



# Code of conduct

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# Introduction



New Code of Conduct  
has been approved and  
published September  
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Expectation that  
Osteopaths will adhere  
to the Code's standards



Values that  
underpin  
professional  
conduct

Respect

Partnership

Trust

Integrity



# Grounds of discipline

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- Professional misconduct - negligence/malpractice or bringing discredit on the profession
- Convicted of offence that reflects adversely on fitness to practise
- Practised while not holding an APC
- Performed a health service not permitted in scope of practice
- Breached order of Tribunal



# Professional misconduct

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- Negligence - falls seriously short of the standards of competent, ethical and responsible practitioners
- Malpractice - neglect and bad practice
- Bringing discredit to the profession - the reputation and good standing of the profession was lowered by the behaviour of the practitioner



# Principle 1

Respect the dignity and individuality  
of health consumers



## Treating

Treating health consumers, families and colleagues with respect enables osteopathic relationships that support health consumers' health and wellbeing.

## Treating

Treating someone with respect means behaving towards that person in a way that values their worth, dignity and uniqueness. It is a fundamental requirement of professional osteopathic relationships and ethical conduct.



## Principle 2

Respect the cultural needs and values  
of health consumers





# Recent case study – racist comments on social media

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On 4 May 2019, a news article from Stuff was linked to an open nursing organisation Facebook page. The article's headline was "*Māori voices 'missing' from mental health and addictions inquiry*".

Open page with anyone able to view and comment (including nursing students, nurses).

A nurse commented on Facebook under the article. The comments made were offensive, inappropriate and derogatory to Māori.



# Examples of the comments:

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This is bull shit, Māori & every other culture in NZ gets a voice. Māori predominantly get more hand outs & freebies in Nursing+ Education + workforce. Māori nurses sit on their fat arses eat & have meetings all day. While their patients run riot. NZ Nursing council are racist.

But Māori are by far the laziest & cunning underhanded I have worked with. One male Māori nurse I worked with grew a marijuana plot was in a gang took DHB cars out of the region on joy rides.

It was the Māori carers stealing from residents.

Its not being racist. I am being honest



Was repeatedly told to stop but continued on in the comments on the same themes.

Made reference to specific work-places in her comments and an individual was named



## Notification

A senior nurse (the notifier) wanted to stop the nurse posting her offensive comments on Facebook, so she rang to try and block the conversation and the nurse's hateful dialogue. It took several hours to stop and block her discussion.

On 5 May 2019 (the next day), a complaint was made by email to the Nursing Council.

In her complaint she refers to the fact that the nurse's *“lack of professionalism and lack of being human toward Māori and employers/employees highlights why cultural safety is important to every industry and employment in Aotearoa”*.



Senior nurse witness was interviewed as part of the investigation. She:

- Links the conduct to public safety.
- The comments had a significant impact on many students, nurses and people generally.
- Shortly after the comments were made there was a Supporting Maori Students Hui held. People were affected by the Facebook comments at the Hui, and students were furious about the comments and felt distressed.
- There was a major backlash from students and colleagues. What the nurse did not appear to know was that there were hundreds of students, nurses and staff who had read her postings.



The PCC met with the nurse and determined to lay charges with the HPDT.

The hearing took place over 2 days in New Plymouth. Landmark case of its kind for the HPDT.

# HPDT hearing



# Tribunal decision

The Tribunal found the charges established. The Tribunal stated that they were left in no doubt that the Facebook post was highly offensive, derogatory to Māori and inappropriate for a member of the nursing profession to post on a Nursing Organisation social media platform.



# Tribunal decision continued

The Tribunal stated that this conduct is self-evidently conduct that falls well below the standards expected of any Registered Nurse or health professional. It is malpractice, being immoral and unethical conduct and a neglect of professional duty to fail to uphold the Code of Conduct of the nursing profession. It is also likely to bring substantial discredit to the nursing profession.





# Tribunal decision continued

In determining penalty, the Tribunal was clear only appropriate penalty in this case was cancellation of registration.

No other penalty would be suitable in this case given the serious nature of the two charges, and particularly given the practitioner failed to show a sustained and genuine understanding or remorse for her highly offensive and racist comments.

The Tribunal also recommended that if the nurse wished to re-engage with the nursing profession and to attempt to restore mana for the people in Taranaki who had been represented before the Tribunal, that she takes up the opportunity to apologise to Taranaki whānui, Māori nurses, named organisations and individuals and Māori student nurse trainees.



## Principle 3

Work in partnership with health consumers to promote and protect their well-being



# Re B

- Inserted acupuncture needles without warning through T-shirt.
- Left patients unattended with needles in situ.
- Failed to obtain informed consent for cervical manipulation.
- Failed to obtain thorough case history.
- Failed to convey or confirm the diagnosis and plan of care.
- Improper positioning of treatment bed.
- Speaking excessively about personal issues and lack of focus.
- Swearing and answering mobile phone.
- Use of intimidating and inappropriate language to and with reference to colleagues.
- Used Western Medical Acupuncture and related needling techniques without being permitted to perform this.



# Tribunal findings

- Issues re leaving patient with needles established
- Issues re bed positioning (so his crotch was pressed against patient) was not found to be significantly inappropriate - no allegation of covert sexual behaviour
- Found inadequate communication leading to a misconception by patient but not professional misconduct
- Found evidence that spoke excessively but communication did not compromise care
- Swearing brought discredit to the profession
- Using mobile phone once did not amount to misconduct



# Tribunal findings cont.

- Using intimidating and threatening language to colleagues brought discredit to the profession
- Using acupuncture and related needling techniques was an offence under the Act because outside scope
- Suspended from practice for 12 months
- Fined \$3,000 and costs of \$45,714
- Practise under supervision for 6 months with approved supervisor reporting monthly
- Medical examination and follow up any recommendations
- Complete education on communication, professional boundaries and informed consent as directed by Council



## Principle 4

Maintain health consumer trust by providing safe and competent care



# Re R - safe and competent care

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- Failed to record any clinical notes for appointment with 13 year old girl with weak and painful hip
- Treated without obtaining informed consent
- Patient became tearful and upset
- Inappropriately diagnosed patient as having experienced an unwanted sexual encounter (incestuous contact with her father) based solely on impression and emotional energy in the room formed during treatment
- Made inquiry with police as to how to deal with his concern about abuse by father



# Tribunal findings -

- Note taking is mandatory and essential part of information gathering process leading to differential diagnosis
- Informed consent is a fundamental requirement reinforced by the HDC code
- Failure to follow the clinical diagnostic processes set out in the standards and the diagnosis of an unwanted sexual encounter was made as a direct result of treating “locked uterus” for which there was no informed consent and using process that was not robust or reasonable
- Discipline is warranted having regard to the ignorance of basic obligations to a young and vulnerable client





## Re R – penalty

- Mr R already suspended by Council (interim order) and required to sit written and clinical examination (CAPP) before suspension lifted.
- Conditions to be included once suspension lifted.
- Must satisfactorily complete a workplace based assessment programme.
- Must not provide supervision to any other osteopath for 12 months.
- Must not teach for 12 months.
- Censure.
- \$12,000 in costs.



# Re M - safe and competent care

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- Failed to recognise breast tissue as a sensitive area covered by practice guidelines and follow those guidelines
- Failed to explain the proposed examination or treatment or offer delay
- No chaperone offered (History of abuse)
- Failed to focus on tooth pain and ? muscle tension from neck
- Failed to obtain fully informed consent (signed or documented)
- Assumed ability to tolerate treatment on breast tissue because of scar from previous treatment
- Patient experienced pain swelling, embarrassment and feelings of violation



# Tribunal findings

- Admitted professional misconduct
- Expert believed treatment undertaken for misguided therapeutic reason not self gratification
- Failed to recognise the breast tissue required special treatment and to follow guidelines
- Negligent to treat sensitive area on first visit when no immediate need or without chaperone
- Conduct fell well below that expected of competent osteopath and brought discredit
- Public entitled to expect will act in accordance with guidelines



# Re M - penalty

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- Subject of a similar complaint for which received training and support previous year.
- Censured.
- Practise under monthly supervision for 12 months with review of cases focusing on management of professional boundaries, ethical practice, communication, informed consent and awareness of sensitive areas.
- Complete a bespoke course.
- Not operate in sole practice for 24 months.
- Costs of \$19,000.



## Principle 5

Respect health consumer's privacy  
and confidentiality



# Accessing notes Nur16/343P

Over 1½ years accessed files of colleagues, their family members, other staff at the DHB, people she knew (64 people with 114 unauthorised accesses).

Nurse submitted looked at records of family and friends to “make better sense of how clinical decisions are made”, or on behalf of district nurses concerned about their safety. Also submitted that depressed.

Tribunal noted that society’s expectations around privacy of information were higher and previous penalties had not acted as deterrent – future cases may lead to cancellation. Ordered suspension, censure and conditions on practice.



## Principle 6

Work respectfully with colleagues to best meet health consumers' needs



# Sexual harassment

## Nur17/401P

Nurse was clinical manager at care home

Behaved in inappropriate or unprofessional manner with some caregivers and nurses

Pressure and misrepresentations (ability to terminate or put staff on CAP) on others to perform sexual acts and resultant bullying and intimidation if they refused

Tribunal found relationship of power imbalance and dominance that influenced responses and behaviour





# Sexual harassment Nur17/401P cont.

Public needs protection from harassment of this kind.

Applies not only to patients but also colleagues who cannot be expected to discharge their responsibilities professionally competently or properly if harassed in this way. Impacts on public safety.

In denial about his conduct and that used his position of power over young and vulnerable women.

Registration cancelled, censured, costs, publication.



# Principle 7

Act with integrity to justify health consumers' trust



# Professional boundaries

## Cole v PCC

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- Prison employed nurse provided accommodation to former patient on his release after professional relationship ended
- Provided him with range of nursing services (about 9 direct consultations)
- After release met him and offered him position of flatmate (\$150-\$270 pw)
- Ms Cole alleged that patient then raped her at least weekly for 9 months until she evicted him
- Appealed the finding of professional misconduct



# High Court findings

- Code of conduct is not determinative in terms of setting standards or for establishing professional misconduct
- Code cannot cover every possible circumstance
- Reference must be had to more generalised provisions and considerations
- Where the Code does not address whether conduct falls under professional misconduct up to HPDT to set the standard and determine if actions are so significant as to amount to misconduct



# High Court findings cont.

- Although interactions may seem minor the aggregate of contacts demonstrate significant professional relationship
- Environment increased the significance and intensity of the relationship
- Failure to review clinical notes relevant to assessing extent of vulnerability (depression, ACC sensitive counselling and drug user)
- Vulnerability arose because of the fiduciary nurse/patient relationship, medical issues and power imbalance, patient carried vulnerabilities
- Not possible to “turn off like a tap” the nurse/patient relationship
- Power imbalance continued after formal professional relationship ended - therefore Code, Guidelines and other cases refer to former patients



# High Court findings cont.

- Code and guidelines encourage discussing issues with colleagues and seek advice from professional organisations
- Health professional have significant resources in own professions and amongst peer group
- Two colleagues expressed concern about interactions and failed to discuss accommodation arrangement
- Did not seek any form of ethical advice or help at any relevant time, even before she said the relationship became abusive
- Opportunity to discuss with manager and probation officer
- Overwhelming inference that meeting was pre-arranged



# Professional boundaries with family Re S

- Nurse entered into inappropriate or intimate relationship with estranged wife of patient
- Saw patient's wife for “family work” on 29 occasions with patient present for 3 meetings
- Meetings continued after patient’s discharge (networking assistance)
- Not documented or discussed with anyone
- Patient discovered emails from nurse – involvement with services and trust broke down
- Nurse also encouraged wife to provide false or misleading statements to DHB and PCC
- Pleaded guilty to level of intimacy and asking wife to provide false statements to match his



# Re S decision

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- Guilty of entering an inappropriate and intimate relationship
- The patient's mental health impacted as a result
- Not appropriate to engage in an intimate relationship with a member of patient's immediate family
- Fact that wife estranged did not absolve responsibility
- Met her in capacity of providing treatment to patient and family
- Used his position to commence a relationship when this would risk harm to a vulnerable patient
- Suspended for 12 months censured and conditions after commencing practice (supervision, education, notify employer)





# Professional boundaries - Business arrangement

## Re G

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- Nurse providing community care entered into real estate contract with elderly patient - substantial financial rewards for nurse
- Patient died several weeks later
- Significant power imbalance, nurse put interests first and obtained undue preferential consideration
- Fine \$15000 (deterrent), supervised practice for 18 months, further education on communication and professional boundaries
- Censured



# Professional boundaries Accepting gifts -Collie

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- Two nurses met an elderly couple who were patients of the practice. Both patients suffered from impaired cognitive functioning and depression
- Nurses accepted small gifts, visited couple at home, accepting payment for petrol
- Nurses accepted cheques on numerous occasions from couple, amounting to \$45,000. Some cheques were accepted after the couple left the practice
- The Council held that the nurses owed a duty of care to the couple, and the public must have reasonable expectation that nurses will behave ethically and not abuse their position, particularly with vulnerable clients
- The nurses' names were removed from the register. Both appealed to High Court but were unsuccessful



## Principle 8

Maintain public trust and confidence  
in the osteopathic profession



# Re D

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- Found guilty of 8 counts of sexual violation and 7 of indecent assault under the Crimes Act
- Sentenced to 8 and 3 years imprisonment
- At the time of offending was practising from his own clinic
- Victims all patients receiving osteopathic treatment
- Asked to undress, failed to offer chaperone, touched in sexual manner and failed to wear gloves for sensitive areas
- Digital penetration
- Also indecent assault - massaging breasts



# Tribunal findings

- Offences reflected adversely on fitness to practise which involves not just clinical ability but whether conduct was immoral, unethical or failed to uphold the law
- Offences related to osteopath's core professional obligation to avoid any unlawful sexual conduct as it undermines trust and confidence the community has in osteopaths
- Sexual offending against patients will always be regarded as morally, ethically and professionally repugnant
- Registration cancelled and censured
- If reinstated must not practise in sole practice and must accept supervision, \$10,000 costs



# Re P

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- Convicted of dishonestly using documents with intent to obtain pecuniary advantage (penalty of 7 years imprisonment)
- 12 charges over 18 months
- Was spoken to previously about billing irregularities but engaged in systematic deliberate process to claim for extra treatment services provided which not entitled to claim for (\$35,000 repaid to ACC)
- Convicted and sentenced to 140 hours community work
- Pleaded guilty to having a conviction that reflects adversely on fitness to practise



## Re P - Penalty

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- Registration suspended for 6 months
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- After recommencing practice must be supervised on clinical records and billing for 6 months
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- Must complete an assessment on billing and related accounting practices
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- Censured
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- 30% of costs

