms A] on 20 July to give his sincere apology and he expressed that he 'would like to deal with the issue peacefully to be good for both'. [Mr B] sent a final email to [Ms A] on 21 July, inviting her to return to the clinic for acupuncture. Again, the consumer did not respond.

Points of Action since receipt of the complaint:

23 July: NZASA wrote to [Mr B] advising him that a condition had been placed on his Annual Practicing Certificate (APC) restricting him from using any form of fire cupping or moxibustion until the CAC process was completed (at which time he would receive advice regarding this APC condition). ACC were advised of the restriction to practice. In addition, NZASA requested that [Mr B] have no further contact with the complainant.

The letter also requested that the practitioner supply a copy of the clinical records and consent form(s) related to the case, with the invitation for [Mr B] to provide any further information or explanation that he would like the CAC to consider. [Mr B] promptly replied on 28 July with the case notes, consent form, an explanation letter of the accident, and an email he sent to the client on 21 July.

6 Aug: An additional letter was sent to [Mr B] with questions relating to the provided consent form, and requesting details on the treatment provided (point prescription and treatment frequency), timing of needle retention, when cupping was applied, and whether he left the room at any point during treatment. With regards to the treatment injury the following questions were asked:

- Did you provide any First Aid to the client's upper back before she left the clinic?
- Why did you choose to treat with the herbal remedy?
- Are you confident that the herbal patch is sterile?

[Mr B] responded on 11 Aug:

- 'When the last treatment finished, [Ms A] felt a stinging pain on her upper back. Immediately I had examined her back. But, I hadn't seen any wound. So I didn't provide any First Aid to the client's upper back.'
- 'I asked her whether she would like to use my herbal dressing to treat the burning blister or go to a medical center for the remedy. She said her husband suggested she can be treated this issue by me. So I used herbal patch to help her burning issue. I have already used this herbal patch products for many years for my personal use. It has worked very well. One of the herbal patch application is to treat burn, so I choose this method to help her.'
- 'I'm confident that the herbal patch is sterile due to I have already used this herbal patch for many years for my personal use.'

24 Aug: NZASA wrote to [Mr B] to request an English translation of the herbal product including the ingredients, place/date of manufacture, expiry date, and where the product was purchased. At this point, the CAC recommended that the product is not used on any burn or open wound.

25 Aug: [Mr B] responded with the advice that the herbal patch is from [overseas] and the ingredients are 'a secret formula which is made by an ancient method', and 'is for

external use which can quickly reduce the inflammation and alleviate the pain, enhance the recovery of skin tissues.' Of note, there is no mention of an expiration date, and no evidence (from the photograph of the herbal patch packaging) of a quality/GMP (Good Manufacturing Practice) mark.

Statement of Rule

Standard 2: Treat the consumer using Acupuncture safely and effectively

- Observe the consumer and collect information about the effectiveness of the acupuncture treatment.
- Anticipate, recognise and manage any adverse reactions.

Code of Ethics: Professional Conduct

1.2 Ensure that all conduct between you and the patient is above reproach at all times.

Code of Ethics: Professional Responsibilities: to clients and colleagues

2.1.1 Practitioners should recognise their own clinical and diagnostic limitations and know when to refer a client to another health care professional.

It is probable that the practitioner has failed to uphold his obligations under the Code of Health and Disability Services Consumers' Rights (1996). The Code establishes the rights of consumers, and the obligations and duties of providers as regulated under the Health and Disability Commissioner Act (1994).

All practitioners providing health or disability services, whether from regulated or non-regulated professions, are subject to this Code. The CAC finds that the practitioner acted in contradiction to Right 4.4:

'4.4 Every consumer has the right to have services provided in a manner that minimizes the potential harm to, … that consumer.'

Findings

The CAC acknowledges that a blister has resulted due to the cupping treatment (adverse event of treatment). The CAC further acknowledges that in her written statement [Ms A] has referred to the injury area as a burn. **After reviewing the available evidence, the CAC is unable to confirm the cause of the blister. There is insufficient evidence for the CAC to conclude that the blister is a burn from heat versus, for example, a result of suction.**

Application of the style of cupping used by [Mr B] presents a low risk of a burn occurring from heat which may cause a blister. However, a blister can also develop as the result of cupping which is unrelated to a burn from heat. A blister can develop as a result of the suction applied during cupping being too strong; the skin being delicate; the cupping being applied for too long for the client's skin type; and, on occasion, as a result of a client's underlying condition.

The CAC recommends that [Mr B] reviews his cupping technique to avoid and/or minimise the possibility of a blister or other incident.

1. **Treatment of the resulting blister**

   a. **Care with piercing of blisters.**

   Many acupuncturists are trained to treat blisters by piercing them (and releasing the fluid), when they are moderate in size (as was the case in this instance) and are at risk of bursting due to friction with clothing (which may increase the risk of infection).

   After piercing a blister the area is best covered with a sterile dressing (with or without the application of an antiseptic solution such as betadine). Risk of external infection is reduced by leaving a blister intact, which would be an appropriate course of action for small blisters and for clinicians not specifically trained in a piercing technique. Advice to the client to keep the area clean is recommended.

   b. **The herbal plaster that [Mr B] applied was not an appropriate choice of treatment.**

   The packaging of the herbal plaster does not list the ingredients present in the plaster and [Mr B] has stated he has no information on these ingredients. The packaging did state it was suitable for burns (which is why the practitioner stated he chose to use it), but this was in addition to various musculoskeletal and skin conditions listed. While the herbal plaster was in sealed packaging, there was no indication on the packaging that this was a sterile or antiseptic product, including no manufacturing/expiry date, nor a quality, licensing, or GMP mark. Once the blister had been pierced any product applied would need to be antiseptic, and/or a sterile dressing applied.

With the available evidence the CAC is unable to give further comment as to whether the herbal patch affected the normal healing process of the wound.

In the CAC's opinion, best practice would have been to cover the blister (with or without piercing) with a sterile, non-adhesive dressing.

2. **The offer of payment is not required and is inappropriate**

   The blister/wound resulted in an ACC claim as a personal injury caused by an accident. Therefore, the offer [Mr B] made to cover any medical costs incurred by the consumer in the treatment of the personal injury would only be applicable to any surcharges involved. The CAC finds this would have been an appropriate offer if both parties were in agreement. However, offering [Ms A] $500 as compensation and to formalise an apology is not appropriate.

Disciplinary and Remedial Recommendations

Recommendations completed

1. Restriction on Annual Practicing Certificate (APC)

On the recommendation of the CAC, NZASA wrote to [Mr B] on 23 July advising the registrant of a restriction from using any form of fire cupping or moxibustion, and that ACC would be notified accordingly. [Mr B] was notified on the 10 December that the restriction on the use of moxibustion was lifted.

The restriction on fire cupping remains in place until the completion of the CAC investigation, at which point NZASA will advise [Mr B] of the lifting of this restriction.

In addition, on 24 August the CAC advised [Mr B] not to use the herbal patch on any burn or open wound.

2. Professional Reflections

The CAC asked the practitioner to provide a written reflection on two points. [Mr B's] responses of 11 August 2020 are detailed below:

Question 1: What is the recommended First Aid for a burn? i.e. as detailed in your First Aid Certification

The practitioner supplied a comprehensive reflection on the appropriate clinical response to a burn, including 'immediately cool the injured area for a minimum of 20-minutes'; 'see a doctor if the burn is causing ongoing significant pain …'; and 'apply a sterile dressing'.

The CAC accepts that the practitioner understands the first aid procedure for a burn injury.

Question 2: Why did you offer the client a payment of $500?

The practitioner, on reflection, stands by his offer of compensation, stating that it is his 'proactive attitude and [his] responsibility'.

The CAC recommendation is for a clear discussion of the professional obligations with respect to offering payment for ongoing medical costs during the in-person professional/educational visit (see Recommendation 4 below).

Recommendations to complete

3. Use of Herbal Plaster

The CAC recommends extending the advice already given to [Mr B] not to use this same herbal plaster on broken skin, to advising that this plaster is not to be used on any client. The inability to identify the ingredients within the plaster and the absence of a manufacturing/expiry date or quality mark leads to a lack of certainty around the safe use of this product.

An additional clinical option with topical herbal treatments would be the use of a skin patch test to assess client response.

4. Professional/Educational Visit

The CAC recommends an in-person professional and educational visit be arranged with an NZASA appointed Assessor.

This educational visit is to include discussions on:

a. The safe application of cupping and demonstration.

b. How to determine the cause of blisters.

c. The treatment of a blister as a result of cupping.

d. The safe use of herbal plasters (as per item 3 above).

e. Professional obligations with respect to offering payment to consumers (as per item 2 above).

The professional/educational visit will be arranged at a time/date appropriate for the assessor and the practitioner.

Costs to be Incurred by the Practitioner:

A set fee for the professional/educational visit of $275+ GST will be charged to the practitioner prior to the visit. Any recommendations for further education and/or audit as a result of the above visit will incur an additional fee.

Signed

[CAC Chair]

On behalf of CAC Members: …

Appendix A

Date: Wed, 15 Jul 2020

To whom it may concern,

I am writing to give you feedback on a provider I have used following a recent ACC claim. The care I received was far less than satisfactory, and in fact, I now feel it was totally unprofessional. I have now sustained a new injury during my treatment, which has resulted in a visit to both my GP, and an emergency clinic, ending up in a second ACC claim.

In the middle of June I visited my GP regarding a shoulder injury. I was referred for acupuncture treatment and this was accepted by ACC (claim number shown above). I found a provider in a location convenient to me, which was [Dr B's clinic]. I had attended several sessions before an incident on the 3rd of July. The provider had been treating

my injury with a combination of acupuncture and cupping. During this cupping, I have sustained a burn injury that blistered quite badly and was very painful. Please refer to my attached photos for evidence of this. After a quite significant blister appeared during treatment, he assured me he could help to treat it. The following day, I found the blistering was worse, but the provider continued to reassure me that he could treat it. Over the next few days he had applied a number of new plaster bandages every day, which I found to be very sticky indeed. They appear to have some kind of traditional medicine substance fused to the plaster, which became stuck in the wound and over my back. This has later proved to be very difficult to remove. I have attached a photo of one of these plasters for your reference.

During the last few days, I didn't feel the wound was improving and I had grown quite concerned whether it could heal properly, or if there would be long term scarring. I had stopped treatment with this provider on the 8th of July and on the 10th of July, I decided to visit both my GP and my local emergency clinic to seek their opinion. They assessed and dressed the burn for me, and requested I visit them for follow up to check how it is healing and to put a new dressing over the wound. Yesterday I attended the emergency clinic for the third time, where they once more cleaned and re-dressed the wound for me (please refer to photos attached). You can see the area is now much cleaner, however, I'm still left with a significant and painful burn. I'm also concerned about the possibility of permanent scarring. I need to return to the emergency clinic again tomorrow for a follow up visit.

The treatment and cleaning of this burn is proving painful, and as the affected area is on my back, sitting comfortably in a chair and lying down have proven to be problematic.

I am very dissatisfied with this unpleasant experience, as well as the inconvenience and added expenses I have been caused seeking additional medical attention. Finally, I would be concerned that others may suffer the same poor treatment as I have.

I look forward to hearing your reply.

Yours sincerely

[Ms A]

[NB: Photograph of blister attached here]”

Appendix B: Assessor's report

The following report was prepared by an NZASA assessor:

"Educational Visit — 11.02.2021

I met with [Mr B] at his clinic and began with asking him why he thought it had occurred and what he would do differently next time.

[Mr B] mentioned several times in the discussion that because [Ms A] was Chinese, that they had an understanding regarding the treatment. He believes it was because her skin was too delicate. He showed me his adjusted informed consent time showing that cupping time would only be 8–10 minutes.

We then discussed the importance of adjusting the treatment depending on the client and that in fact longer cupping times were perfectly okay depending on the area, condition and clients constitution.

I told [Mr B] regardless of patients ethnicity/culture/background we should not assume that they have a full understanding of treatment (protocols/risks etc) and it was our responsibility to ensure this and also to treat all patients the same in this regard.

[Mr B] also said that beyond giving immediate first aid and advice he would always recommend that a patient see their GP if symptoms persisted or worsened.

I then went over the possible causes of blisters/burns during cupping treatments (eg too hot due to methods, too tight/close together/left on too long etc)

We also discussed contraindications to cupping and then did a demonstration of cupping, with [Mr B] showing me the method he used, which was fine.

I also mentioned the use of plastic/adjustable cups as a possible safer alternative.

The importance of consent both written and verbal was also discussed.

Points made:
The client reading and signing informed consent for was not enough as they may not fully understand everything on it and may not feel able to ask, it was quite a lot of information and they could not be expected to remember each kind of treatment and risks involved, so best to explain the treatments verbally also and get verbal consent.

When doing a specific treatment on a client for the first time that an explanation of the procedure, possible side effects/adverse reactions and the reason why you would like to use that treatment must be given to the client and that they then must consent to that. This should be noted in file.

Then each time you treat that client you should ask them if okay to use that method eg 'I would like to do some cupping again today, is that ok for you?'

Reasons for this include H & D Code of rights — eg communication, fully informed choice and consents well as NZASA code of ethics and that it is for our and the patients protection (particularly the recording of this in our notes).

We covered treatment of blisters.

Best to leave intact (unless very large/likely to undergo friction causing to burst) ensure is dry and cover with a dry sterile dressing to protect. Could recommend going to a GP to have it drained or redressed.

Herbal Plasters
[Mr B] informed me that he is no longer using the herbal plasters he used to treat [Ms A] on himself.

I asked him if they were sticky and how that was inappropriate for a blister as could cause further damage, regardless of the type of herbs.

I also recommended if he was using any other kind of herbal plasters for clients ie for muscle pain that they could do a small patch test first to check for any adverse reactions.

Payment to Consumers/Communication with [Ms A]
[Mr B] seemed still a little distressed over this matter and assured me that it was done in good faith and that also it was a cultural difference and he was only trying to compensate [Ms A] for her pain and distress and potential loss of earnings.

In our discussion
As per NZASA code of Ethics — 'ensure that all conduct between you and your patient is above reproach at all times'.

How to deal with a complaint from a patient

Listen, showing respect and concern, apologise, offer advice/treatment if appropriate, refer on to GP etc. Important to have this in writing either in email/letter or taking notes whilst you are talking to patient.

[Mr B] replied to [Ms A's] initial email to him as she had asked for his reply, she did not respond to this, so he thought he needed to do more.

I told him at this point the communication between them should have stopped due to the fact that it could be seen as harassment by him. She may not have wanted to have any more interaction with him.

Also discussed that it is a patients right to complain and that they did not have to inform you that they were going to make a complaint to H&D Comm/NZASA/ACC etc.

Also suggested that in future if such an event occurred again, he could inform NZASA himself and ask for their advice.

Offering money to [Ms A] was not appropriate as it could easily be seen as an attempt to make the complaint 'go away'.

It would be okay to offer to cover medical costs incurred due to injury but nothing further.

[Mr B] understands now that this was not acceptable.

Note taking
Important for yourself — protection and education/reflection
For client
For ACC/NZASA

Detailed notes provide us with opportunity to review and learn from our treatment plans and can help the patient understand their progress as well as protection in circumstances where there is any questions or complaints regarding our treatments.

Discussed what notes should include specifically for ACC clients injury basis how and why not enough just to copy what is on referral note from GP, must discuss with client.

Factors such as other treatments/aggravating/easing.

ROM testing — and this should be repeated every 3 treatments at least — helps you see changes and also for client to see any improvement.

Palpation of affected area/channels and record findings subjective measure eg pain scale.

Not just feels better.

Treatment plan — estimated treatment numbers, points prescription/methods etc.

Informed consent.
Showed him some examples of clinic notes.

Told [Mr B] not all treatments take an hour and that he needs to record what he does during treatment and invoice accordingly.

Overall I feel the visit went well and [Mr B] came away with a better understanding of what changes he needs to make and how to deal with any such instances in the future.

I hope that this covers what you needed — first time doing such a visit!

Also some very helpful reminders for me.

[Assessor]"