

Guide for the Prevention and Management of Sexual Misconduct

This brochure is provided for massage therapists, both remedial and therapeutic, and myotherapists to promote awareness of the issues of Sexual Misconduct and to assist in the management of any potential or real situations.

In the health care environment, any sexual assault, inappropriate treatment or comment between providers and clients is considered professional sexual misconduct. This behaviour is unethical and an extreme breach of trust, and causes irreparable harm to the victims. This is not a single gender-specific concern as documented cases of same sex therapist/client misconduct have been recorded.

If you feel in any way that sexual assault or abuse has taken place, Massage & Myotherapy Australia strongly recommends that you contact one of the supporting organisations provided in this brochure. Discussing the matter with a trained counsellor in this area can help you clarify your complaint while supporting you personally.

If a client or patient of any health service provider reports an incident to you, he/she is entitled to make a complaint. The appropriate authorities are listed at the end of this brochure. The client should also register a statement with his/her local police.

Sexual Misconduct by any health service provider is against the law and should be reported.

Important information

Sexual Misconduct is a very complex problem. It encompasses issues of sex, gender, power and communication.

Massage and myotherapists hold a position of power in relation to their clients in the same way that any healthcare professional does. While the client may not be directly aware of the power imbalance, the therapist is obligated to understand and control its limits by law.

MYTH

'All Sexual Misconduct is performed by evil and corrupt professionals and if these bad apples were eliminated from the industry all would be well.'

FACT

Studies of professionals involved in sexual boundary violations indicate that sexual misconduct occurs among a diverse group who become involved with clients for a variety of reasons. All health professionals are at risk of boundary violations under certain circumstances or within normal practice

What is Sexual Misconduct?

Sexual Misconduct can be divided into the following areas:

- » sexual assault
- » inappropriate treatment
- » sexual relationship
- » sexual harassment
- » inappropriate relationship
- » therapist self-disclosure.

'Different individuals will perceive and react to behaviour in different ways. According to law, unwelcome conduct is conduct that is not solicited or invited.'¹

Some examples of this would be:

- » having a sexual relationship with a client during the course of, or following treatment
- » an unnecessary treatment such as breast massage
- » making sexual, personal or erotic comments to a client during treatment.

'The power imbalance between professional and patient negates the possibility of an equal consenting relationship.'²

Vulnerability factors for health professionals and clients

- » Personal life issues/stress
- » professional isolation
- » drug/alcohol abuse
- » mental illness.

Professional boundary violations often accompany or precede sexual misconduct. The areas where a professional relationship are defined include boundaries such as appointment time, place, gifts, appropriateness of clothing, language used, disclosure of personal information and physical contact not directly related to the treatment.

Sexual Misconduct/Sexual Harassment

Both sexual misconduct and sexual harassment can create significant problems for the therapist: the issues are not identical but are equally damaging. The similarity is the abuse of power regardless of the intent. If the client has manoeuvred the therapist to give comment or invite touch, there is no excuse: the law deems practitioners to have the knowledge to conduct themselves professionally and prevent the behaviour.

While health practitioners may not be aware of their influence, patients usually perceive a power differential between themselves and their treating health practitioners. Given this power differential, any exploitation of the relationship between the patient and the health practitioner for the gratification of the practitioner is an abuse of power.

The following list gives some examples of the warning signs that can start a downward slide to sexual misconduct:

- » personal conversation intruding on the clinical work
- » personal telephone, personal social media or personal SMS contact
- » body contact e.g. pats on the shoulder, hugs
- » giving a client a lift home
- » not charging or billing for treatment
- » client or practitioner insisting on the last appointment of the day
- » practitioner anecdotal comments, e.g. you have beautiful eyes/skin ...
- » giving a client an inappropriate gift
- » trips or social events outside the clinic
- » poor or inadequate draping.
- » dinner, lunches or offers of alcohol
- » operating outside of normal business hours.

The violations of professional boundaries can be made by either the practitioner or the client. However, because health professionals are in a position of power relative to the client, the law holds them to a higher standard of behaviour. They are required to place the interests of the client above their own.

Sexual behaviour with a client may affect the clinical judgment of the health practitioner in the management of the client.

Contact with professional peers should be maintained to allow for personal and professional support and critical opinion on how to best manage difficult clients or situations.

What to do if an at-risk situation occurs

- » Ensure all contact is within normal practice boundaries.
- » Refer the client to another practitioner and cease treatment.
- » Seek advice for personal vulnerability factors for self.
- » Keep meticulous records.
- » Seek professional or legal advice.
- » Contact your Association and insurer for advice or referral.

Understanding when a client/professional relationship has gone wrong, or has that potential, is an important part of working towards resolving the problem.

What are the consequences of sexual misconduct for the client?

Documented consequences for clients or patients subjected to sexual misconduct by a healthcare professional include:

- » anger
- » severe guilt
- » relationship breakdown
- » hospitalisation
- » mental health issues and trauma.

*'A good test is: If an allegation was made against me would the factual evidence of my behaviour and manner serve to incriminate me or absolve me in the opinion of my peers? It is not your opinion, it is that of others that will ultimately determine a breach of boundaries.'*³

What are the consequences of sexual misconduct for the practitioner?

- » relationship breakdown
- » financial loss
- » mental health breakdown
- » imprisonment
- » public humiliation
- » criminal record.
- » career trauma

Sexual relationships with existing or past clients

Does client consent make a sexual relationship acceptable? If the client consents, and even if the client initiates the sex, it is not acceptable at any time to engage in a personal sexual relationship with a current client.

A relationship is still considered sexual misconduct for the therapist. It is an abuse of the massage therapist/client relationship that puts the therapist's needs first.

It is always the responsibility of the therapist to establish professional boundaries with present and former clients.

What if my client reports sexual misconduct by another therapist to me?

You can provide your client with this brochure which explains professional boundaries.

You can recommend they contact one of the Ombudsman offices or Healthcare Commissions listed in this brochure and make a formal complaint or contact Massage & Myotherapy Australia who have a formal complaints process for our members' conduct.

- » Do not tell the client what to do.
- » Do not approach the therapist yourself.
- » Mandatory report as required in your state/territory.

'Any form of abuse that comes from the very people who are supposed to protect us, to whom we have no choice but to make ourselves vulnerable, is the most destructive.'

– Gloria Steinem, Revolution from Within, 1992.

Massage & Myotherapy Australia – what is our role?

Members of Massage & Myotherapy Australia are required to act in accordance with the Association's Constitution, Code of Ethics and Standards of Practice and the National Code of Conduct for Health Care Workers in your state or territory. Members will observe the highest standards of ethics, integrity and professional conduct.

Ethical behaviour is not simply compliance with legal requirements; it extends to honesty, equity, integrity, and social responsibility in all dealings. It is behaviour that holds up to disclosure and to public scrutiny.

Members and the public can register a complaint with Massage & Myotherapy Australia at any time. Massage & Myotherapy Australia encourages the member and client to make a formal complaint so that the matter can be investigated and heard by the relevant legal authority or jurisdiction. The National Ethics Committee which is appointed by the Association's Board can also hear or refer such matters.

Matters which are of a serious nature will be referred to the police and/or appropriate authorities.

Complaints can also be made to any of the Health Commissioners in any state or territory.

*'Members are responsible for their professional decisions.'*⁴

REFERENCES

1. HREOC, Code of Practice for Employers, Sexual Harassment in the Workplace. www.hreoc.gov.au
2. National Board for Certification in Occupational Therapy, Inc. Sexual Misconduct by Professionals, 2007
3. NSW Health Care Complaints Commission – Sexual Misconduct www.hccc.nsw.gov.au
4. Massage & Myotherapy Australia Code of Ethics, 2004 (Revised 2017).

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HEALTH OMBUDSMAN/COMMISSIONERS

Victoria

Health Complaints Commissioner

Freecall™ 1300 582 113
www.hcc.vic.gov.au

New South Wales

Health Care Complaints Commission

Freecall™ 1800 043 159
(within NSW)
www.hccc.nsw.gov.au

Queensland

Office of the Health Ombudsman

133 646
www.oho.qld.gov.au

South Australia

Ombudsman SA

(08) 8226 8699 or
Toll Free 1800 182 150
(outside Metro SA only)
www.ombudsman.sa.gov.au

Western Australia

Health and Disability Services Complaints Office (HaDSCO)

1800 813 583 or (08) 6551 7600
www.hadsco.wa.gov.au

Tasmania

Ombudsman Tasmania

Toll free 1800 001 170
(within Tasmania)
www.ombudsman.tas.gov.au

ACT

Human Rights Commission

(02) 6205 2222
hrc.act.gov.au/health/health-service-complaints

Northern Territory

Health & Community Services Complaints Commission

Toll free 1800 004 474 or
(08) 8999 1969
www.hcsc.nt.gov.au

ASSAULT CENTRES

Victoria

Sexual Assault Crisis Line

1800 806 292
www.sacl.com.au

New South Wales

NSW Rape & Domestic Violence Services Australia

1800 424 017
www.nswrapecrisis.com.au

Queensland

DV Connect

1800 010 120
www.health.qld.gov.au/sexualassault or www.dvconnect.org/queensland-sexual-assault-helpline/

South Australia

Yarrow Place Rape & Sexual Assault Service

Freecall 1800 817 421 or
(08) 8226 8777 (Business hours)
(08) 8226 8787 (After hours)
www.yarrowplace.sa.gov.au

Western Australia

Sexual Assault Resource Centre (SARC)

Crisis 24 hour (08) 6458 1828
Free call from landlines:
1800 199 888
kemh.health.wa.gov.au/services/sarc/

Tasmania

TAS Sexual Assault Support Services Southern Tasmania

1800 697 877
www.sass.org.au

Laurel House North TAS

Ph. 6334 2740

Laurel House North West TAS

Ph. 6431 9711 (a/h crisis)
1800 697 877
laurelhouse.org.au

ACT

Canberra Rape Crisis Centre

(02) 6247 2525
www.crcc.org.au

Northern Territory

NT Sexual Assault Referral Services (SARC)

Alice Springs: (08) 8955 4500 or 0401 114 181
Darwin: (08) 8945 0155
Katherine: (08) 8973 8524
Tennant Creek: (08) 8962 4361
<https://nt.gov.au/wellbeing/hospitals-health-services/sexual-assault-referral-centres>

National

Sexual Assault & Domestic Violence National Help Line

1800 Respect (1800 737 732)