Fitness to Practise
ebulletin
June 2011

A question of conduct

In this issue of the Fitness to Practise e-bulletin, we launch a new series of questions and answers to help guide osteopaths through some of the difficult issues that arise in daily practice.

Q Question

I had a baby brought in to me for treatment recently by his grandparents. I am usually very cautious about treating a child without the parents being present and when I questioned the grandparents, it transpired that they had not even let the parents know that the child had been brought to me. The parents were under the impression that the grandparents were just relieving them of their irritable baby for a few hours! Unsure of the legalities of the situation, I asked them to call the parents. They did this, and I spoke to the parents who were happy for me to proceed. It is a situation that I had not come across before – did I do the right thing?

A The GOsC answers

The treatment of children raises complex issues about who can give consent: child, parent – or someone else? As you were asked to treat a baby, you will not need to decide whether (as may happen if you have an older child before you) the child itself is competent to give consent.

So who can give consent to treatment where the child is not competent to do so? It is the person with 'parental responsibility'. This is defined in the Children Act 1989, and includes the child's:

- Mother and father if married at the time of the child's birth.
- Mother but not father if unmarried at the time of the child's birth, unless the father has acquired parental rights.
- Legally appointed guardian or other person with a relevant court order.

The person with parental responsibility can however delegate that responsibility to someone who looks after the child on a regular basis, for example, a grandparent.

The responsibility may also be delegated in relation to particular treatments or treatments for particular conditions. Osteopaths in these situations need to be absolutely certain that the parents have indeed delegated responsibility to the grandparents (or other regular carers) and in the situation you've described, that seems far from certain. You did the right thing to assure yourself that the parents agreed that the grandparents could provide consent for the examination or treatment of their child.

You can find out more about children and consent from:

- The GOsC's *Code of Practice*, which deals with children and consent at clauses 31 to 36.
- The GOsC's booklet, *Obtaining Consent*, published in 2005, which deals with children and parental responsibility on page 7.
- The Department of Health website which has a very useful general guide for healthcare practitioners entitled *Seeking consent: working with children (2001)*. This should be read in conjunction with the Department of Health's update of 2009, *Reference guide to consent for examination and treatment*.

Do you have a question you would like answered by the GOsC in a future e-bulletin? Please email us at regulation@osteopathy.org.uk.

ebulletin highlights

Under examination

Failing to undertake adequate patient examinations and case histories can easily land osteopaths before the GOsC's Professional Conduct Committee. Two recent cases illustrate the problem while another before the Investigating Committee shows how good practice can avoid problems.

Case 1

Changing symptoms

The Professional Conduct Committee (PCC) admonished an osteopath following a finding of unacceptable professional conduct relating to patient treatment over a series of appointments.

The patient in this case had returned to the osteopath after a gap of just over a year. He then attended the osteopath several times over the course of the following three weeks, receiving HVT treatment on a number of occasions during that period.

The PCC made a number of findings which contributed to the overall finding of unacceptable professional conduct, including failures by the osteopath in relation to record keeping, diagnosis, prognosis and modification of treatment. Crucial to the determination was the PCC's view that the osteopath had failed to carry out an adequate evaluation of the patient as required in the light of the patient's changing symptom picture.

The PCC heard in evidence that the patient had kept returning to the osteopath with changing and deteriorating symptoms, including 'pins and needles' at one appointment, and inflammation, tenderness and restriction of movement on the cervical spine at C5, 6 and 7 at another appointment. The PCC found that if the osteopath had carried out adequate clinical evaluations, she would have become alerted to the need to modify her treatment of Patient A and, especially when presented with symptoms of inflammation and tenderness, to recognise the risks of continued HVT treatment so close to the affected disc.

However, while the PCC was firm in its view that the osteopath's failings were sufficiently significant and wide ranging to constitute unacceptable professional conduct, it recognised that the practitioner had made a considerable effort to improve her practice. It was noted that the osteopath had 'undergone a real learning process' since the events that had triggered the hearing: the PCC found that the osteopath's notes now showed 'a consistent pattern of assessment of presenting symptoms, formulating working diagnoses, setting treatment programmes, monitoring and evaluating, including response to treatment, modification of treatment and further evaluation and proper recording'.

Case 2

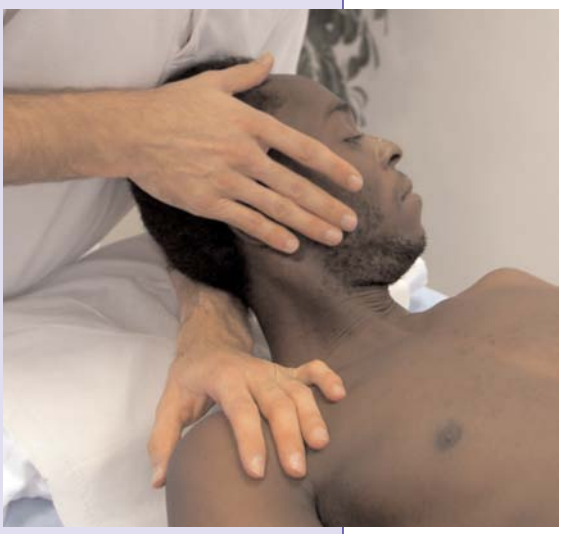
Inadequate initial exploration of symptoms

A failure adequately to explore patient symptoms and complaints resulted in another finding of unacceptable professional conduct by the PCC last year.

In this case the particular issue was that the osteopath failed to elicit an adequate patient case history and then did not adequately explore the onset of the patient's current complaint of knee and back pain. The osteopath also failed to gather further information regarding relieving factors and progression of the condition since onset, and failed to investigate associated signs and symptoms (including, in relation to the patient's knee, swelling, heat and/or redness, and pain or swelling in other joints). The osteopath admitted to failing to make adequate records regarding a range of matters, including patient case history, presenting symptoms, the actual examination, clinical findings, diagnosis and treatment plans.

Again, the PCC was clear in its view. It found that the osteopath had 'failed to elicit an adequate case history in relation to [the patient's] past and present knee pain and her past back pain'. It noted that simply asking the question, 'Do you have any other problems?' was not an adequate exploration of associated signs and symptoms including pain or swelling. As in the first case, while the PCC admonished the osteopath, it noted that insight into the failures and sufficient practice improvements had occurred. The PCC noted that, as well as producing a new, thorough record system and attending a one-to-one record-keeping course last year, the osteopath's records were now thorough and detailed, and showed full case histories, working diagnoses being re-visited and treatment and management plans being completed.

The PCC said it accepted that the practitioner had 'expressed genuine regret and remorse' and noted that there was good evidence that he had taken 'rehabilitative and corrective steps'.



Case 3

Proper examination

A recent case considered by the Investigating Committee (IC) illustrates that a properly conducted and documented patient examination can prevent a case progressing to the PCC.

Last summer, a patient attended an osteopath's clinic having been referred by her general practitioner following a complaint of sciatica. The patient complained that, after an initial examination, the osteopath concluded that one of her legs was longer than the other and that her body was out of balance. He then carried out treatment to both sides of the patient's body. However, over the next few days, the patient's symptoms and condition worsened. The osteopath dealt with the situation both over the telephone and at a second consultation, at which he concluded that his earlier treatment had provoked an acute protective muscle spasm.

Ultimately, the patient had a MRI scan, was signed off work and underwent a back operation, and a microdiscectomy on two discs. She complained to the GOsC that the osteopath should not have treated her back in the way he did. However, the IC took the view that the treatment was appropriate given the patient's presenting symptoms, and, importantly, supported by the osteopath's adequate examination.

The IC found no case to answer and the case was closed with no further action taken.

Additional information

Paragraph 66 of the *Code of Practice* states:

'When you accept someone as your patient, you have a duty to provide them with an appropriate consultation and good quality care. This includes a full case history, examination, treatment (which must be within your level of competence) and/or referral.'

Under investigation

Here we explain the work of the Investigating Committee, a body that carries out a crucial step in the fitness to practise process, and show how it is handling cases efficiently and fairly.

Membership

Six lay members and six osteopaths form the GOsC's Investigating Committee (IC), which is chaired by a lay member. The IC meets with seven members about five or six times annually (and more often if workloads require or to consider interim suspensions where serious allegations have been made against the registrant). Twice a year, all 12 members come together to review their work and procedures, and to receive training to ensure they remain up to date with the law and are fulfilling their role in the best way possible.

Step by step – how the IC works

Once a formal complaint has been made, it must first be considered by a Screener (an osteopath member of the IC) who decides whether it lies within the GOsC's jurisdiction. If the Screener decides it does, it is a legal requirement that it is then considered by the IC. The next step is to send the registrant involved a copy of the Screener's report and, crucially, a copy of the complainant's written statement and any supporting evidence.

The registrant has 28 days to respond to the allegations in writing, after which the response is sent to the complainant for comment – a step which is intended to ensure the IC has as much information as possible. Sometimes, once the complainant sees the osteopath's response, they understand for the first time how a particular situation may have developed and they let us know they do not wish to pursue their complaint. However, this may not be the end of the matter, as the IC must, under the legislation, consider the complaint in any event. Also at this time, GOsC staff may gather other relevant evidence, such as the complainant's medical records.

Following the exchange of response and comments, and on receipt of all relevant evidence, the case can move to the IC. IC members receive all the relevant available information relating to the case before their meeting and papers are read in advance so that cases are dealt with as effectively as possible. Careful checks are carried out to ensure that IC members who may have a conflict of interest in a case – for example, because of a personal connection with the registrant concerned – neither receive the paperwork for the case, nor participate in any other way in the decision making.

The key task of the IC is to decide whether there is a case to answer, and the Committee is assisted in reaching sound and fair decisions on this question by guidance drawn up for that purpose and by the presence of a legal assessor who advises on points of law.

If the IC determines that there is a case to answer, it will refer the matter to the Professional Conduct Committee (or to the Health Committee if appropriate). On referral to the Professional Conduct Committee (PCC), the parties (registrant and complainant) are notified and provided with details of the particular issues which the IC has referred, together with its reasons for referral. About half the complaints considered by the IC are referred to the PCC.

The parties are also notified, and given full reasons for the decision, if the case is not referred to the PCC. The case is then closed and remains confidential to the GOsC and the osteopath involved. Sometimes, the IC takes the view that there is no case to answer, but considers that the registrant would benefit from some guidance in relation to the issues raised. In that case, a letter of advice is sent to the registrant.

The IC's caseload

The GOsC dealt with 21 new cases in the year to March 2011 – a 34% fall compared with the previous 12 months. All these cases were screened in and will therefore have been, or are due to be, considered by the IC. Although the number of cases in any given year will fluctuate, generally the figure is about

continued

Under investigation? > continued

25 to 30. But where numbers increase – as in the year from April 2009 to March 2010, when there were 35 cases – the IC increases the frequency of its meetings to ensure that cases are considered in a timely way.

The GOsC aims to have new cases screened within three weeks of receipt and to have them considered by the IC within four months of receipt. The GOsC also aims to notify the parties of the IC's decision within a fortnight of the IC's consideration of a case.

A fair hearing

We know that registrants are often agonised that a complaint has been made about them, and fearful of the consequences. However, they should try to remember that the role of the IC is to investigate. No conclusions will have been drawn either by GOsC staff or more importantly by the IC. By providing a full response, the registrant will help the IC to reach a fair and proper decision.

CHRE

The Council for Healthcare Regulatory Excellence (CHRE) conducts audits of cases considered by the IC where no referral to the PCC was made – in other words, those cases where the IC found no case to answer. The CHRE's most recent audit for 2010 (now available on the CHRE's website), found that good decisions had been made by the IC which were properly recorded and communicated to the parties.

Osteopathic Practice Standards

The new *Osteopathic Practice Standards* will be published on 31 July 2011 and take effect on 1 September 2012.

Every osteopath will be receiving their own copy at the beginning of July and the standards will also be available on the GOsC's website.

We have lots of activities and communications exercises planned for the time between now and September 2012, to help you familiarise yourselves with the new standards so that you apply these in practice fully and confidently by the time they take effect.

Look out for more on the new standards in the next Fitness to Practise e-bulletin.

Advertising standards – don't wait until you hear from the GOsC!

Many osteopaths will have received a letter from the GOsC suggesting they review the claims made on their websites, and reminding them to check all their marketing materials to ensure they comply with the requirements of the Advertising Standards Authority and the GOsC's own *Code of Practice*.

If you haven't had a letter, our message is: don't wait until then to make any necessary changes to your advertising. Patients count on the integrity and honesty of health professionals, and rightly expect that any claims you make in your marketing material are backed up by verifiable evidence of their effectiveness. This applies to all advertising, but bear in mind that websites reach a wider audience than more traditional communication methods.

We also know that the internet offers other innovative, and rather appealing, ways to attract patients. If you're looking at some of those possibilities, you should consider any promotional options with great care to ensure they don't inadvertently jeopardise professional standards and even risk bringing osteopathic practice into disrepute. We'll be looking at some of the mass marketing opportunities currently available and giving some advice in a future issue.

General Osteopathic Council

The GOsC Fitness to Practise e-bulletin is produced by the Regulation Department. For further information contact regulation@osteopathy.org.uk.