

Patient confidentiality

A case recently heard by the General Osteopathic Council's Professional Conduct Committee illustrates the importance of thinking more widely about patient confidentiality.

In this case, the registrant had been practising as an osteopath in the north of England before leaving to go travelling. She left her practice in the hands of a locum. On her return to the UK, she transferred her patient notes to another osteopath to whom she had sold the goodwill in her practice. A total of 1,500 sets of patient records were transferred. Among the notes transferred were those of one particular patient, who was dismayed to find that her notes had been passed on in this way without her permission, and made a complaint to the General Osteopathic Council.

The registrant admitted before the Professional Conduct Committee that she had not obtained, or attempted to obtain, consent from any of her former patients before transferring their notes. The Committee considered that the registrant's failure to respect her patients' confidentiality amounted to unacceptable professional conduct.

When it came to deciding what sanction to impose, the Committee accepted the registrant's submission that she was now extremely alive to issues of confidentiality and there was no realistic possibility of recurrence of similar unacceptable conduct. It had been an isolated incident, albeit one which



concerned her entire patient list. The Committee accepted that she was not aware that she was acting in breach of the confidentiality requirements imposed on her, and that she took the view (mistakenly, as she now accepted), that the transfer of notes to a fellow osteopath, without first obtaining the consent of each patient, was permitted practice. Taking everything into account, it imposed a sanction of admonishment.

This case was considered under the *Code of Practice 2005*, but similar requirements as to confidentiality apply under the *Osteopathic Practice Standards*. Standard D6 provides: "Respect your patients' rights to privacy and confidentiality" and the detailed guidance which accompanies that standard includes the following:

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Patient confidentiality > continued

'Maintaining patient confidentiality includes:

- 1.1 Keeping confidential your patients' identity and other personal information ...
- 1.2 Ensuring that your staff keep such information confidential.
- 1.3 Ensuring that the information is kept confidential even after the death of a patient.
- 1.4 Not releasing or discussing medical details or information about the care of a patient with anyone, including their spouse, partner or other family members, unless you have the patient's valid consent to do so ...'

So what should you do if you find yourself in similar circumstances to this registrant? We can't give you advice which covers every eventuality, but the guidance at D6 should help, as it explains how there may be times when you want to ask your patient if they will give consent for you to disclose confidential information about them, for example, if you need to share information with another healthcare professional.

In that case, the guidance advises, you should:

- '6.1 Explain to the patient the circumstances in which you wish to disclose the information and make sure they understand what you will be disclosing ...'
- 6.2 Allow them to withhold permission if they wish.
- 6.3 If they agree, ask them to provide their consent in writing or to sign a consent form.'

In the event that you intend to transfer the goodwill in your practice, it is essential that you consider these issues of confidentiality and consent. In such circumstances we would always recommend seeking independent legal advice before any such transfer is made.



Registering with the Information Commissioner's Office

From time to time we are asked by osteopaths whether they need to register with the Information Commissioner's Office (ICO).

The Data Protection Act 1998 requires every **data controller** who is **processing** personal information in an automated form to register with or 'notify' the ICO, unless they are exempt.

The ICO website explains that 'processing' personal information means 'obtaining, recording or holding the information or data, or carrying out any operation or set of operations on the information or data'. And a 'data controller' is a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed. So if you are obtaining, recording and storing

personal information about patients or staff on a computer, and you are the person within your practice who is determining the purpose for which that information will be obtained and held, it is likely you will need to register with the ICO.

If you want to check whether you need to notify, the ICO website links to an easy-to-complete, online self-assessment form. There is also a self-assessment guide: http://www.ico.gov.uk/for_or_ganisations/data_protection/notification/need_to_notify.a_spx

Note that the ICO website states that failure to notify is a criminal offence and that register entries have to be renewed annually.

Fitness to Practise Annual Report

In the last edition (Apr/May 2013) of *The Osteopath* magazine, we reported on the number of cases that had been considered by the Fitness to Practise Committees in 2012/13.

Further to this, we will shortly be publishing on our website the annual *Fitness to Practise Report*, which provides a summary of the cases that were considered and found proved by the Professional Conduct Committee during the same year.

If you have any questions about the report or the Fitness to Practise process, contact the GOsC Registration Department on 020 7357 6655 or email regulation@osteopathy.org.uk

A question of practice



Question

I live in a small town and am friendly with other osteopaths nearby. A colleague in another practice called me to let me know about an elderly lady who has complained about her; she told me who it was. That lady has now telephoned me to ask about treatment. I managed to put her off by saying I'd put a brochure in the post for her even though I don't intend to, as I don't want to treat her. Am I obliged to accept her as a patient?



Answer

You are not *obliged* to accept any individual as a patient. The *Osteopathic Practice Standards* (OPS) make that clear, and also set out some of the circumstances in which an osteopath might not want to accept a patient or continue to treat a particular individual. These include people who become aggressive, appear to have no confidence in the care you are providing and become inappropriately dependent on you.

However, the scenario you describe raises several other issues. Your query does not suggest that any of the general reasons for declining to accept a patient apply here, and you may wish to reflect on your reasons for declining to treat this lady. Is it loyalty to your colleague or fear that this patient may complain about you? Do these reasons justify your response to her approach? You should also consider whether there is any element of discrimination in your reasons: it is illegal to refuse

a service to someone on the grounds of various protected characteristics which include ethnicity, disability gender and age.

Another issue to bear in mind is whether telling a patient that you will do something (putting a brochure in the post for her) when you do not intend to do so is consistent with the standards of integrity required of osteopaths and whether it upholds the reputation of the profession. Guidance in the OPS indicates that the public's trust and confidence in the profession, and the reputation of the profession generally, can be undermined by an osteopath's professional or personal conduct, and that upholding the reputation of the profession may include showing compassion to patients, and behaving honestly in your personal and professional dealings.

Finally, you may wish to remind your colleague about patient confidentiality. Maintaining patient confidentiality includes keeping confidential your patients' identity and other personal information, and any opinions you form about them in the course of your work. So your colleague was not entitled to reveal the patient's identity when she told you that a complaint had been made against her.

Further information:

Osteopathic Practice Standards

> See Section D Professionalism, and in particular standards D4, D6, D14 and D17.



General
Osteopathic
Council

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