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## Identifying ethicolegal and professional principles

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<p><b>Ethical and legal duties to benefit and not harm patients</b>                  Beneficence and non-maleficence                  Competence and limits of competence                  Reflexologists' duty of care                  Reflexologists who commit crimes                  Maintaining safe, effective boundaries</p>	<p><b>Respecting the patient's autonomy</b>                  Ethical requirements of the duty to respect autonomy                  Legal facets of the duty to respect autonomy  <b>Conclusion</b>  <b>References</b>  <b>Further reading</b></p>
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**Abstract**

Although few reflexologists are likely to be sued in the course of their professional practice, all practitioners owe their patients a duty of care and must work within the law. Ethical and legal responsibilities are integral to safe and effective practice. This chapter will outline the major ethical and legal responsibilities owed by reflexologists to their patients.

**Key words: benefiting and not harming, confidentiality, consent, ethical and legal duty of care, limits of competence, respect for autonomy**

The popularity of clinical reflexology has increased dramatically in recent years (Zollman & Vickers 1999). However, although there has been growing awareness of the therapeutic potential of reflexology, the ethical and legal issues facing its practitioners have received little specific attention, perhaps because of the assumption that reflexology is gentle, relaxing and considered to be harmless. Nevertheless, any therapy that has the capacity to benefit a patient also has the capacity to cause harm when used inappropriately. Ethical issues, such as seeking consent to treatment, respecting a patient's confidentiality, and maintaining appropriate boundaries, are as relevant to reflexologists as to any other practitioner, whether in complementary or conventional health care, and these ethical issues may also give rise to legal issues.

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## ETHICAL AND LEGAL DUTIES TO BENEFIT AND NOT HARM PATIENTS

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### BENEFACTENCE AND NON-MALEFACTENCE

Patients are entitled to expect that their therapeutic encounter with a reflexologist will be of benefit to them and, at the very least, will not cause them harm. These expectations (or rights) are encapsulated in the ethical duties of beneficence (benefiting) and non-maleficence (not harming), ethical principles that are at the heart of all healthcare relationships. These duties form the basis of most codes of ethics and are a central plank of Hippocratic tradition. As in most complementary therapies, the notion of what constitutes 'benefiting' in reflexology is somewhat wider than within conventional medicine. Whereas medical benefit usually involves the removal of symptoms, reflexology may benefit patients by preventing illness from arising or may improve the patient's mental outlook on his or her condition through the relaxation effect. The corollary is that harm may be caused during a reflexology treatment not just by physically injuring the patient, but by causing emotional damage or preventing the patient from seeking more appropriate treatment. Therapists must always avoid making inappropriate claims for reflexology, and indeed are bound by the laws pertaining to specific conditions, for example, not guaranteeing to cure cancer, not providing maternity care except in an emergency and not attempting to treat sexually transmitted disease.

### COMPETENCE AND LIMITS OF COMPETENCE

To be able to benefit patients, reflexologists must be competent. Competence requires both technical proficiency and ethical literacy, that is, the ability to analyse and reflect upon ethical dilemmas arising in practice. As many reflexologists work single-handedly in private practice, therapists must recognize their own limits of competence and should, in the case of doubt, refer a patient onto someone better able to provide the necessary treatment – be that person a more senior reflexologist, another complementary practitioner, or a doctor. Accurate diagnosis is an important component of proficient practice and requires the therapist to recognize when the patient requires more intensive therapy than the reflexologist can offer. Reflexologists must also be in good physical and mental health in order to be able to treat patients effectively and safely.

The current common law allows freedom to practise, by which anybody can set up as a reflexologist (or other complementary therapist) without any training whatsoever. This makes it hard for patients to ascertain who is and who is not a competent reflexologist (Stone & Matthews 1996). Personal

recommendation of 'good' practitioners may be a reasonably reliable means of finding a competent reflexologist, although this may simply be the subjective assessment of a previous patient who happened to develop a good rapport with the therapist. The general public should be encouraged, by the practitioner, to contact the reflexology professional organizations to confirm minimum training requirements and qualification of the individual therapist. The regulatory body will also be able to provide information regarding their Code of Ethics, which will determine the standard of professional behaviour expected of its therapists, as well as any complaints mechanisms that exist in the event of mishap. The coexistence of a number of professional registers within reflexology does little to ease the uncertainties facing patients or purchasers of reflexology, although this is changing.

'Best practice' demands not just high standards of pre-registration training, but also a commitment on the part of the reflexologist, once qualified, for continuing professional development (CPD) and, where possible, supervision of practice (Mackereth 2001). Reflexologists must be up to date with current research in order that practice can be based on contemporary evidence. With increasing governmental interest in complementary medicine (House of Lords 2000) the reflexology profession will have to invest energy and resources into research, because without evidence as to both the efficacy and safety of reflexology, it will be difficult to know for sure whether or not patients are receiving the best treatment possible (Ernst 1996).

### REFLEXOLOGISTS' DUTY OF CARE

The ethical duty to benefit patients is mirrored by a legal and professional duty of care requiring practitioners to treat patients with all due care and skill. Reflexologists who fall short of their duty and cause patients harm may be found negligent if sued in a civil court, or may be liable to appear before a professional misconduct hearing. The most likely legal action against a reflexologist is negligence. Negligence may arise out of any sphere of a reflexologist's activities, such as failure to diagnose adequately or correctly, negligent treatment or negligent failure to disclose risks to the patient before providing treatment.

To be accused of negligence does not imply that the reflexologist intended to cause the patient harm. In determining whether a reflexologist had been negligent, the court would apply the Bolam test of professional negligence (*Bolam v. Friern Hospital Management Committee* 1957). This test of professional negligence states that the standard of care owed by the reflexologist to the patient is that which could be expected of a reasonably skilled and competent reflexologist acting in those circumstances. In ascertaining 'reasonable-ness', the court would look to national standards current at the time of the incident, such as National Vocational Qualifications, Occupational Standards or seek evidence from an expert witness. The absence of a single professional

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standard within reflexology at the time of writing presents difficulty in ascertaining the appropriate standard of reasonableness.

It is noticeable that the incidence of litigation against reflexologists arising out of their professional practice is minimal, and this is reflected in the low premiums for personal professional indemnity insurance which are paid by clinical reflexologists. It is possible, however, that as reflexology becomes more professionalized and better organized, the incidence of litigation may paradoxically rise. Increasing integration of the therapy into mainstream healthcare services will automatically result in a larger client caseload, thus reducing time and availability of the practitioner for each individual patient. Examples of possible reasons for litigation include situations in which practitioners fail to recognize that patients are more seriously ill than their competence permits them to treat; or failing to warn patients intending to return to a job in which they operate heavy machinery of the potential drowsiness following treatment.

### REFLEXOLOGISTS WHO COMMIT CRIMES

It has already been stated that negligence involves unintentional harm. However, in criminal law, for a reflexologist to be successfully prosecuted for a crime, the crown prosecutor would have to show that the reflexologist both committed the criminal act and intended to do so. Examples of criminal offences include sexually assaulting a patient or stealing money from a patient. Falsifying one's tax return, for example by failing to disclose income from patients who paid in cash, would also constitute a criminal offence.

One would hope that few, if any, reflexologists would be prosecuted in connection with their professional practice. As well as having dire personal consequences for the practitioner, criminal acts within professional practice would breach the primary ethical principle to do patients no harm. They would also be a breach of the fiduciary relationship that is at the heart of the therapeutic encounter, in which the patient should be able to assume that the reflexologist will act at all times in the patient's best interests and that the patient will not be used as a means to an end, for example, that the reflexologist will not create a dependency on the part of the patient to satisfy his or her own need to be needed.

### MAINTAINING SAFE, EFFECTIVE BOUNDARIES

Safe, effective therapy requires safe, effective boundaries. Practitioners should strive to create firm emotional, sexual and financial boundaries with their patients. Although reflexologists are no more likely to abuse the relationship of trust than any other health professional, evidence of professional abuse is, unfortunately, surfacing within almost all health professions. Moreover, the particular dynamics of the complementary and

alternative medicine (CAM) relationship may increase the likelihood of boundary violation by both therapist and patients. A reflexologist's therapeutic concern and empathy may be mistaken by a vulnerable, or indeed manipulative, patient for personal or romantic emotional interest. If the reflexologist gives a welcoming or departing hug this could be misconstrued as a sexual advance. Similarly, overfamiliarity on the part of the reflexologist may cause the patient mistakenly to consider the therapist as a friend and to start asking personal questions that the therapist feels it is not appropriate to answer. The lending and borrowing of money to and from patients is almost always inappropriate and liable to lead to misunderstanding and bad feeling. Although it would be regrettable if, in order to prevent these problems, reflexologists felt bound to practise more defensively, practitioners must also be aware of the dangers of an allegation of abuse and take the relevant steps, such as the maintenance of detailed, contemporaneous notes, to avoid unfair or inaccurate accusations.

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## RESPECTING THE PATIENT'S AUTONOMY

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Respecting autonomy means allowing patients to make decisions about their own lives and to act in accordance with their own set of values and preferences. Most reflexologists consider that they provide treatment that is individualized, holistic and ultimately patient centred. Certainly, one would hope that a therapeutic encounter in which the patient is given the time and space to explore his or her feelings at length, as well as discussion of physical symptoms, would facilitate the patient's involvement in the therapeutic process and increase their sense of empowerment. The reflexology patient is not a mere passive recipient of treatment. For reflexology to be maximally efficacious, patients have to be active participants in their own healing, making whatever adjustments to diet, exercise, stress levels or mental outlook the practitioner recommends.

Conversely, this does not mean that reflexologists are incapable of acting paternalistically, such as when practitioners believe that they 'know better' and seek to override the patient's wishes or fails even to elicit the patient's views. Such behaviour is rightly condemned within medicine as an abuse of the professional's power and is no more acceptable in clinical reflexology than in any other area of health care. In condemning paternalism, we must not, however, lose sight of the fact that some patients want their reflexologist to make some decisions for them. Some otherwise autonomous patients may luxuriate in allowing themselves to become temporarily dependent upon a therapist for a period of time. Nor is the patient's capacity for acting autonomously a prerequisite of the therapeutic relationship. Reflexology can provide benefit even when patients are not autonomous (e.g. where

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they are suffering from learning disabilities or are incompetent minors). What is important is that when patients wish to be autonomous reflexologists do not supplant patients' values and preferences with their own.

**ETHICAL REQUIREMENTS OF THE DUTY TO RESPECT AUTONOMY**

Most of the ethical requirements to do with autonomy concern information. To redress the power disequilibrium inherent in the professional relationship, the reflexologist must disclose as much information as the patient needs or desires to know in order to make an informed decision whether or not to proceed with treatment. This will include information about the therapy, how long each session is going to last, how many sessions are likely to be necessary, what the reflexology is likely to achieve and, if the patient wants to know, information about the reflexologist's training and therapeutic orientation. Patients also need to be informed of their obligations for the duration of the professional encounter. Respect for autonomy involves treating the patient as an equal in decision-making and keeping them informed and involved as the therapeutic relationship deepens. Consent, in particular, is not a one-off event, but an ongoing process.

Respecting the patient's autonomy also requires that the reflexologist treats as confidential any information given by the patient during the therapeutic consultation. Patients invariably disclose a significant amount of personal information in the course of their treatment. They do so trusting that this information will be used solely for their benefit. However, reflexologists need to be able to explain to patients that this duty is not absolute and that there may be rare situations when the reflexologist may be obliged to breach the patient's confidentiality (Case study 4.1).

Reflexologists should familiarize themselves with their professional code of ethics and be aware of the particular circumstances in which strict confidentiality may be overridden. This might include the legal duty on the part of the reflexologist to inform the local Medical Officer in the case of discovering that a patient has a notifiable disease or, rarely, if the patient tells the reflexologist something in the course of a treatment session that causes the reflexologist to fear that the life or safety of a third party is at risk. An example might be if the patient confides to the reflexologist that he or she intends to commit a serious assault on a named individual, and the reflexologist genuinely believes that breaching confidentiality and warning the individual will significantly reduce the likelihood of that individual suffering harm.

**LEGAL FACETS OF THE DUTY TO RESPECT AUTONOMY**

The law may protect a patient's autonomy in a number of ways. The civil action of battery (or trespass to the person) most closely protects the

**Case study 4.1** An ethical dilemma

Jeanette had been receiving regular reflexology for a few weeks when she confided to her reflexologist that she was pregnant for the second time and that, because of her dissatisfaction with the first experience she had decided to care for herself during this pregnancy and that her partner was intending to deliver the baby at home without midwifery support. Jeanette did, however, wish to continue to receive reflexology throughout the pregnancy.

The reflexologist felt very concerned about this and discussed the case anonymously with her supervisor, who informed her that it is illegal for anyone other than a midwife or doctor to deliver a baby except in an emergency (see Chapter 10). However, the dilemma for the practitioner was being asked to continue the treatment in the knowledge that Jeanette was pregnant and at risk of complications as a result of her previous delivery. She could not be seen to be colluding with Jeanette's wishes and yet could not break Jeanette's confidentiality by referring her to the local midwifery service, which she had no desire to use.

The practitioner advised Jeanette that she would be willing to provide reflexology care during the pregnancy on condition that Jeanette sought the appropriate maternity support. Jeanette was given contact details of the local Supervisor of Midwives but declined to follow this up, so the reflexologist felt obliged to withdraw her services.

patient's bodily autonomy. A battery is occasioned when a reflexologist touches a patient, for example, in the course of physically examining the patient, without having obtained consent. Usually, a patient's consent to be touched may be implied if the patient lies down and makes no obvious objection to examination or treatment. Such consent would only extend to that which a reflexologist could be reasonably certain that the patient would agree to if asked directly. The concept of implied consent would not permit, for example, a vaginal or rectal examination as part of a physical examination, which, in any case, would be wholly inappropriate within standard reflexology practice, although it may be relevant if the therapy was incorporated into midwifery or gynaecological nursing practice.

Failure to provide information about the risks of reflexology might also result in an action for negligence. This might arise, if, for example, a reflexologist failed to warn a diabetic patient about the risks of treatment and the patient, consenting to treatment unaware of those risks, suffered harm as a result of the reflexology. However, this extends only so far as contemporary evidence available at the time.

Reflexologists are also under a legal, professional and ethical duty to respect confidentiality. Occasionally, a patient might be able to sue a reflexologist who disclosed confidential information learned in the course of the professional relationship, particularly if economic loss was sustained as a result of the unauthorized disclosure. Reflexologists must also comply with their legal responsibilities in relation to data protection, and ensure that their manual and computer records are maintained in accordance with statutory requirements. The Data Protection Act 1998 extends a practitioner's duty to safeguard certain manual as well as computer-based health records. Although reflexologists are not yet included in the list of professionals who are duty-bound to allow

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their patients access to their records by law, they should do this as a mark of respect for autonomy, and might even wish to consider providing patients with a copy of their records. Where reflexology is used within some other form of professional clinical practice whose practitioners are required to comply with these regulations, they apply also to the reflexology-specific data.

### CONCLUSION

Reflexology is generally thought of as safe and non-invasive, and it may mistakenly be assumed that few ethical and legal issues arise. The purpose of this chapter has been to demonstrate that ethical and legal issues arise in all professional relationships and that the harm that an incompetent reflexologist may cause a patient need not be physical. The requirements of ethical and legal principles go beyond requiring that the reflexologist be technically competent. For clinical reflexology to continue to grow in credibility as an adjunct to mainstream health care, practitioners must be familiar with their ethical and legal responsibilities and accept that they are accountable to their patients, their profession and to society as a whole. As well as fulfilling individual responsibilities, reflexologists should take responsibility for the collective aspects of their profession, volunteering, for example, to participate in the profession's disciplinary mechanisms and mentoring colleagues who have recently qualified. Hopefully, adherence to the principles outlined above will ensure that reflexology continues to grow in reputation, respectability and credibility and that adverse incidents remain few and far between.

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