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## **SUBMISSION BY MASSAGE NEW ZEALAND**

### **on the Discussion Document “How Do We Determine if Statutory Regulation is the Most Appropriate Way to Regulate Health Professions?”**

Thank you for the opportunity to make a submission on this discussion document.

Massage New Zealand is the national professional association for massage therapists. We were formed in 2006 from the amalgamation of the Therapeutic Massage Association (formerly the New Zealand Association of Therapeutic Massage Practitioners, founded 1989) and the Massage Institute of New Zealand, founded 1985).

Massage is defined as ‘the manipulation of soft tissue for therapeutic benefit’. When we are discussing how the proposals in this discussion document could impact on massage therapy, it is important to be aware of the following: Massage therapy has a variety of purposes. Growth in the massage industry over the last ten years has seen the majority of massage consumers seeking treatment for soft tissue problems, rather than choosing massage therapy purely for its effects on physical and mental relaxation.

New Zealand therapists are using a wide range of techniques concerned with (inter alia) the following: relaxing muscles; enhancing circulation; rehabilitate after injury, including realignment of scar tissue; improving the range of joint movement; removing causes of soft tissue pain, such as headaches, back pain and occupational overuse; releasing fascia by gentle manipulation; facilitating lymphatic drainage.

The 2002/3 New Zealand Health Survey indicated that 9.1% of NZ adults visited a massage therapist at least once in the last 12-month period, compared with 6.1% who consulted a chiropractor and 4.9% who attended an osteopath. The latter are both professions with statutory regulation <sup>(1)</sup>.

#### **Summary of submission:**

While Massage New Zealand broadly supports the amendments to the criteria proposed in this document, we want to see a change of wording to Criterion 1 and present many points that we believe would be worth considering when looking at adding health professions to the HPCAA. We give examples of how these points relate to the example of massage therapy.

**1. Are the principles for regulation set out in section 9 of this document appropriate? If not, why not?**

Yes, appropriate.

**2. Are the criteria set out in section 10 appropriate? If not, why not?**

We would like to make the following suggestions on the details within the criteria as they would relate to massage therapy:

**Criterion 1**

Amend the phrase “clinical intervention with the potential for harm” by adding “physical, mental or emotional” before the word harm in line with the corresponding Ontario legislation. This amendment would also follow on more clearly from the definition of a health service (referring to section 9’s over riding principles) as “a service provided for the purpose of assessing, improving, protecting, or managing the physical or mental health of individuals or groups of individuals.”

This would provide protection for the public by ensuring that health practices which may harm them mentally or emotionally if done badly, such as by being subjected to sexually inappropriate behaviour when they are undressed and lying on a massage table, or undergoing and being charged for ineffective treatment by untrained or under trained practitioners, are regulated.

We would also want to include the consideration of indirect harm, such as harm from practitioners retaining clients when it is in the best interest of the client to be referred on, or being charged for unnecessary or inappropriate treatment.

**Criterion 2**

Regarding self regulation, Massage New Zealand endeavors to ensure that massage therapists are well qualified, that training establishments provide consistent teaching standards and that there is a central register of massage practitioners. However, Massage New Zealand has approximately 400 members, whereas there are thousands of people in business practicing massage. Therefore voluntary regulation is not working, and the interests of the public are not being protected.

Self regulation will only work if the public, government or other health professionals put pressure on all practitioners to be regulated. Unfortunately, regarding massage therapy, the reality in NZ is that the public seems to be unaware that therapists can be in business with no prior training, so they are not in an informed position with relation to potential risks to their safety.

Massage New Zealand has disciplinary processes in place, but these can only be enforced on our members and the strongest sanction we can impose is to expel

them from our voluntary association. This is an inadequate system of protection for the public.

### **Criteria 3 & 4**

Massage New Zealand has done extensive work to create a voluntary regulatory framework. We have worked with training establishments to ensure/achieve consistency in the massage training offered at the main colleges in New Zealand.

We have defined Scopes of Practice for our two levels of registered members, Remedial Massage Therapists (RMTs, who hold a minimum of a diploma in massage and are qualified to undertake remedial treatment of soft tissue dysfunctions such as muscle imbalances and postural problems, along with muscle injuries) and Certified Massage Therapists (CMTs, who hold a minimum of a certificate of massage and are qualified to provide relaxation and stress management massage). Both RMTs and CMTs require on-going professional development to retain registration. We have procedures in place to ensure that our members are of good character and a disciplinary process for investigating complaints from the public or other health professionals.

Regrettably our registered members are but a small proportion of the practicing massage therapists in NZ. The scope of our beneficial regulating influence is correspondingly restricted.

### **Criterion 5**

We feel that the last point of Criterion 6 is covered by points listed in Criterion 5.

When doing a cost-benefit analysis of regulating a specific profession, more than just financial costs-benefits should be looked at. The cost to the public of potential risk of harm by not regulating needs to weigh in to the balance. This should also include the financial cost to consumers in the instance that they receive unnecessary or ineffective treatment from practitioners who put financial gain before patient-centred ethics.

When weighing up costs and benefits for regulation, it should also be taken into account that greater clarity regarding levels of competence and scopes of practice within a profession reduces the need for the public to visit their GP for initial assessment. They could go directly to the appropriate health care professional, as some already do. This would free up the GP's time for cases only they are qualified to treat and lower overall health care costs.

Much of the cost of regulating a profession can be mitigated by creating blended authorities. The HPCA Amendment Bill is urgently needed to allow blended authorities or otherwise restructuring existing authorities, which will go a long way towards bringing down the costs of statutory regulation to each profession's members and thus make regulation even more strongly in the public interest, since the benefits of intervening must exceed the costs.

## Criterion 6

We support the proposal that Criterion 6 can stand alone as the basis for regulation of a health profession, unlike the Australian criteria, where a health service will only be regulated if it fulfills all six criteria.

Criterion 6 contains points that would, for example, apply to the massage profession:

- Therapists commonly practice without the supervision or support of peers, managers and other regulated staff;
- They may well move to different clinics, areas or work on short term contracts;
- Unless they are members of Massage New Zealand, they will generally not be working under a professional code of conduct;
- They frequently provide services to vulnerable or isolated individuals (see answer to question 4);
- They may be working with no prior training in either practical skills or professional values, since anyone can call themselves a massage therapist and set themselves up in business;
- There are certainly complaints against massage therapists, generally for sexual misconduct. Without statutory regulation, even those who are convicted of such offences can just get back in to practise, once they have served their sentence, so the public are put back at risk.
- Massage therapists who train in relaxation massage (to certificate level) may not have an extended period to gain the professional ethos which underpins safe practice. This situation can be remedied, and the public risk minimized, by ensuring statutory regulation of all massage therapists and ensuring that they are working under a code of ethics and undergoing ongoing professional development.
- Massage consumers and other health professionals commonly need assistance to identify appropriately qualified professionals. This can lead to people not getting appropriate/beneficial massage treatment. With the recent cuts in ACC funding, the cost of physiotherapy and massage are becoming more comparable. However, a person may well be spending their money on a less effective treatment for their particular health complaint, simply because their GP or other health provider is unsure who is a well trained and competent massage therapist.

Certainly it is in the public interest to receive effective treatment from a trained therapist and to have clarity, for both consumers and other health professionals, around what types of treatment a particular therapist is competent and entitled to provide.

3. **Are there any other criteria you think should be added to section 10?**

No

4. **Do you agree that to establish a ‘risk of harm’ the profession must be involved in at least two of the following activities:**

- **invasive procedures**
- **clinical intervention with the potential for harm**
- **making decisions or exercising judgement which can substantially impact on patient health or welfare, including situations where individuals work autonomously, ie, unsupervised by other health professionals?**

In our view a ‘risk of harm’ arises when a profession is involved in any single one of the above activities. If two of the three is to be the standard, we would suggest that the wording be amended as suggested under our answer to question 2 above.

Regarding the establishment of a risk of harm, we would ask you to consider the following: risk of harm of a profession covers many aspects. In the case of massage therapy, for example, risk of harm falls under several categories:

**Risk of Adverse Effects from the Application of Massage Therapy:**

Many of the procedures and techniques used by massage therapists cause a therapeutic disruption to unhealthy tissues. However, when applied inappropriately, the effects can be bruising, swelling and considerable pain. There is also a risk that the condition worsens. This may be temporary or it could develop into a more serious health outcome.

The adverse effects of the application of massage therapy was reviewed by Dr Edzard Ernst 2003 (2). He included cerebrovascular accidents, pseudoaneurism, pulmonary embolism, embolization of a kidney, haematoma, leg ulcers, nerve damage, posterior interosseous syndrome, hearing loss and various pain syndromes. Results from the study suggest that “massage by non-professionals and the use of forceful techniques are relatively often associated with adverse events.”

A practitioner’s lack of knowledge of contraindications to massage treatment can be a severe risk to the consumer’s health. This lack of knowledge may occur with untrained or under trained practitioners. For example, massage is totally contraindicated for 3-6 months after a diagnosis of Deep Vein Thrombosis. A clot dislodged from the vein can travel through the body, with potentially fatal consequences. Massage over a tumour or site of cancer is contraindicated because it can contribute to the spread of cancer cells to other areas of the client’s body. A client’s safety can be compromised through lack of knowledge or the disregard of existing contra-indications.

In the Ministry Advisory Committee on Complementary and Alternative Health 2004 report <sup>(3)</sup>, the inherent risks of massage were stated to include tissue or nerve damage or exacerbation of injury.

### **Risk to Vulnerable Populations:**

Massage is used by many vulnerable people such as the elderly, pregnant women, patients with serious or chronic illnesses such as cancer, HIV, post-traumatic stress disorder, multiple sclerosis and diabetes. Clearly, adequate training and able competence of the practitioner is of great importance. The aging population means that an increasing proportion of people seeking massage will have chronic conditions including heart disease and other high risk disorders. These people, with increasing health risks coupled with greater life expectancy, need to have access to safe and effective massage therapy.

Massage increasingly provides a primary healthcare option for people who rely on their massage therapist for assessing and effectively treating their condition. Someone with lower back pain may go straight to their massage therapist without seeking an initial diagnosis elsewhere. More and more clients are utilizing massage therapy for the short or long-term treatment of more complex cases.

As such, it is even more important that the public can rely on their choice of massage therapist being safe and effective, and that they have a clear system (register) for choosing a thoroughly trained practitioner in the first instance.

Self regulation, as used by the Master Builders Association cited in the discussion document, is not sufficient or appropriate in the healthcare field, where vulnerable populations are involved, being open to risk through effects on their health, risks to their safety and through possible sexual misconduct. Health professions are not suited to self regulation, because they are dealing with vulnerable populations; often people who are in pain; people who are reliant on the advice they are given; people who trust what they are told.

### **Risk of Financial Harm:**

It is essential that health care providers accept responsibility for serving the patient's best interest. Thorough training that instills values of public service and patient-centred care are essential to ensure that clinical decision making is based on therapeutic reasoning, rather than financial gain. Money wasted on ineffective treatment may prevent a person being able to afford the treatment they require and raises overall health costs.

Putting financial gain above therapeutic benefit is more likely with an untrained or under-trained practitioner, particularly as the latter may be struggling financially due to repeated unsatisfactory outcomes and consequent lack of personal recommendation.

### **Risk of Sexual Abuse:**

Due to the intimate nature of the therapeutic relationship in the massage clinic, it is essential for public safety that everyone be able to clearly distinguish between regulated professionals who are trained in professional ethics and boundaries and are held accountable for their conduct, and untrained or under trained and unregulated practitioners. As stated in the College of Massage Therapists of British Columbia, (the statutory regulatory body) 2004 Annual Report <sup>(4)</sup>, sexual misconduct is an exploitation “of a relationship of trust” in a delicate relationship which “arises from the fact that massage therapy patients must of necessity put themselves in a vulnerable position, both physically and psychologically, when they are receiving massage therapy treatments.”

Sexual misconduct is the most common complaint made against massage therapists, and illustrates the need to include mental and emotional risk of harm in the decision making process for regulation under the HPCAA.

The observation that complaints against massage therapists have, in almost all cases, been made against non members of Massage New Zealand points to the fact that to protect the public, massage therapists need to be controlled by statutory regulation. It is also important to consider that many complaints are likely to not be made officially, since the public is lacking in information as to how to go about making such complaints.

This risk of sexual abuse is further complicated by common confusion amongst the NZ public as to the delineation between professional massage therapists and sex workers advertising ‘massage’, as a cover for sexual activities. This means that many people avoid accessing the massage therapy that would be physically and/or emotionally beneficial, because of their concern over ending up, unwittingly, in a brothel. Others have had the embarrassment of being offered unwanted sexual services and this again can lead to them avoiding seeking therapeutic massage in the future, to their physical and mental detriment.

The sex industry has come under statutory regulation and no longer needs to hide behind a front of advertising massage. Statutory regulation of the massage industry will provide increased clarity for members of the public who seek therapeutic treatment.

### **Risk of Indirect Harm:**

There are a number of ways that the public can be potentially put at risk of harm indirectly by a massage practitioner:

- Incorrect assessment of their health complaint;
- Missing an existing health complaint;
- Preventing, delaying or discontinuing other effective clinical interventions;

- Working outside scope of practice, meaning that the practitioner is using techniques which they are not qualified to provide;
- Breaching client confidentiality;
- Ineffective record keeping, affecting ongoing treatment and/or the ability to effectively inform another health practitioner to whom the client is being referred of prior treatment and outcomes;
- Failure to refer on;
- Fraud.

In summary, any risk to the public should strengthen the case for regulation of health services, without that harm needing to be irreversible and involuntary. If a person is treated with inappropriate techniques, their harm may be only that they make no progress, but if such treatment is continued by an unethical or untrained practitioner, that constitutes a case of harm.

**5. Should a profession be required to meet all of criteria 1–5 to establish that the health services pose a risk of harm to the public? If not, what are the minimum criteria a profession should meet?**

The application of the criteria should be taken on a case by case basis, looking overall at both the risk of harm to the public and also whether regulation is otherwise in the public interest.

The minimum criteria a profession ought to meet are a set of standards which provide safe, effective practitioners; standards which are clearly communicated to the public. In this way the profession is accountable and transparent in its role in the healthcare system.

**6. Do the proposed criteria provide sufficient guidance on what factors will be taken into account in establishing whether it is ‘otherwise in the public interest’ to regulate a profession?**

Yes

**7. Should applicants be given the detailed guidelines outlined in section 11?**

Yes

**8. Should any other matters be included in the guidelines outlined in section 11?**

- We would like consideration to be given to the points we have raised under question 2;
- A template for a potentially successful application, i.e. what detailed information is required and a guide to the preferred format.
- Some guide as to time frames around the length of the consideration process.

**9. Should any other information be added to the application form to guide applicants?**

No

**10. If the revised criteria are confirmed, do you have any comments about the timing for introducing the new criteria? In particular, do you have any comments about how introducing the proposed changes might impact on the new professions that currently have applications with the Ministry?**

We would like to see the new criteria introduced as soon as is practical. However, we consider that those professions which currently have applications with the Ministry should not be forced to conform to the new criteria. We presume that those applications were submitted in accordance with the previously existing criteria which were deemed adequate for previous successful applicants.

**11. Do you have any other comments?**

In conclusion, we consider that the regulation of health professions is strongly in the public interest, whether or not they are at risk from irreversible and involuntary damage.

The benefits to the public of being able to choose a well qualified and competent therapist by far outweigh any increase in treatment costs. Having a system in which regulates therapists by reserved title, (as occurs in many cases in New Zealand, as well as in Canada) rather than by exclusive scope of practice still offers the public free choice. They can choose a regulated therapist or opt to visit an unregulated therapist, at perhaps a lesser cost, but they will have the informed knowledge that they will be visiting a person who falls short of the regulatory standards.

Furthermore, allowing the public access to a formal complaints process, which acts effectively to stop unsuitable people from being regulated in the future, paves the way for more consistency of treatment as well as peace of mind for the public.

We appreciate having had the opportunity to provide input on this discussion document.

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**References**

1 Ministerial Advisory Committee on Complementary and Alternative Health (2004) *Complementary and Alternative Health Care in New Zealand*, p 13.

2 Ernst, E (2003) *The Safety of massage therapy*. *Rheumatology*, 42 (9), p 1101-1106.

3 Ministerial Advisory Committee on Complementary and Alternative Health (2004) *Complementary and Alternative Health Care in New Zealand*, p 14.

4 College of Massage Therapists of British Columbia (2004) *Annual Report*. In house, p11.