

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 436/5208

DECISION

Case of: Mr Mark Robson

Committee: Ms Judith Worthington (Chair)
Mr Andrew Kerr
Mr Rod Varley

Legal Assessor: Mr Angus Withington

Representation for Council: Mr Jonathan Goodwin

Representation for Osteopath: Mr Stuart Sutton (by written representations only)

Clerk to the Committee: Ms Vanessa Tailor

Date of Hearing: Monday 30 June to Tuesday 1 July 2014

Decision

The Professional Conduct Committee has decided that the appropriate and proportionate Sanction in this case is Removal.

This decision will take effect in 28 days, beginning with the date on which notification of this decision is served upon Mr Robson. There is a right of appeal against this decision, in accordance with section 31 of the Osteopaths Act 1993.

The Committee decided that it was necessary, in order to protect the public, to impose an immediate Suspension Order. This Order is imposed immediately and until the expiry of the appeal period or, if an appeal is made, until that appeal is disposed of.

Please read the full Professional Conduct Committee decision, which is set out below.

Allegation and Facts

It is alleged that you, Mark Robson, are guilty of unacceptable professional conduct, contrary to Section 20 (1)(a) of the Osteopaths Act 1993, in respect of the following particulars:

Miss A

1. On 16 July 2013 you accepted a police caution that on a date between 1 January 2001 and 31 December 2001, you indecently assaulted a 16 year old female patient (Miss A), contrary to Section 14(1) of, and Schedule 2, to the Sexual Offences Act 1956.
2. As a consequence of accepting the police caution on 16 July 2013, you were required to sign the Sex Offenders Register.

Miss B

3. From November or December 2010 to February 2013 you were a member of the teaching staff at North East Surrey College of Technology ("Nescot") and Miss B was your student.
4. In or about March 2011, you accepted Miss B as your patient and provided both osteopathic treatment and counselling to her on a number of occasions.
5. Between November 2011 and August 2012 and whilst Miss B was both your student and your patient, you conducted:
 - 5.1 a personal relationship with Miss B;
 - 5.2 a sexual relationship with Miss B
6. Your behaviour as set out at paragraph 5 above was:
 - 6.1 inappropriate;
 - 6.2 transgressed professional boundaries;
 - 6.3 transgressed sexual boundaries.

Miss C

7. Whilst a member of the teaching staff at "Nescot" you crossed professional boundaries and used sexualised behaviour with a student, Miss C, on a number of occasions between December 2011 and September 2012, including:
 - 7.1. making inappropriate comments;
 - 7.2. touching her bottom inappropriately.

8. In or about March or April 2012, you accepted Miss C as your patient and provided osteopathic treatment and counselling to Miss C on a number of occasions.
9. Whilst providing osteopathic treatment and counselling to Miss C between December 2011 and September 2012, you crossed professional boundaries and used sexualised behaviour towards Miss C including:
 - 9.1. telling her about your relationship with your wife and other sexual relationships;
 - 9.2. sending her inappropriate comments by text;
 - 9.3. hugging her at the end of treatment session(s).

Decision:

The Registrant has not attended the hearing. He has instructed solicitors, Tuckers, to advise him and the Committee has had regard to the written representations prepared by Mr Stuart Sutton and sent under cover of an email dated 12 June 2014. These representations supplement a very full letter of response to the original allegations drafted by Linder Myers Solicitors dated 24 July 2013. The Committee believes that these helpful and comprehensive representations fully set out the Registrant's response to the allegations and it has paid careful regard to them. The Council was represented by Mr Goodwin and the Council has also had regard to his written and oral representations.

The Committee has also received and read a bundle of relevant evidence prepared on behalf of the Council. It heard oral evidence from three persons – Donna Patterson, the Director of Human Resources for the North East Surrey College of Technology (Nescot) and Ms B and Ms C, who had both been students at Nescot but who also received osteopathic treatment from the Registrant. In addition to carrying on private practice as a Registered Osteopath, the Registrant was, until his notice of resignation given on 14 May 2013, employed as a Sessional Osteopathic Lecturer at Nescot.

The Committee was satisfied that the Registrant had received proper notice of the proceedings. Further, it was plain from Mr Sutton's representations, that the Registrant was aware both of the date of the proceedings and his right to attend and to be represented, but he had voluntarily chosen not to do so. In the

circumstances, the Committee considered that it was appropriate to proceed in the Registrant's absence.

The Committee has accepted the advice of its Legal Assessor that the burden of proof is upon the Council and that the standard of proof is the civil standard – namely the balance of probabilities.

Parts 1 and 2

It is admitted that the Registrant accepted a caution from Surrey Police on 16 July 2013 for an offence of indecent assault on a woman, contrary to s.14(1) of the Sexual Offences Act 1953. The offence took place in 2001 and the Police notified the Council of this caution and the nature of the underlying offence by letter dated 29 July 2013. It was confirmed that the caution related to the Registrant touching a 16 year old patient's breasts in a sexual way and that his motives were of sexual gratification. It was stated that the offence occurred under the pretence of osteopathic treatment.

By a letter from his former solicitors, Linder Myers to the Council dated 24 July 2013, it was accepted by the Registrant that he had had no legitimate or osteopathic cause to request this patient to lower her vest or for him to cup her breasts and that what he did was wrong.

It is further admitted both in that letter and in Mr Sutton's representations that the Registrant has had to sign the Sex Offenders Register as a result of this caution and that this entry will remain effective for a period of two years (until 15th July 2015).

The Committee is therefore satisfied on the basis of the evidence it has received and the Registrant's admissions that Parts 1 and 2 have been proved.

Parts 3-6

Parts 3 and 4 are not allegations of unacceptable professional conduct but rather relevant background matters of fact.

It was confirmed by the evidence of Ms Patterson, Ms B and Ms C that the Registrant was a member of the teaching staff at Nescot during the period specified in Part 3 and that Ms B was a student at the College during the same period. These factual matters are also expressly admitted by the Registrant in Mr Sutton's written representations.

It is also agreed by the Registrant that, from February 2011, he accepted Ms B as his patient and provided both osteopathic treatment and counselling to her on a number of occasions (page 1 of Mr Sutton's written representations).

The Committee is therefore satisfied that the factual matters contained in Parts 3 and 4 are therefore proved.

The substantive allegations are contained by Parts 5 and 6, which the Committee considered had to be read conjunctively.

Ms B initially sought osteopathic treatment from the Registrant in order to assist her recovery from a hip injury so as to enable her to participate in a marathon. During the initial treatment sessions, the Registrant began to speak to and ask questions of Ms B in a way which she considered amounted to counselling. The Committee understood that the Registrant was not employed by Nescot to offer such a service and the College had its own dedicated team of counsellors to assist students requiring such provision. Ms B, who by her own account had some psychological vulnerabilities at that time, began to utilise part of the sessions in order to speak to the Registrant about certain issues which had and were causing her concern.

Ms B stated that part of her could tell how things could get complicated given the Registrant's apparent attraction to her. She had wanted their relationship to be therapeutic and professional. It is, however, apparent that over time, the relationship between Ms B and the Registrant moved beyond that of a student/tutor and patient/practitioner.

The Registrant went to the cinema with Ms B on two occasions and took her for a meal and cocktails on another occasion. He also invited Ms B to assist him in decorating a Christmas tree at a local Church in 2011 and he attended the Nescot Christmas meal, which was an event predominately for students but which three or four members of staff also attended. The Registrant attended a nightclub with some of the students after the dinner and was the only tutor to do so. He danced with Ms B and pulled her hair on this occasion.

These matters disclose and the Committee finds that the Registrant was pursuing a personal relationship with Ms B. This is accepted by the Registrant, who has stated that he fell in love with Ms B and that, in circumstances where his marriage appeared to be at an end, "it seemed like an opportunity for him to progress an alternative relationship." (letter from Linder Myers dated 24 July 2013).

The Committee also finds that the Registrant conducted a sexual relationship with Ms B.

[XXX...] insofar as there is any disagreement between the account given by Ms B and the Registrant, the Committee would accept the evidence of Ms B. Having had the opportunity of assessing her evidence in person, the Committee believes that she has given a truthful and reliable account of what occurred.

Parts 5.1 and 5.2 are therefore found proved.

The Committee also has no doubt that, even on the Registrant's admissions of factual matters, parts 6.1 and 6.2 are proved in relation to parts 5.1 and parts 6.1 to 6.3 are proved in respect of part 5.2. The Committee observes that, in its judgment, part 6.3 does not properly arise for consideration in respect of an allegation of conducting a personal relationship.

By his written representations, Mr Sutton accepts on the Registrant's behalf that "his behaviour transgressed professional boundaries and transgressed sexual boundaries in this his behaviour was contrary to that set out by the Code of Practice in place at the time (May 2005) in that he did not avoid putting himself in a position of making it known that he wanted a personal relationship with Ms B, nor did he avoid any form of contact that may be construed as a willingness to enter into a relationship (indeed the contrary occurred). When the signs were there, he did not remove himself from the position so that the close and/or sexual relationship with the patient failed to develop, nor did he stop treating her or end the professional relationship."

The Committee believes that the Registrant's concession in this respect is realistic and fairly reflects the evidence it has received and accepted. The Registrant does not, however, appear to accept that his behaviour was necessarily inappropriate. Whilst Mr Sutton accepts that it might be regarded as inappropriate in comparison with the Code of Practice, it is submitted that the Registrant "did not find the relationship inappropriate at the time and it appears that Ms B did not either."

The Committee disagrees and has no doubt that the Registrant's conduct should be regarded as inappropriate. It considers that conduct which transgresses professional and sexual boundaries is self-evidently inappropriate but that its finding is that the Registrant not only used the fact that he was providing osteopathic treatment as a means by which he could further his intention to pursue a relationship (including a sexual relationship) with Ms B, he also used treatment sessions to further his own sexual desires. [XXX]

When judged against the standard of conduct expected of an osteopath, the Committee has no doubt that the Registrant's behaviour in relation to Ms B must be regarded as inappropriate.

Parts 7-9

The Committee again judges that Part 8 is again not an allegation of misconduct, but rather a relevant matter of fact to explain the context of the Registrant's interaction with Ms C.

It is accepted by the Registrant that he did provide osteopathic treatment and counselling to Ms C between 1 March 2012 and 28 September 2012. These dates are consistent with the witness evidence of Ms C. Part 8 is therefore proved.

He has, however, consistently denied any allegations of wrong-doing in relation to Ms C. There are essentially three allegations in which it is asserted that the Registrant made inappropriate comments to Ms C for the purposes of Part 7.1. The first relates to an occasion during a class taught by the Registrant during Ms C's second year at the college (2010-11). She describes that the Registrant had decided to examine Ms C in class. She was wearing shorts and a bra and as she stood to be examined, she pulled her stomach in and the Registrant said something along the lines of, "oh, I can't say what I would have said because [XXX] is here." [XXX], another student in the class, was Ms C's then boyfriend.

In her oral evidence, Ms C confirmed that she interpreted this comment that he would have made a comment about what he felt her body was like.

The second comment occurred during the summer of 2012. The Registrant attended Ms C's flat for dinner with two other students. Ms C states that everyone got drunk and that she remembers the Registrant asking her, "Are you a squirter?" This was plainly intended to be and understood by Ms C to be a sexual reference, which caused her embarrassment.

The third occasion was in about December 2011 when in a car, the Registrant said to Ms C that in pursuing Ms B he had "gone for the wrong bi". This reference, which was clearly understood by Ms C, was to the effect that he ought to have pursued a relationship with her instead. When making this comment, Ms C described the Registrant as biting his lip and looking her up and down.

Part 7.2 relates to an event in July 2012, when Ms C and other students went to the Registrant's flat for dinner. The Registrant's wife was also present. All persons at the dinner were drinking but Ms C describes the Registrant as being "really drunk". When Ms C went to check upon the Registrant, who was being sick in the bathroom, he reached up and grabbed her bottom with one of his hands and squeezed it for about 10 seconds.

The Committee considered that Ms C's evidence was measured and given in a matter of fact way without any hint of embellishment. It was satisfied that she was a truthful witness and that it could accept her evidence in relation to the events referred to above.

Part 7 is therefore proved in respect of both particulars 7.1 and 7.2.

In respect of Part 9, the Committee notes that the terms of the charge refer to the Registrant's behaviour as having crossed professional boundaries and the use of sexualised behaviour. It therefore considered that both of those qualities would need to be present in relation to the specific allegations contained in Part 9.1 to 9.3 respectively.

The Registrant accepts, from Mr Sutton's representations, that he may have crossed the boundary of discussing personal matters with Ms C which he accepts are inappropriate. Ms C confirmed that the Registrar discussed both the absence of sexual relations with his wife for five years, but also that he had slept with a married woman, whose husband had been away a lot and "three way" relationships. In the Committee's judgment, this conduct clearly crossed both appropriate professional boundaries but also evinced a clear example of the use of sexualised behaviour on the part of the Registrant.

The Committee also accepted Ms C's evidence that the Registrant sent her inappropriate text messages. In particular, we find that the Registrant sent Ms C a text concerning a film, "Crash" in which he said, "don't tell anyone but I'm really kinky – you've probably guessed that already because you are quite intuitive." He also made reference to another film scene which he thought was more erotic. Although this message was denied by the Registrant and a copy of it was not made available to the Committee, it was satisfied on the balance of probabilities that Ms C's evidence on this issue was also reliable.

Part 9.2 is proved. This conduct by its very nature crossed professional boundaries and amounted to sexualised behaviour on the part of the Registrant.

Part 9.3 related to hugging Ms C at the end of treatment sessions. She described in her statement that, "We would hug to say goodbye sometimes because we were friends." Whilst the Committee judged that this was not appropriate and professional behaviour, it could not find in light of Ms C's description that it amounted to a use of sexualised behaviour by the Registrant. Part 9.3 is therefore not proved.

Unacceptable Professional Conduct

The Committee next considered whether the facts it found proved amount to conduct falling short of the standard required of an registered osteopath – namely, whether they amount to unacceptable professional conduct (UPC). It has accepted the advice of its Legal Assessor and has applied the guidance of Mr Justice Irwin in *Spencer v The General Osteopathic Council* as to the meaning of UPC and the threshold for failings to become UPC. In particular, that the failings must be judged to be serious and worthy of the opprobrium and publicity which would automatically derive from a finding of UPC.

The Code of Practice (May 2005) states at paragraphs 1-5:

“Trust is an essential part of the osteopath/patient relationship. Your professionalism and observance of the ethical standards in this Code and the law will reinforce this Trust.

Patients must be put first. Those seeking help may be anxious and vulnerable. They are unlikely to have your professional knowledge and experience and they may have unrealistic expectations about osteopathic care.

You must not abuse your professional position by pursuing a close personal or sexual relationship with a patient ... This is bound to harm the trust that is crucial between an osteopath and a patient, and may impair your clinical judgment and practise.

It is your professional duty not only to avoid putting yourself in such a position, but also to avoid any form of conduct that may be construed as a willingness to enter such a relationship.

If you think, or there are any signs to suggest, that a close personal or sexual relationship with a patient is developing, you must stop treating the patient and end the professional relationship immediately.”

The Committee reminds itself that a failure to comply with any provision of the Code shall not be taken, of itself, as amounting to unacceptable professional conduct by virtue of s.19(4)(a) of the Osteopaths Act 1993.

In the Committee’s judgment, Parts 1 and 2 amount to a serious breach of the standards expected of a Registered Osteopath. To commit a criminal offence of indecent assault whilst undertaking an osteopathic treatment is plainly a gross breach of trust and represents behaviour which is completely unacceptable and wholly contrary to the standards expected of the profession.

The other Parts found proved by the Committee, together and separately each amount to UPC in its judgment. The Registrant was in a position of trust in

respect of both Ms B and Ms C as their treating osteopath. He wholly failed to maintain appropriate professional boundaries and engaged in sexualised behaviour with them. His wrong-doing was magnified by the fact that he also breached his position of trust as their tutor at the College. There is no doubt in the Committee's judgment that these matters were serious and would properly be regarded as constituted conduct amounting to moral blameworthiness.

In the circumstances, it is plain that the Registrant is guilty of UPC.

Sanction

The Committee considered the representations of Mr Goodwin and also the written representations of Mr Sutton. It accepted the advice of its Legal Assessor and sought to apply the Council's Indicative Sanctions Guidance. It reminded itself that any sanction must be proportionate, should protect the public interest and maintain the reputation of the profession. It should also impose the least sanction necessary to achieve those purposes. It is therefore considered the possible sanctions in ascending order of seriousness.

The Committee could not identify any strong mitigating factors either in relation to the factual matters it found proved or in respect of the Registrant personally. It is noted that he had no previous disciplinary record and that he had demonstrated a degree of regret in relation to the incident giving rise to the Police Caution and some insight in relation to his professional failings concerning Ms B. He failed to acknowledge any wrong-doing in respect of Ms C.

The Committee did not consider that an admonishment could be an appropriate sanction. The Registrant's unacceptable professional conduct was not isolated and constituted a deliberate course of conduct in relation to three patients. An admonishment could not be a sufficient or proportionate sanction given the findings of the Committee has made.

The Committee next considered a Conditions of Practice Order. The Committee found that such an order could not offer an appropriate level of protection to the public. The Registrant's name is presently entered on the Sex Offenders Register until July 2015. The Committee's judgement is that this demonstrates that he would present a risk to female patients if he were allowed to continue in practice during the currency of that registration. The Committee also did not consider that it was possible to formulate conditions which could be easily verified or monitored so as to ensure that the public would be protected. Further, it received no evidence from the Respondent to demonstrate that he would be willing and have the potential to respond positively to conditions, even if appropriate ones could be identified.

The Committee next considered a Suspension Order. It noted that this sanction was appropriate for more serious offences. However, in the Committee's judgment, its findings disclose that the Registrant has deep-seated professional problems in controlling his behaviour and maintaining appropriate professional boundaries. This is apparent in his conduct towards Ms B and Ms C, which occurred despite his assertions that he had reflected for a period of approximately 13 years on his wrongful and criminal conduct towards Ms A. It was not satisfied that the Registrant had shown sufficient insight and therefore it considered that there was a significant risk of him repeating a similar pattern of behaviour in future. It has not received any evidence to confirm that any appropriate and assessable action could be undertaken by the Registrant during a period of suspension in order to address the concerns found proved by the Committee.

The Committee therefore considered removal of the Registrant's name from the register. This is the highest sanction which can be applied and should only be used where there is no other means of protecting the public and/or maintaining confidence in the osteopathic profession. The Indicative Sanction Guidance confirms that such an order is appropriate where there has been a serious departure from the relevant professional standards outlined in the Code of Practice, where the Osteopath has done serious harm to others and/or has abused a position of trust (particularly in relation to vulnerable patients), violated the rights of patients and/or has been convicted or subject to findings of a sexual nature.

The Registrant accepts that his conduct in Parts 1 and 2 is sufficient in itself to justify his removal from the Register. In Mr Sutton's representations it is stated that the Committee will "have no alternative but to order that his name be struck from the Register".

The Committee finds that this is a realistic concession on the Registrant's part. On the basis of its findings, the Registrant is guilty of committing a serious criminal offence against a 16 year old patient in the context and under the pretence of providing osteopathic treatment. This is a most serious abuse of trust. Although not amounting to criminal conduct, the Registrant also demonstrated gross failures of maintaining appropriate professional and sexual boundaries in his interactions with Ms B and Ms C, which caused distress to them, in circumstances where both were vulnerable and had specifically sought help and support from him. There was a significant and deliberate failure to comply with the relevant standards of the Code of Conduct. The Committee is quite satisfied that the seriousness of the Registrant's conduct, over a relatively lengthy period of time, means that the only appropriate sanction is for his name to be removed from the Register.

Interim Suspension Order

The Committee's order will take effect in 28 days, being the expiry of the period during which the Registrant is entitled to seek to appeal its decision.

The Committee has the power to make an interim suspension order in respect of this period to s.24(1)(b) of the Osteopaths Act 1993, provided that the Registrant has been given the opportunity to appear before it and to argue his case against the making of such an order and it is satisfied that such an order is necessary in order to protect members of the public.

The Committee has received an exchange of emails between Ms Lakhani of the General Osteopathic Council and Mr Sutton today in which the Council stated its intention to apply for interim suspension order in the event that the Committee determined either that a Suspension Order was appropriate or that the Registrant's name should be removed from the register. Mr Sutton stated that his client had no representation to make if such an application was in fact made.

The Committee was therefore satisfied that the Registrant had been given an opportunity to make representations in relation to this application but that he had no representations to make.

The Committee therefore considered whether such an order was necessary in order to protect the public during the period before its order removing the Registrant's name from the Register took formal effect. Given its findings and its decision as to sanction, it is plainly necessary for an interim suspension order to be made during this intervening period. The Committee therefore makes the order sought by the Council.

Under Section 31 of the Osteopaths Act 1993 there is a right of appeal against the Committee's decision.

The Registrant will be notified of the Committee's decision in writing in due course.

Section 22(13) of the Osteopaths Act 1993 requires this Committee to publish a report that sets out the names of those osteopaths who have had Allegations found against them. The Registrant's name will be included in this report together with details of the allegations we have found proved and the sanction that that we have applied today.