

**A Decision by the
Deputy Health and Disability Commissioner
(Case 23HDC02792)**

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Introduction

1. This report is the opinion of Dr Vanessa Caldwell, Deputy Health and Disability Commissioner, and is made in accordance with the power delegated to her by the Commissioner.
2. The report discusses the care provided to Ms A by an osteopath, Mr B.
3. The following issue was identified for investigation:
 - *Whether Mr B maintained appropriate professional boundaries with Ms A between 2021 and 2023 (inclusive).*

Background

4. Ms A suffered an injury in June 2021 and sought treatment from osteopath Mr B at the suggestion of an osteopathy clinic (the clinic),¹ where Mr B was employed as an independent contractor.²

¹ Mr C is the sole director.

² In response to the provisional opinion, Ms A told HDC that initially she saw another osteopath at the clinic and started treatment with Mr B between August and October 2021.

5. Mr B registered with the Osteopathic Council of New Zealand following his arrival in New Zealand in 2021.³ The clinic told HDC that as Mr B had completed his training overseas, he was required to complete a year of training, during which he was made aware of the Council standards.

Treatments with Mr B

6. Ms A told police that she started receiving treatment from Mr B between August and September 2021, and usually she received treatment every week. She said that previously, she had had problems with chronic pain.
7. Ms A said that when she first started receiving treatment from Mr B, she booked appointments for around 9–10am. She stated that later, Mr B initiated appointments at 5–5.30pm so that he could offer her longer treatments (45 minutes or longer). Ms A said that at this time of the day, no other staff were around, and usually it was just herself and Mr B at the clinic along with her young child, who attended all the appointments with Ms A.
8. In response to the provisional opinion, Mr C, on behalf of the clinic, told HDC that Mr B and Ms A were not left alone in the clinic, as reception hours did not stop at 6pm and other practitioners were working. However, Mr C accepted that he was unaware of whether Mr B was spending any extra time with Ms A.
9. Ms A told police that there were no issues with Mr B in the first year of her appointments. She did not have any concerns about his behaviour towards her or his osteopathy treatments.
10. Mr B told HDC that he had been treating Ms A since October 2021. He said that Ms A had presented with multiple physical complaints since she had started attending appointments with him, and she had numerous strains in her personal life. These included her financial position, and Mr B said that Ms A '[showed] stress, [was] emotionally up and down, [had] anxiety [attacks] and [was] sometimes crying'.
11. In response to the provisional opinion, Mr B told HDC that Ms A's health issues were complex. As a result of her chronic pain, she required treatment in different areas of her body depending on where the pain was on presentation each week (from her neck through to her pelvis). Mr B said that during the weekly appointments, and as part of his holistic approach to treatment, Ms A would open up to him about not only her past but also other issues and challenges she was facing. He stated that Ms A was a solo mother with financial struggles (living on a benefit), and naturally she warmed to him as each week he provided treatment to ease her chronic pain and offered a friendly ear and much-needed adult conversation. He said that she confided in him, and a friendship between them ensued.

³ Mr B was employed at the clinic as an independent contractor in 2022. Prior to that, Mr B was an employee at the clinic on a work visa after he arrived in New Zealand in 2021. He had practised as an osteopath overseas since 2019. In 2021 (during the COVID-19 lockdown) he emigrated to New Zealand and commenced work at the clinic. Mr B told HDC that he is a skilled and experienced osteopath, with the ability to provide considerable empathy to his patients while achieving their treatment goals.

12. Mr B stated that the extension of appointment times was necessary for the treatment and care he provided to Ms A. The standard allocation time of 30 minutes was often not sufficient and an extra 15 minutes was required. Extension of appointment times is not an uncommon mode of practice for osteopaths, and Mr B noted the appointment records of the osteopath who subsequently treated Ms A as evidence of this.⁴ Mr B also stated that it was Ms A who requested the last appointment of the day, as set out in the messages.⁵

Text messages and development of relationship

13. Ms A told police that Mr B contacted her directly about a year after her first appointment.⁶ She said that she received a text message from his personal phone advising her of her next appointment date. She stated that this was out of the ordinary, as every other appointment reminder she had been sent had been an automated message from the clinic's system.
14. Ms A provided HDC with screenshots of her conversations with Mr B across Instagram and Facebook, as well as the text conversations, for the period of February 2022 to 30 June 2023. These show that Mr B first contacted Ms A by text message on 3 February 2022 stating: 'Morning [Ms A] I hope you are ok. You have an appointment at 8:30 [flower emojis].' It appears that they became friends on [social media] around the same time and followed each other on [social media] in April 2022. HDC also obtained phone logs between Mr B and Ms A for the period of 14 October 2022 to 30 June 2023, which showed 868 lines of communication.
15. Ms A said that she received text messages from Mr B over the next few months, and usually Mr B would instigate the conversations. Initially the messages related to her treatments, but gradually they started to discuss their personal lives and sex, with Mr B asking her personal questions. Mr B messaged her through social media accounts as well.⁷
16. Ms A said that Mr B's behaviour changed over time and became 'over friendly' and flirtatious, and that when offering longer treatments, he would say things like: 'I am always doing you a favour, what are you doing for me?' Ms A said that she would respond to Mr B that she was paying him for treatment, but she felt that the longer appointments were not out of goodwill and that Mr B expected something in return. She stated that it was normal for Mr B to hug her before and after appointments, but the hugs began to feel romantic, and from time to time he would rest his hand on her.
17. Ms A told HDC that Mr B told her that in his home country, patients were treated in their underwear. Ms A told police that during one appointment, Mr B did mention that he needed

⁴ The clinical records show that the osteopath who subsequently provided treatment to Ms A extended the appointment time on two occasions.

⁵ Based on the text message conversations, both Mr B and Ms A arranged appointments.

⁶ In response to the provisional opinion, Ms A told HDC that she told police that Mr B contacted her about four months after her first appointment with him.

⁷ HDC received photographs of a portion of these text messages. The messages do not always contain clear dates or time stamps. However, as part of the investigation, HDC received raw data that confirms that the later messages were sent in June 2023.

to touch her vagina as part of her treatment for her pelvic area and hip bones. She said that she did not question his actions at the time, as she felt that Mr B knew what he was doing.

18. Ms A said that Mr B was aware that she was a single mother, and he knew her religious views, given that they had discussed these. She stated that Mr B would keep the conversations within normal boundaries at the appointments, but he would then steer the conversations towards more explicit topics during their text conversations. She said that she would message Mr B about pain she was experiencing in between appointments, and Mr B would message her back with exercises to try to help with the pain. Ms A said that these messages were accompanied by messages about sex. This is reflected in the screenshots of the conversations Ms A supplied to HDC.
19. The messages also contain screenshots sent from Mr B of his calendar, with details of the names of other patients and appointment times.
20. In response to the provisional opinion, Mr B accepted that he shared health information but said that this was only the names of some of his patients, and he did not disclose anything he considers to be personal or private health information. Mr B told HDC that he did not discuss any private health information of these patients with Ms A. He stated that this was an inadvertent disclosure of names of patients, which he accepts was unwise, and he will ensure that he maintains the privacy and confidentiality of his patients in the future.
21. Ms A said that Mr B began to offer to come to her house, and he invited her to his house outside of their scheduled appointments and offered free treatments. Ms A did not think this was appropriate and declined the offers, but she continued to see Mr B at the clinic.
22. Mr B accepted that he and Ms A started exchanging messages and that the topics ranged from 'day to day' things to questions about Ms A's pain management and discussing religion. He said that Ms A suggested meeting for coffee several times and suggested going for a walk, but these things did not occur. Mr B stated that often there were misunderstandings in message communications due to his spelling mistakes, incorrect use of English words, and translating to English. These misunderstandings were always clarified with Ms A in person at her appointments, and they both 'laughed them off'.
23. In response to the provisional opinion, Mr B told HDC that many of the messages have been exacerbated by his grasp of the English language and poor 'turn of phrase', which is often lost in translation. Mr B also highlighted that he has been unable to verify whether the messages Ms A has provided are complete and therefore contain the full context of the conversations, as he has been unable to access those messages personally. Regardless of this, Mr B accepted that it was inappropriate to have had such informal conversations with a patient, and that in doing so, he failed to maintain a professional boundary with Ms A.

Allegations of inappropriate behaviour — 17 June 2022

24. Ms A told police that in the evening of 17 June 2022, Mr B tried to kiss her after an appointment. In her statement, Ms A said:

‘We were outside in the waiting area/foyer. We were standing there hugging. I looked at him, he looked at me, we had our arms around each other, and he went to kiss me. I moved my head and pulled away from his body. Because I moved my face to the side, he only kissed me on the cheek.’

25. Ms A said that she tried to act calmly and left for her next appointment.
26. Mr B told HDC that he has never kissed any of his patients. He said that a ‘greeting hug’ and a goodbye kiss on the cheek is normal in his culture and that his other patients in New Zealand did this to him when he treated them at the clinic, and Ms A gave him a hug at the end of her consultations. Mr B said that he saw this as a ‘goodbye and thank you hug’.
27. Ms A said that she messaged Mr B following the appointment saying, ‘That was a very cheeky kiss. You stole that one x,’ with Mr B responding, ‘Come to [mine] and I can give you [proper] ones [winking face emoji].’ During this conversation, Mr B and Ms A also discussed their mutual like of one another.
28. Ms A accepted that she did have feelings for Mr B but said that her religious beliefs meant that she could not enter into an intimate relationship with Mr B outside of marriage. She stated that she reminded Mr B of this frequently during appointments and in their text conversations.
29. In response to the provisional opinion, Mr B stated that the wording of the complaint is that he tried to kiss Ms A, not that he actually kissed her. Therefore, the factual finding regarding this alleged incident (discussed below) is far more serious than what was alleged in the complaint, and the evidence does not justify the conclusion that he kissed Ms A. Mr B reiterated that he did not kiss Ms A, but he acknowledged that likely he would have given her a ‘peck on the cheek’, as is normal in his culture and practice as a greeting or goodbye. This is consistent with Ms A’s subsequent text message to him that this was a ‘very cheeky kiss’. Mr B reiterated that Ms A would give him a hug at the end of treatments, which he viewed as ‘a goodbye and thank you hug’. He said that there is nothing more sinister than that, particularly bearing in mind the rapport between the practitioner and patient over regular treatments.
30. In a message conversation on 24 February 2023, Ms A said that she ‘laughed and died at the same time’ when Mr B moved her breast during treatment. Mr B responded: ‘About your beautiful breast, I was very careful to not [cause] any pain.’ He also wrote: ‘You have no idea what I have been through. In [my country] women come to be [treated] in their underwear. I have seen so many breasts. But yours are special.’

Home visit — 6 March 2023

Ms A’s version of events

31. Ms A told police that on 5 March 2023 she messaged Mr B asking to be put on his cancellation list as she was in pain and wanted an earlier appointment. Mr B offered to visit her home to provide private treatment, to which Ms A agreed, and a time was arranged for the following day (6 March).

32. Ms A told HDC that she did not want to agree to this, but she was overwhelmed with pain. She said that following Mr B's arrival at her house, he advised her that she needed to be on the bed for treatment. Mr B proceeded to look at her neck and shoulder and then put his hands under her tee-shirt and unclipped her bra. Ms A said that this was not normal during a treatment, and she was in shock and did not say anything. She alleged that Mr B then proceeded to assault⁸ her indecently by way of inappropriate touching.
33. Ms A stated that Mr B stopped after she asked him to several times. She said that they talked, and she tried to explain to him that this type of behaviour occurred in relationships, and they were not together. Ms A said that Mr B said that he liked her, and she said that she liked him as well, but that they did not see 'eye to eye' given her religious beliefs. She stated that she set boundaries with him by advising him of her religious views on celibacy.
34. Ms A said that she felt embarrassed and vulnerable and was unable to say what she was thinking, as she blamed herself for letting this happen to her and allowing Mr B to come to her house. She said that following the incident, they kissed on the lips and Mr B left promptly. Ms A stated that no treatment was given at this appointment.
35. In response to the provisional opinion, Ms A told HDC that Mr B left 'abruptly' when her child's tutor arrived, and he snuck out of her house and asked her to collect his belongings from the lounge.
36. Ms A told HDC that she was in 'complete shock' and 'ashamed' about what had occurred and was concerned because her child was also in the house. She said that she discussed what had happened with her friend, who suggested that she see Mr B only at the clinic for future appointments.

Mr B's version of events

37. Mr B said that when he arrived at Ms A's house, she appeared to be 'fine', which he did not understand as previously Ms A had said that she was in severe pain. Mr B stated that Ms A suggested that she be treated on the floor, but given the difficulty in performing shoulder and neck articulations, they agreed that Ms A should be treated on the bed. The bedroom door was open during her treatment, and Ms A's child came in and out of the room during this time.
38. Mr B said that he treated Ms A's lower back, middle back, neck, and shoulders. During the treatment, Ms A was wearing loose clothing. Mr B stated that he lifted Ms A's tee-shirt (as was usual) when she was lying face down in order to assess her lower back and use the cupping technique,⁹ which went from the shoulder blade level down to the lower back. Without being prompted by Mr B, Ms A undid her bra strap for the cupping to be placed on her. Mr B said he suggested that Ms A get a towel to cover herself and make her feel more comfortable.

⁸ 'Indecent assault' is defined as 'the doing on the person of an indecent act that, without the person's consent, would be an indecent assault of the person', and can include unwanted sexual touching or exposure.

⁹ An alternative therapy that involves placing cups on the skin to create suction.

39. Mr B said that following the treatment, Ms A thanked him, and they hugged, as they often did. Mr B stated that the treatment at Ms A's house was 'strictly professional', and that Ms A was pleased at the end of the appointment and said that she would book another treatment at the clinic as soon as she was able. She returned to the clinic twice after the home treatment and told him that she liked his treatments.
40. In response to the provisional opinion, Mr B acknowledged that he should not have provided a free treatment at Ms A's home. He accepted that this was unwise and unprofessional, particularly given the vulnerabilities of Ms A.
41. Mr B stated that this was a one-off treatment provided after Ms A messaged him stating that she was in excruciating pain, and he knew that she was unable to get to his practice or to afford treatment. Mr B said that given these circumstances, his actions were largely justified. He stated that it is of note that by this stage, he had been treating Ms A on a weekly basis for 17 months. Further, Mr B said that when he had practised osteopathy in his home country (discussed below), often he would provide free treatment to his friends and family. Treatment in such circumstances is not specifically condoned by the Code of Conduct, but in cases where emergency treatment is required, this would be a justified exception. Mr B reiterated that on arrival at Ms A's home, she was not in pain and appeared fine.
42. In response to the provisional opinion, Ms A told HDC that while she acknowledges Mr B's version of events, her recollection differs. Ms A stated that the cupping did not occur at the appointment at her house, and this occurred at an appointment at the clinic. She said that Mr B did not ask her to get a towel to cover herself, and she can explicitly recall that she was wearing fitting clothes (black tights and a tee-shirt), not loose-fitting clothing as described by Mr B.

Documentation and subsequent messages

43. The clinical documentation provided to HDC contains no record of this consultation or the home visit.
44. In response to the provisional opinion, Mr B accepted that he should have documented the treatment he provided to Ms A at her home on 6 March 2023.
45. Following the home visit, Mr B sent a message to Ms A stating, 'What a nice time I have with you,' to which Ms A responded, 'I enjoyed spending that time with you too.'
46. Ms A said that she did not want to make a big deal about it and wanted to move on. She stated that she responded to Mr B's message as she wanted to end the conversation. She thought that this was a one-off incident and did not invite Mr B to her house again.
47. Ms A continued to attend appointments with Mr B at the clinic in the subsequent months, and Mr B and Ms A continued to exchange text messages throughout this time. On 18 June 2023, Mr B sent a message to Ms A asking her: 'Are you allowed to do oral or anal sex.' Ms A replied that 'any sexual behaviour was reserved for her future husband'.

Final appointment — 30 June 2023*Ms A's version of events*

48. Ms A told police that she attended an appointment with Mr B at the clinic at 3pm on 30 June 2023 due to nerve pain in her leg. Her child was also present.
49. Ms A alleged that during this appointment she was indecently assaulted by Mr B. She said that she told Mr B to stop, and she pulled away, and he did stop when he realised that she was not interested. She stated that he continued to treat her but did not touch her in the areas where she did not want to be touched. Ms A said that she panicked and froze and was unsure what to do given that Mr B was casual about what was happening.
50. Ms A said that at the end of the appointment, Mr B hugged her, and she left with her child.
51. Ms A stated that when she got home, she sent Mr B a message saying that his actions were inappropriate. This message was included in the bundle of screenshots provided to HDC. Ms A said that she also confronted Mr B about inappropriate touching during the home visit on 6 March 2023. The message stated:

'[Mr B], I didn't want to talk about this in front of my [child]. But I need you to know that I'm actually really upset by the way you touched my body, it was not consensual! You did not ask me first if you could touch me that way. It was inappropriate and I have already told you before when it happened at my house and before when you tried to kiss me the first time last year. I feel really betrayed [crying face emoji] and you haven't respected my boundaries when I've said no time and time again! I'm literally sitting in my car in tears and I feel so hurt by your actions. I feel violated, all because you thought it was ok to do that to me. It's not ok! No means no. It doesn't mean to keep trying until I give in [sad face emoji]. I appreciate that you're a fantastic osteo, but I'm now conflicted and I will have to consider seeing someone else [crying face emoji].'

52. Ms A said that Mr B tried to justify his actions as osteopathic treatments, and he denied that he had touched her in the way she had alleged.
53. Ms A declined to meet with Mr B to discuss what had happened, and she did not communicate with him again.

Mr B's version of events

54. Mr B told HDC that he treated Ms A for lower back and bilateral hip pain, for which he had treated her in the past. He said that he applied the same techniques as he had used previously. At the end of the treatment, he asked Ms A if she was ok (as was his usual practice with his patients). She responded that she was fine.
55. In his clinical notes provided in his response to HDC, it was documented that the 'lower quadrant inhibition technique' was used. This was the first time he had used this technique on Ms A. However, this comment is not included in the full clinical notes that were provided to HDC subsequently and is included only in the notes Mr B provided initially.

56. In response to the provisional opinion, Mr B told HDC that given the nature of the allegations, he provided an elaboration of the typed clinical notes for the appointments on 22 December 2022, 17 March 2023, 16 June 2023, and 30 June 2023. Mr B stated that these form part of his response and are not to be interpreted as altering the contemporaneous records.
57. Mr B said that he received a message from Ms A that night stating that she thought his treatments were inappropriate. He said that these messages surprised him, and he was disturbed by them. In the screenshots of text communication provided to HDC, Mr B responded to Ms A's message (at paragraph 51 above) stating that he did not touch her inappropriately and has 'never done that and u would never do it with intentions'. HDC understands that Mr B meant to say: 'I would never do it with intention.'

Further information from Mr B

58. Mr B told HDC that in all the years he has been qualified and practising he has always ensured that he does his best for all his patients. He said that he has never had any previous complaints about his osteopathic practice or his behaviour. Mr B said that following the allegation from Ms A that his treatments were inappropriate, he offered to talk with Ms A and clarify the allegation at the clinic. Mr B stated that it was not until the allegation that he realised he had crossed 'some degree of boundaries' as a practitioner, such as exchanging messages with Ms A. Mr B said that he should not have responded to Ms A's message when she initiated contact, as this appeared to encourage her to continue.
59. Mr B said that previously he has had patients ask for his phone number for various reasons, including that his treatments produced results for them or because they wanted to show him around. He told HDC that patients have also invited him out for coffee and dinner, but he declined these invitations. He said that his experience in New Zealand is that people are friendly, and he dropped his guard, as he thought Ms A was just being friendly. Mr B accepted that his communications with Ms A and his choice of words resulted in a misunderstanding between them. He said that despite all the conversations he had with Ms A, he does not believe that these went beyond a friendly level.
60. Mr B said that in all his treatments for Ms A, she was always made aware of the treatment required and that some manoeuvres might require a closer distance, but these were never inappropriate. He stated that Ms A's consent was always obtained beforehand. Mr B said that he always asked Ms A to dress in a comfortable manner for her appointments, and he never asked her to undress.
61. Mr B said that on several occasions he extended his appointment time for Ms A due to the extent of Ms A's physical complaints, which required extra time for treatment. However, this was not limited to Ms A, and he extended appointment times for other patients if required. He said that on some occasions he also allowed for an additional 20 minutes for Ms A to talk about the issues she was having in her life. Mr B told HDC that he had grown up helping and working for various charitable associations and people who lived in poverty. Given Ms A's situation, he felt it was natural to want to help her.

62. Mr B said that they discussed osteopathy practice in other countries and that when he was training, it was common practice for new patients to be examined in their underwear depending on their physical complaint. Mr B said that this is also the case in his home country, where the culture is more relaxed and alternative medicine is embraced in a natural way. Mr B did not provide any comment on his draping practices.
63. In response to the provisional opinion, Mr B told HDC that there are significant cultural differences between his home country and New Zealand, not only in day-to-day life, but also the way osteopathy is practised in his home country and in the world. Mr B reiterated his comments above that there is a more relaxed, laid-back approach to alternative medicine in his home country. Tied to this is Mr B's personal ethos of helping those in need and in pain, with such help often extending to charity work and free treatment for those not in a position to pay. Mr B advised that he is still learning about culture in New Zealand and there have been learning curves and challenges.
64. Mr B said that he offered Ms A free treatment at his house, as he does for friends or family, as it was a long distance to her house to provide free treatment. He told HDC that his offer did not involve driving to Ms A's house to provide free treatment.

Subsequent events

65. In October 2023 Ms A made a complaint to police setting out the allegations of indecent assault. She provided a copy of the messages between herself and Mr B. Mr B was not interviewed by police as he had left New Zealand.¹⁰
66. The clinic and the Osteopathic Council were also advised of the allegations. The clinic told HDC that it has not taken any action since becoming aware of the allegations. The clinic said that Mr B was a trusted and highly regarded practitioner for many patients at the clinic, and there had been no other issues or complaints with his practice. Following notification of the allegations, the clinic discussed the complaint with Mr B. Mr B told the clinic that he had downloaded the messages and 'there are all sort of [conversations] and good and bad messages. But its all about the [context] and personal understanding.'
67. In response to the provisional opinion, Mr C told HDC that this was the first time he had dealt with a situation such as this, and there was no guidance on how to act or respond. Mr C stated that as soon as he was aware of the allegations by HDC, he had a meeting with Mr B, who denied the allegations made by Ms A but stated that he regretted 'flirting' with Ms A and agreed that he should have stopped treating Ms A.
68. Mr C stated that when he became aware of the allegations, he familiarised himself with Ms A's patient history and reached out to a peer for advice, in addition to seeking legal advice. Mr C told HDC that he knew that Ms A was no longer being treated by Mr B and that she was being treated by another practitioner at the clinic. Mr C said that he saw Ms A on one occasion when he was at reception, and Ms A seemed to be in 'good spirits'.

¹⁰ To date, Mr B has not returned to New Zealand and has not confirmed whether currently he is practising as an osteopath.

69. Mr C told HDC that as Ms A continued to attend the clinic and had not raised any issues, he considered that she felt safe to attend appointments and he did not feel she was in any danger.
70. Mr C reiterated that he was not aware of any other allegations concerning Mr B and considered that he did not present any threat to patients or the public. Mr C said that his assessment was that Mr B had breached 'some boundaries' in terms of the code of conduct, but he was not posing any threat to warrant intervention or stop Mr B from practising at that stage. Mr C considered that as the case was with HDC, the New Zealand Police, and the Osteopathic Council, the allegations would be dealt with by these authorities. He said that if there had been a recommendation to order Mr B to stop practising, then it would have been enforced by the clinic. Mr C said that at that stage he decided to let the investigation take its course and to monitor Mr B in the meantime, as Mr B still had to fulfil his obligations to his other patients. Mr C stated that if it was necessary for Mr B to be ordered to stop practising, then HDC or the New Zealand Police should have requested this. Mr C stated that he considered that he had everyone's safety in mind at the time, and that going forward, cases will be acted on on an individual basis.
71. The Osteopathic Council considered that the allegations cast doubt on the appropriateness of Mr B's professional conduct and imposed conditions on his scope of practice.¹¹

Responses to provisional opinion

Ms A

72. Ms A was provided with an opportunity to comment on the 'information gathered' section of the provisional opinion, and her comments have been incorporated throughout the report where relevant.
73. Ms A stated that she strongly disagrees with areas of Mr B's statement. She said that Mr B's wrongdoing and her response to that are supported by the text messages. Ms A said that previously Mr B had discussed with her a trip to his home country and told her that he intended to return to New Zealand after this trip. She questioned why Mr B left New Zealand in November 2023 after he was contacted by police and has not returned.
74. Ms A stated that she does not want this to happen to anyone else, particularly in countries that do not have a Code of Rights for consumers of health and disability services.

Mr B

75. Mr B was provided with an opportunity to comment on the provisional opinion, and his comments have been incorporated throughout the report where relevant. Mr B accepted that the messages he exchanged with Ms A were inappropriate and that it was

¹¹ These included that Mr B was to advise the Council of any intent to return to New Zealand to practise, including details of the nature and location of intended practice. Mr B was to obtain Council approval for any practice location and was not to practise at a location not approved by Council or at a location without a health practitioner present. All patients were to be accompanied by a chaperone and, if a chaperone was not available, the appointment was not to proceed. These conditions were to remain in force until such time as the Council was satisfied that Mr B's professional conduct was no longer an issue.

unprofessional for him to have provided her with free treatment at her home. He accepted that such behaviour contravened professional boundaries, and that in doing so, he breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights (the Code). Mr B stated that he only ever had Ms A's best interests at heart, but he now appreciates that the lengths to which he went to ensure her health and wellbeing overstepped the professional boundaries expected of him in New Zealand.

76. Mr B said that recently he re-read the Council's Code of Conduct and, in particular, reminded himself of his professional boundary obligations, especially Principle 7. He stated that he certainly no longer communicates with any patient via text or social media.
77. Mr B accepted that with the benefit of hindsight, he can see that, over time, the friendly discussions they had during their weekly appointments, coupled with his cultural differences and mode of practice, blurred professional boundaries and the inherent power imbalance between practitioner and patient. He said that this is particularly so, on reflection, due to the emotional vulnerabilities of Ms A.
78. Mr B stated that he is truly sorry for his actions and has prepared an apology to Ms A, which he asked to be provided to Ms A. Mr B said that had he been in New Zealand, he would have liked to convey the apology to her in person.
79. Mr B stated that as a result of this process, he has reflected deeply on his conduct and his failings in respect of Ms A, and he is ashamed by the extent to which he engaged with Ms A in such an informal and unprofessional manner. He said that he remains committed and dedicated to his practice of osteopathy and to ensuring that he maintains the highest professional standards in the treatment of his patients going forward.
80. Mr B told HDC that he maintains his strong denial of the allegation of indecent assault. While he accepts that HDC has been unable to resolve the conflicting accounts and therefore has been unable to determine whether or not the alleged indecent assault occurred, he believes that several facts strongly support his version of events. However, he stated that ultimately this is an issue for the New Zealand Police to resolve.

Osteopathy clinic

81. The clinic was provided with an opportunity to comment on the provisional opinion, and its comments have been incorporated throughout the report where relevant.
82. In response to the provisional opinion, Mr C told HDC that he discussed the allegations with Mr B and considered that he had likely crossed 'some' professional boundaries. Following the allegation, Ms A continued to see another practitioner and did not raise any issues with the clinic. Mr C stated that he monitored Mr B closely after he was made aware of the allegations. Mr C told HDC that he had not dealt with a situation like this previously, and there was no guidance on how to respond. He considered that as the case was with HDC, the New Zealand Police, and the Osteopathic Council, the allegations would be dealt with by these authorities. He said that if there had been a recommendation to order Mr B to stop practising, then it would have been enforced by the clinic.

83. Mr C stated that retrospectively, once he had been made aware of the complaint, he could have asked for more support or guidance from HDC, the New Zealand Police, and the Osteopathic Council, but he was aware of confidentiality issues for all parties. Mr C accepted the recommendation to develop a policy for when a patient makes a complaint about staff. However, he noted that the clinic already has a protocol in place for when a patient makes a complaint to the clinic, and in the past, the clinic has been able to resolve any issues well.

Opinion: Mr B — breach

84. Under Right 4(2) of the Code,¹² Ms A had the right to have services provided to her that complied with professional, ethical, and other relevant standards. At the time of these events, Mr B was required to comply with the Osteopathic Council's Code of Conduct (Appendix A), namely, maintaining professional boundaries, protecting the privacy of patients, and keeping clear and accurate records. The maintenance of professional boundaries is an integral part of the provision of health services. I consider that Mr B's conduct contravened professional boundaries. As such, I have found Mr B in breach of Right 4(2) of the Code. The reasons for this decision are set out below.

Inappropriate communication

85. HDC has been provided with a copy of the messages exchanged between Ms A and Mr B. Mr B has not denied that these messages were sent by him, and, on the balance of probabilities, I consider that these are actual messages that were exchanged between Ms A and Mr B while he was providing her with osteopathic treatment. To support reaching this conclusion, I note that the text data received from the phone company between 18–30 June 2023 corresponds with the screenshots that Ms A provided to New Zealand Police and HDC. I also note that Mr B sent screenshots of his calendar appointments (discussed below) and discussed Ms A's health concerns with her in addition to providing advice on treatments and discussing appointments. The discussions range from day-to-day matters to more intimate discussions and took place from 2022 until June 2023 when Ms A was a patient of Mr B. I acknowledge that there are conflicting interpretations of the messages between Mr B and Ms A. However, I do not accept Mr B's explanation that these communications never went beyond a friendly level, noting the content of the messages, which frequently discussed personal and sexual matters. I also note that previously he acknowledged that there were 'good and bad' messages when discussing these allegations with the clinic.
86. As this Office has stated previously,¹³ an inherent power imbalance exists between a consumer and a healthcare provider. This arises from the nature of the relationship, and is more pronounced in contexts such as this, where the provider is privy to intimate details about a healthcare consumer's life. Trust is fundamental to the relationship, in ensuring that the consumer is assured that the provider is acting with the consumer's best interests in

¹² Right 4(2) states: 'Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.'

¹³ Opinion 21HDC00086.

mind. It is critical that relationships between health professionals and their clients stay within the professional realm, to avoid any exploitation or abuse of power.

87. Mr B was aware of Ms A's vulnerability because he was aware of her history of consulting him for personal issues that were arising in her life, including her physical complaints. I acknowledge that Ms A was an active participant in the conversations with Mr B. However, I do not consider this a mitigating factor for the reasons I have discussed above. The fact remains that there was an inherent power imbalance between patient and provider. Considering Ms A's vulnerability, and the power imbalance owing to Mr B's knowledge of Ms A's personal circumstances and physical health issues, it was inappropriate for Mr B to communicate with Ms A in the way that he did. I am very concerned about the nature of some of the messages that were sent to her, particularly those of a sexual nature, and the comments on her body following the appointment in February 2023. In my view, the messages Mr B sent to Ms A clearly crossed a professional boundary.

Allegations of inappropriate conduct

88. Ms A told HDC that Mr B's behaviour had become flirtatious over time and that he extended appointment times to treat her. Ms A told police that these appointments were scheduled by Mr B at the end of the day so that he could do longer treatments. Mr B accepted that he did extend appointment times for Ms A, but he stated that he did this for other patients as well.
89. In response to the provisional opinion, Mr B stated that extension of appointment times was necessary for the treatment and care he provided to Ms A, and that extension of appointment times is not an uncommon mode of practice for osteopaths. Mr B also stated that it was Ms A who requested the last appointment of the day, as set out in the messages.
90. I acknowledge Mr B's rationale for extending appointment times, and that this is not uncommon among other practitioners. However, I remain of the view that the extension of appointment times was not appropriate in this case, as the longer appointments only blurred the professional boundaries further, particularly in the context of their written communication. I refer specifically to the message from Mr B on 24 February 2023 where Mr B states: 'I loved to treat [you] yesterday. I could treat you for hours.'
91. I also do not accept Mr B's submission that it was Ms A who was solely responsible for arranging the late appointments, which are acknowledged as largely having been scheduled for later in the day. Based on the written communications, both Mr B and Ms A arranged appointment times. For example, Mr B sent the following message to Ms A on 9 August 2022:
- 'Hi [Ms A]. I am checking my [patients] on Thursday 18. [You] are booked at 5pm. But as I changed my schedule to finish at 6:30 if you want you can rebook to be my last patient of the day. Xxx'
92. I note that there are also messages from Ms A arranging appointment times, with some of these being the last appointment of the day.

93. Ms A alleged that Mr B tried to kiss her following an appointment on 17 June 2022. Mr B denies this. However, in a text message between Mr B and Ms A after this appointment, Mr B stated: 'Come to [mine] and I can give you [proper] ones.'
94. In response to the provisional opinion, Mr B reiterated that he did not kiss Ms A and that Ms A's allegation is that he tried to kiss her — not that he actually did kiss her. He accepted that it is likely that he did give her a kiss on the cheek, which he states is normal in his culture and practice as a greeting or goodbye.
95. Ms A told police that Mr B tried to kiss her and that this occurred when they had hugged following an appointment, and Mr B 'went in to kiss her'. She said that she then moved her head to the side and pulled away from his body, and Mr B kissed her on the cheek. Ms A reiterated in her complaint to HDC that Mr B tried to kiss her and that this was non-consensual and unsolicited. Despite Mr B's submission above, I consider that it is irrelevant as to whether Mr B actually kissed Ms A or not. The fact that he tried to kiss her was inappropriate as was the communication from Mr B following this incident. I have already commented that the relationship had gone beyond a professional level at this time, and I remain critical that this incident is a further example of Mr B breaching professional boundaries.

Allegations of indecent assault

96. Mr B provided free treatment to Ms A at her home on 6 March 2023. Ms A alleged that it was during this appointment that she was first indecently assaulted by Mr B. Mr B denies that he indecently assaulted Ms A as alleged. He accepts that he provided free treatment to Ms A at her home and said that this is what he does for friends and family.
97. Ms A alleged that she was indecently assaulted by Mr B on a second occasion at the clinic on 30 June 2023. Mr B also denies these allegations.
98. Given the conflicting accounts of what occurred at both appointments, I am unable to make a finding as to whether Ms A was indecently assaulted as alleged. I note that Ms A appropriately made a complaint with New Zealand Police. I would be extremely critical of Mr B if the incidents occurred in the manner described by Ms A.
99. I am critical that Mr B provided free treatment at Ms A's home on 6 March. Despite his response (outlined in paragraph 59) that his offer did not mean that he would travel to Ms A's home to offer free treatment, this is exactly what occurred. It was not appropriate for him to provide free treatment at Ms A's home despite his assertion that this is what he does for friends and family. Ms A was his patient, and Mr B's lack of judgement in seeing Ms A at her home has resulted in a significant breach of professional boundaries.

Documentation

100. Two sets of clinical records¹⁴ were provided by Mr B to HDC as part of the investigation. In one set of incomplete records, there are additional comments from Mr B that are not included in the full set of records. I also note that there is no record of the appointment at Ms A's home on 6 March.
101. In response to the provisional opinion, Mr B told HDC that he did not provide two sets of clinical records. One set of records was provided to HDC by the clinic (consisting of handwritten and subsequent typed notes). Mr B said that in response to the investigation and given the nature of the allegations, he provided an elaboration of the typed clinical notes for the appointments on 22 December 2022, 17 March 2023, 16 June 2023, and 30 June 2023. Mr B stated that these form part of his response and are not to be interpreted as altering the contemporaneous record.
102. While I acknowledge that these additional comments are not to be interpreted as altering the records initially provided by both Mr B and the clinic, the comments made by Mr B at the above appointments are written in clinical shorthand and refer to treatments provided and diagnoses. I also note that these comments are not included in the clinical records sent to HDC by Mr B and the clinic on other occasions. I consider that these comments have been incorporated into the contemporaneous clinical records and do present as clinical notes. There is no description of them as an 'elaboration' or that these are additional comments made to the original records. These include comments about Ms A's presentation and her emotional state, and the treatments provided, which have been made some months after the consultations.
103. The Osteopathic Council's Code of Conduct¹⁵ (Appendix A) sets out that records must be clear and accurate. I remain concerned about Mr B's additions to the clinical records, particularly as they were completed some months after the consultations and after he was advised of the complaint to HDC, and that there is no record of the visit on 6 March 2023, although Mr B told HDC that he treated Ms A's lower back, middle back, neck, and shoulders, although this is disputed by Ms A. Regardless of whether this was a free appointment, there should have been documentation of the treatment provided.

Conclusion

104. Given that the maintenance of professional boundaries is an integral part of the provision of health services, I consider that Mr B's conduct, specifically sending inappropriate text and social media message communications, providing a free service at Ms A's home, conducting longer appointments than necessary, and kissing her following an appointment, breached professional boundaries. I am also critical of Mr B's standard of documentation.

¹⁴ One set was a complete set of records dating back to October 2021. The other set was provided by Mr B in his initial response to HDC and dated back to December 2022.

¹⁵ The current Code of Conduct is dated January 2023. The previous version, dated September 2020, contains the same information regarding maintaining professional boundaries, documentation, and client confidentiality.

105. The Osteopathic Council Code of Conduct requires osteopaths to maintain a professional boundary between themselves and healthcare consumers. It also provides guidance that osteopaths should avoid online relationships with current healthcare consumers and should not use social media or electronic communication to build or pursue personal relationships with healthcare consumers, in addition to providing guidance on the requirements for keeping records. I consider that Mr B did not adhere to this Code of Conduct, and therefore breached Right 4(2) of the Code, which states that consumers have a right to have services provided that comply with legal, professional, ethical, and other relevant standards.

Sharing appointment details — adverse comment

106. In the messages provided to HDC, Mr B had sent screenshots of his appointment calendar to Ms A on several occasions. These screenshots contain names and times of other patients who had been scheduled for appointments with Mr B.
107. In response to the provisional opinion, Mr B told HDC that he did not disclose or discuss any private health information of these patients with Ms A. Mr B accepts that this was personal information but not private information and stated that this was an inadvertent disclosure of names of patients, which he accepts was unwise.
108. The Osteopathic Council's Code of Conduct sets out that providers are required to maintain health consumers' confidentiality and privacy by not discussing healthcare consumers or practice issues in public places, including social media. In sharing his calendar on a screenshot, Mr B disclosed that several people were receiving treatment with an osteopath and, in doing so, shared clinical information, and I remain concerned that Mr B disclosed this private health information to Ms A and that this occurred on several occasions. I am also concerned that Mr B, in providing his response, shows no awareness that by sharing names of people who are in receipt of care from an osteopath is indeed sharing clinical information.

Opinion: Osteopathy clinic — adverse comment

109. The clinic had an independent contractor's agreement with Mr B. The clinic's director was advised of the allegations following Ms A's complaint to HDC in October 2023. The clinic told HDC that it took no action after being advised of the allegations, and Mr B continued to practise until he left New Zealand in November 2023.
110. In response to the provisional opinion, Mr C told HDC that he discussed the allegations with Mr B and considered that he had likely crossed 'some' professional boundaries. Following the allegation, Ms A continued to see another practitioner and did not raise any issues with the clinic. Mr C stated that he monitored Mr B closely after he was made aware of the allegations. Mr C told HDC that he had not dealt with a situation like this previously, and there was no guidance on how to respond. Mr C considered that as the case was with HDC, New Zealand Police, and the Osteopathic Council, the allegations would be dealt with by these authorities. He said that if there had been a recommendation to order Mr B to stop practising, then it would have been enforced by the clinic. Mr C told HDC that he believed he had everyone's safety in mind at the time but accepted that he could have asked for more support or guidance from HDC, New Zealand Police, and the Osteopathic Council.

111. The Code of Conduct requires that providers should intervene to prevent unsafe, incompetent, unethical, and unlawful practice. This includes discussing the issues with those involved, reporting at the earliest opportunity, and taking other actions necessary to safeguard healthcare consumers.
112. I accept that Mr B did not inform the clinic of the allegations at the time they were made by Ms A in June 2023 and that the clinic may not have been aware of the full extent of the communications between Ms A and Mr B. I also acknowledge that previously the clinic may not have dealt with allegations of this nature involving staff. However, subsequently the clinic was advised of the complaint by HDC¹⁶ and effectively was on notice that there were issues with the maintenance of professional boundaries following Mr B disclosing that there were 'good and bad messages' to Ms A. I remain concerned that the clinic took no action and continued to let Mr B practise without any oversight or attempt to minimise any potential harm to Ms A (who remained a patient at the clinic with another osteopath following the allegations) or other consumers at the clinic, as required by the Code of Conduct.

Changes made since events

113. In response to the provisional opinion, Mr B told HDC that he has engaged two mentors to provide support and guidance in his osteopathy practice and is also undertaking appropriate continuing education courses in respect of ethics and professional boundaries.

Recommendations

114. I recommend that should Mr B return to New Zealand to work as an osteopath, the Osteopathic Council of New Zealand undertake a competence assessment of him.
115. I recommend that the clinic develop a policy that outlines steps to be taken when a patient makes a complaint about staff. A copy of the policy is to be sent to HDC within six months of the date of this report.

Follow-up actions

116. Mr B will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.
117. A copy of this report with details identifying the parties removed will be sent to the Osteopathic Council of New Zealand and the regulatory authority for osteopaths in Mr B's home country, and they will be advised of Mr B's name in covering correspondence.
118. 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.

¹⁶ HDC contacted the clinic in October 2023.

Appendix A: Osteopathic Council of New Zealand Code of Conduct — January 2023

‘Principle 4: Maintain health consumer trust by providing safe and competent care

Standards

...

4.7 Keep clear and accurate records

Principle 5: Respect health consumer’s privacy and confidentiality

Standards

5.1 Protect the privacy of health consumers’ personal information.

...

5.6 Maintain health consumer’s confidentiality and privacy by not discussing health consumers, or practice issues in public places including social media. Recognise that even when no names are used, a health consumer could be identified.

Principle 6: Work respectfully with colleagues to best meet health consumers’ needs

Standards

...

6.8 Intervene to stop unsafe, incompetent, unethical or unlawful practice. Discuss the issues with those involved. Report to an appropriate person at the earliest opportunity and take other actions necessary to safeguard health consumers.

Principle 7: Act with integrity to justify health consumers’ trust

Standards

...

7.15 Maintain a professional boundary between yourself and the health consumer, their family/whānau and other people nominated by the health consumer to be involved in their care.

7.16 Do not engage in sexual or intimate behaviour or relationships with health consumers in your care or with those close to them “See Guidance: Professional boundaries”.

Guidance: Professional boundaries

- Maintain professional boundaries in the use of social media. Keep your personal and professional life separate as far as possible. Avoid online relationships with current or former health consumers. Do not use social media or electronic communication to build or pursue personal relationships with health consumers.

- Osteopaths must be aware of professional boundaries and ensure that communication via text is not misinterpreted by the health consumer or used to build or pursue personal relationships.
- You should consider the reassignment of care, if possible, of health consumers with whom you have a pre-existing non-professional relationship.
- Sexual relationships between osteopaths and persons with whom they have previously entered into a professional relationship are inappropriate in most circumstances. Such relationships automatically raise questions of integrity in relation to osteopaths exploiting the vulnerability of persons who are or who have been in their care. Consent is not an acceptable defence in the case of sexual or intimate behaviour within such relationships.'