

Health Care Complaints Commission

STATEMENT OF DECISION

Respondent:	Mr Benjamin Steed
File number:	21/00315

The Commission has removed from this Statement of Decision material which it considers to be confidential information under section 41B(5) of the *Health Care Complaints Act 1993*.

1. The Complaint

- 1.1 On 18 January 2021 the Health Care Complaints Commission (**the Commission**) received a complaint about massage therapist Mr Benjamin Steed. The complaint raised significant concerns about the conduct of Mr Steed towards a 26-year-old female patient (**Patient A**) whilst performing massage services on 28 November 2020.
- 1.2 On 29 November 2020 Mr Steed was charged with sexually touching Patient A's vagina without consent, contrary to section 61KC (a) of the *Crimes Act (NSW) 1900*.
- 1.3 On 17 February 2021 Mr Steed pleaded guilty to the offence of sexually touching Patient A's vagina without consent. Mr Steed was sentenced by Magistrate Price at Parramatta Local Court to a 15-month term of imprisonment to be served by way of an Intensive Corrections Order, with conditions.

2 Issues

- 2.1 The Commission has investigated the following issues:
 - 2.1.1 Whether Mr Steed breached the Code of Conduct in relation to his care and treatment of Patient A; and
 - 2.1.2 Whether Mr Steed poses a risk to the health and safety of members of the public.
- 2.2 The relevant clause of the Code of Conduct in this case is:
 - 2.2.1 Clause 3(1): *A health practitioner must provide health services in a safe and ethical manner.*

3 Respondent

- 3.1 Mr Steed was born on 15 September 1987 and was aged 33 years at the time of the offence. Mr Steed obtained a Diploma of Remedial Massage through TAFE NSW in November 2012. At the time of the incident Mr Steed was working as a massage therapist at 'Simply Health and Wellness,' a health clinic located at 8A Kenthurst Road, Dural NSW 2158.
- 3.2 In his capacity as a massage therapist, Mr Steed is considered to be an unregistered health practitioner and subject to the Code of Conduct for unregistered health practitioners (**the Code of Conduct**) set out in Schedule 3 of the *Public Health Regulation 2012*.

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4 Investigation

- 4.1 During the investigation, the Commission obtained information from Mr Steed, NSW Police and Parramatta Local Court.

5 Summary of Evidence

Summary of agreed facts filed in the Local Court at Parramatta

- 5.1 Mr Steed was employed as a remedial massage therapist at 'Simply Health and Wellness', a health clinic located at 8A Kenthurst Road, Dural NSW. The clinic offers chiropractic services, massages services and naturopath services.
- 5.2 The victim in this matter is Patient A, a 26 year old woman.
- 5.3 Prior to this incident, Mr Steed and Patient A were not known to each other.
- 5.4 On Friday 27 November 2020, Patient A, who suffers from back pain, booked an appointment online for a massage at 'Simply Health and Wellness.' Patient A received an email confirmation for an appointment for a 60 minute remedial massage with Mr Steed at 11:30am on Saturday 28 November 2020.
- 5.5 About 11:25am on Saturday 28 November 2020, Patient A parked her vehicle behind 'Simply Health and Wellness', off Ward Street then walked around to the front and entered the clinic. Shortly after, she was approached by Mr Steed who introduced himself as, 'Ben.' After this, Mr Steed asked Patient A what she wanted to focus on for the massage and she stated she wanted to focus on her head, neck and shoulders.
- 5.6 Mr Steed took Patient A to a room adjacent to the waiting room, then left her there alone to get changed. During this time, Patient A removed all her clothing except for her nude coloured G-string. Patient A lay on the massage table face down and covered the back lower half of her body with a white towel.
- 5.7 A few minutes later, Mr Steed knocked on the door and entered the room. After this, Mr Steed put on spa music and rubbed oil on his hands then commenced massaging Patient A's bare back with his hands, forearms and elbows.
- 5.8 After about 20 minutes of silence, Mr Steed engaged in small talk with Patient A then made a joke about a 'happy ending' which is a term that refers to a massage ending in the client reaching orgasm. This joke made Patient A very uncomfortable however she did not say anything to Mr Steed as she did not want to offend or embarrass him.
- 5.9 After a while, Mr Steed tucked the towel which was now covering Patient A's back and left leg, into the right side of her underwear. Mr Steed moved Patient A's legs apart and commenced massaging her right thigh in an up and down motion, up to her right buttock then down her thigh and on the back of her calves. He repeated the same process on Patient A's left thigh and leg.
- 5.10 Patient A was very uncomfortable at this point as she had clearly stated she wanted to focus on her head, neck and shoulders and Mr Steed never discussed touching or

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massaging her legs, thighs or near her buttocks. Mr Steed was using a lot of pressure which caused Patient A significant pain. Mr Steed told Patient A to concentrate on her breathing to bare the pain.

- 5.11 After this, Mr Steed placed Patient A's legs back together and asked her to roll over onto her back to which she did. Mr Steed gave a pillow to Patient A to place under her head, and he placed a gel pack over her eyes.
- 5.12 Mr Steed tucked the towel which was placed on top of Patient A, into the left side of the victim's underwear then pulled her legs which were together at this time, apart. Mr Steed massaged the front of Patient A's left thigh with a lot of pressure. Patient A winced and placed her hands over her head and said it was very painful. Mr Steed placed Patient A's left leg outwards so that it was bent and her knee was resting against his body. Mr Steed massaged from Patient A's left knee, up her thigh and in close proximity to her vagina.
- 5.13 After this, Mr Steed covered Patient A's left leg with the towel then uncovered Patient A's right leg, tucked the towel into the side of her underwear then massaged her right thigh with her leg bent and her knee resting against his body. At this time, Mr Steed started grazing over the top of Patient A's underwear as he massaged the top of her thigh. This made Patient A feel very uncomfortable and nervous.
- 5.14 Mr Steed started laughing and commenting about the fact he was causing Patient A pain and said, "I will have to make it up to you." Patient A felt this was inappropriate and did not laugh. Soon after, Mr Steed started laughing again to himself. Patient A asked what was funny to which Mr Steed replied, "I'm thinking of something dirty which I should not say." Patient A asked what he meant and he said, "Oh, I was thinking of a Thai happy ending."
- 5.15 Mr Steed continued to graze over the front of Patient A's underwear whilst he massaged her thigh then he started to breathe heavily. Mr Steed said, "I'm being unprofessional." Mr Steed massaged up Patient A's right thigh then slid one of his hands under Patient A's underwear and placed his hand on her mons pubis area then back out from her underwear and onto her thigh. He repeated this four times.
- 5.16 Mr Steed said, "I'm gonna make it up to you." Patient A did not say anything. She was terrified and laid frozen on the massage table. Patient A felt she could not speak or move from fear.
- 5.17 Mr Steed used his fingers to slide one of Patient A's right labia majora out from her underwear then asked, "Is that okay?" Patient A did not respond because she was scared. Mr Steed stroked Patient A's vulva under her underwear for a short time before he placed one of his fingers at the entrance of Patient A's vagina.
- 5.18 Patient A was shocked and immediately tensed her thighs and legs. She brought her right leg back onto the table so that it was touching her left leg then placed the towel over her legs.
- 5.19 Mr Steed said, "I'm shaking." After this, Mr Steed continued to apologise to Patient A for his actions. Patient A said she needed to get changed and Mr Steed exited the room.

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- 5.20 After Patient A got changed, she returned to the waiting room and told Mr Steed she was not paying for the massage. Mr Steed said, "Okay, sorry if I was unprofessional. I don't know what came over me."
- 5.21 Patient A exited the clinic and got into her vehicle where she sat and cried for a few minutes before she contacted her mother and disclosed the incident. Whilst Patient A was on the phone, she saw Mr Steed leave the clinic and get into a vehicle.

Criminal conviction

- 5.22 On Saturday 28 November 2020, Patient A attended Castle Hill Police Station where she provided a typed statement for the matter. After this, she underwent a Sexual Assault Investigation Kit at Blacktown Hospital.
- 5.23 On Sunday 29 November 2020, police contacted Mr Steed and asked him to attend the police station in regard to the matter, to which he agreed.
- 5.24 That same day, Mr Steed attended Castle Hill Police Station where he was placed under arrest for sexually touching Patient A without consent.
- 5.25 Mr Steed was cautioned and placed into Police custody. Mr Steed agreed to take part in an electronically recorded interview.
- 5.26 During the interview, Mr Steed made full admissions to the offence. He stated, "During the massage, I touched her inappropriately on the vagina." Mr Steed agreed he got sexual gratification from sexually touching Patient A and furthermore he stated he had intended on digitally penetrating Patient A's vagina "until she orgasmed" however she "closed her legs."
- 5.27 Mr Steed's version of events was very similar to that of Patient A. Police asked Mr Steed whether he sought to clarify whether Patient A consented to which he said, "Not as well as I should have." He agreed that after he asked Patient A whether his actions were okay that she did not respond.
- 5.28 Mr Steed stated he apologised profusely to Patient A following the incident and that he called a friend sometime after and disclosed what occurred because he knew his actions were seriously wrong. Mr Steed's reason for sexually touching Patient A was because he was "feeling lonely."
- 5.29 At the completion of the interview, police obtained DNA from Mr Steed by consent.
- 5.30 The incident made Patient A feel terrified, upset, dirty and violated. Patient A did not consent to the accused sexually touching her vagina.
- 5.31 Mr Steed took advantage of the trust Patient A had in him as a healthcare professional. Mr Steed abused his position for his own sexual gratification and did not consider what Patient A wanted or the fact she was vulnerable and isolated from other people.
- 5.32 Mr Steed appeared before Magistrate Price of Parramatta Local Court on 17 February 2021 and plead guilty to the charge of "sexually touch another person without consent" contrary to section 61KC (a) of the *Crimes Act 1900 (NSW)*

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5.33 Magistrate Price made the following comments:

“...it is important to stress that the conduct [of Mr Steed] was, stating it mildly, very poor, and stating it probably more accurately, completely abhorrent. He was placed in a position of trust with the victim, and has completely abused that position of trust and touched her in a highly inappropriate way on more than one occasion. In my view, it is well above the midrange of objective seriousness. I do not wish it to be in any way, shape or form minimised how poor this conduct was.”

5.34 Magistrate Price noted Mr Steed pleaded guilty to the offence at the first available opportunity and had no prior criminal history. This entitled him to significant considerations of leniency. Mr Steed was sentenced to a 15-month term of imprisonment to be served in the community by way of an Intensive Corrections Order, with conditions, pursuant to section 7 of the *Crime (Sentencing Procedure) Act 1999 (NSW)*.

6 Submissions

6.1 The Commission wrote to Mr Steed on 21 April 2021 proposing to take action under section 41A and 41B of the Act and inviting submissions under section 40 of the Act within 28 days. Mr Steed was provided with a draft copy of the Statement of Decision in this matter.

6.2 No submissions were received from Mr Steed in relation to the proposed action within the 28-day statutory timeframe. Accordingly, the Commission determined to proceed with the action proposed.

7 Findings and determination

7.1 As a massage therapist, Mr Steed is bound by the Code of Conduct, which states at Clause 3 that health practitioners must provide services in a safe and ethical manner.

7.2 On 28 November 2020, whilst performing his services as a massage therapist, Mr Steed did sexually touch Patient A's vagina without her consent, contrary to section 61KC (a) of the *Crimes Act 1900 (NSW)*.

7.3 Mr Steed pleaded guilty to sexually touching another person without consent before Magistrate Price of Parramatta Local Court. He was convicted and sentenced to a 15-month term of imprisonment, to be served by way of an Intensive Corrections Order with conditions, pursuant to section 9 (1) of the *Crime (Sentencing Procedure) Act 1999 (NSW)*.

7.4 Mr Steed's conduct is of a very serious nature and involved a vulnerable victim who was under the care of Mr Steed. Mr Steed was afforded significant trust by Patient A, especially due to the intimate nature of the treatment, which required her to be partially clothed. Mr Steed abused his position as a health practitioner and the trust afforded to him by Patient A by sexually touching Patient A's vagina without her consent. The conduct of Mr Steed was opportunistic and demonstrated a blatant disregard for the health and wellbeing of Patient A.

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- 7.5 Based on the evidence outlined above, the Commission finds that Mr Steed breached clause 3 (1) of the Code of Conduct by failing to provide massage services in a safe and ethical manner.
- 7.6 Given the circumstances of the breach of the Code of Conduct, the Commission has determined that Mr Steed poses a significant risk to the health and safety of members of the public.

8 Decision

- 8.1 Based on the evidence outlined above, the Commission makes the following prohibition order under section 41A(2)(a) of the Act:

Mr Benjamin Steed is permanently prohibited from providing any health services in any capacity, either paid employment or voluntary.

For the purpose of this order, a 'health service' carries the same meaning as defined under Section 4 of the Act.

- 8.2 The Commission will also issue the following public statement under section 41(2)(b) of the Act.

*The NSW Health Care Complaints Commission (**the Commission**) conducted an investigation into the conduct of Mr Benjamin Steed. Mr Steed is a massage therapist who was previously employed at 'Simply Health and Wellness', a health clinic located at 8A Kenthurst Road Dural NSW.*

*In his capacity as a massage therapist, Mr Steed is considered to be an unregistered health practitioner and subject to the Code of Conduct for unregistered health practitioners (**the Code of Conduct**) set out in schedule 3 of the Public Health Regulation 2012.*

On 28 November 2020 Mr Steed sexually touched the vagina of a 26 year old female patient, Patient A, without her consent.

On 17 February 2021 Mr Steed appeared before Magistrate Price at Parramatta Local Court and was convicted and sentenced for the offence of sexually touch another person without consent.

Mr Steed's conduct is of a very serious nature. It involved a vulnerable victim who was under the care of Mr Steed. Mr Steed was afforded significant trust by Patient A, especially due to the intimate nature of the treatment, which required her to be partially clothed. Mr Steed abused his position as a health practitioner and the trust afforded to him by Patient A by sexually touching Patient A's vagina without her consent for his own sexual gratification. The conduct of Mr Steed was opportunistic, wilful and egregious and demonstrated a blatant disregard for the health and wellbeing of Patient A.

Mr Steed has breached clause 3(1) of the Code of Conduct, in that he failed to provide health services in a safe and ethical manner. The Commission also considers that Mr Steed poses a significant risk to the health and safety of members of the public.

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*Accordingly, the Commission makes the following prohibition order under section 41A(2)(a) of the Health Care Complaints Act 1993 (NSW) (the **Act**):*

Mr Benjamin Steed is permanently prohibited from providing any health services in any capacity, either paid employment or voluntary.

For the purpose of this order, a 'health service' carries the same meaning as defined under Section 4 of the Act.

- 8.3 Under section 41D of the Act, the Commission will provide a copy of the statement of decision to the following organisations:
- Australian Health Practitioner Regulation Agency (AHPRA)
 - Each professional Council in NSW
- 8.5 The Commission will also notify the following professional associations:
- The Association of Massage Therapists
- 8.6 The Commission has decided to make this Statement of Decision publicly available, under section 41B(3)(c) of the Act.



Tony Kofkin
Executive Director, Complaint Operations
2 June 2021