

## Referral of Ethical Complaints

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### Preamble

Massage & Myotherapy Australia (Association) is a not for profit body representing the professional practice of massage and myotherapy. In order to provide support to members to achieve best practice and levels of excellence, and in order to safeguard the public, the National Ethics Committee (NEC) hears complaints from the public and other health providers about massage and myotherapists. The NEC has delegated authority from the Board to investigate complaints and to recommend determinations. The NEC functions strictly within the parameters of the Constitution and Ethical Complaints Guidelines to apply the Code of Ethics and Standards of Practice when hearing complaints and making determinations.

Health Care Complaints entities are independent state and territory bodies that deal with complaints about health service providers under various state-based legislative or statutory instruments. Most States and Territories have established processes and standards to manage complaints made against health providers not required to be registered by the Australian Health Practitioners Registration Agency (AHPRA)<sup>1</sup>. Legislation remains being considered in the ACT and Tasmania with a view to have consistent complaints processes nationally.

The Association has aligned its complaints data to categories used by AHPRA. This allows data to be presented using consistent and recognised definitions, and to allow transparent comparison against other health provider groups.

### Aim

- To provide clarification on the classification of complaints heard by the NEC
- To establish norms for when, in the opinion of the NEC as a delegate of the Association's Board, complaints, recommendations or other information should be referred to Health Care Complaint Entities for investigation.

### Process

AHPRA classifies complaints, based on established codes and standards of practice into categories of conduct as follows:

#### Unprofessional Conduct

Unprofessional conduct includes:

1. breach of the National Law
2. breach of a registration condition or undertaking
3. conviction for an offence that may affect suitability to continue practice
4. providing health services that are excessive, unnecessary or not reasonably required
5. influencing, or attempting to influence, the conduct of another registered health practitioner that may compromise patient care
6. accepting a benefit as inducement, consideration or reward, for referrals or recommendations to use a health service provider
7. offering or giving a person a benefit, consideration or reward, in return for providing referrals or recommendations to use a health service provider
8. referring a person to, or recommending another health service provider, health service or health product, if there is a financial interest, unless the interest is disclosed

## Professional Misconduct

Professional misconduct includes:

1. conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience
2. more than one instance of unprofessional conduct
3. conduct that is not consistent with being a fit and proper person to hold registration in the profession

## Notifiable Conduct

Practitioners, employers and education providers are all mandated by law to report certain notifiable conduct relating to a practitioner or student. Registered practitioners who fail to report notifiable conduct may face disciplinary action by their National Board.

### Notifiable conduct (s. 140) <sup>ii</sup>

The registered health practitioner has:

1. practiced the practitioner's profession while intoxicated by alcohol or drugs, or
2. engaged in sexual misconduct in connection with the practice of the practitioner's profession, or
3. placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment, or
4. placed the public at risk of harm because the practitioner has practiced the profession in a way that constitutes a significant departure from accepted professional standards.

In addition to the AHPRA definitions, the Association uses the, Standards of Practice, Code of Ethics and the formal current education of massage and myotherapists in practice, to supplement the AHPRA definitions with the following conduct:

## Unprofessional Conduct

Unprofessional conduct examples may include but are not restricted to:

1. Misrepresenting services, qualification or training
2. No assessment of client, duration of assessment too long or inappropriate to condition
3. Excessive time spent on exercise without explanation to the client or relevant qualifications, expertise or exercise knowledge. Lack of documented rationale.
4. Non delivery of agreed service
5. Ignoring clients stated sensitivities and treatment requests
6. Health Insurance rebate fraud and/or poaching or soliciting clients
7. Selling client information with or without the full business
8. Employment disputes
9. Fees not advised prior to service

## Professional Misconduct

Professional misconduct examples may include but are not limited to:

1. Inadequate clinic and towel hygiene standards
2. Inappropriate comments, conversation or social media post about clients
3. Therapist not leaving the room whilst client is dressing and disrobing, unless assistance is requested by the client and/or with their consent.
4. Treatment without written consent

5. Consensual sexual relationship with current client
6. Unnecessary proximity to client, reaching over client during treatment
7. Inappropriate touching
8. Treatment detrimental to clients' wellbeing, including injury, ineffective, over treatment.
9. Lack of consideration to foreseeable consequences of treatment
10. Failure to ensure clients understanding of the treatment
11. Engaging in practice that the client perceives as disrespectful or harmful disrespectful and harmful practice
12. Failure to refer the client to the relevant health professional where identified treatment is outside scope of practice
13. Application of techniques or modalities for which the therapist is not trained adequately
14. Practicing without professional indemnity and public liability insurances

The Association may recommend to the complainant or make complaint to Health Care entities and/or Police when complaints of the following nature of conduct are received.

### **Unsatisfactory professional performance (s. 5) <sup>iii</sup>**

The knowledge, skill, judgement, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expected for a health practitioner of an equivalent level of training or experience

Such conduct may include but is not limited to:

1. Ongoing serious pain and health problems following inappropriate treatment
2. Breast massage without written consent from the client and full explanation to client for the requirement for the treatment
3. Failure to cease treatment at clients request
4. Allegation of sexual assault, sexual service and/ or sexual misconduct
5. Unsafe application of any technique resulting in injury
6. Therapist being under the influence of drugs (prescription or street) or alcohol whilst working

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<sup>i</sup> <https://www.ahpra.gov.au>

<sup>ii</sup> <https://www.ahpra.gov.au/Support/Glossary.aspx>

<sup>iii</sup> *ibid*