General Osteopathic Council
Professional Conduct Committee Decision

In the case of:

Mr Anthony Agius
Registration Number: 6583

Please note: the General Osteopathic Council has two registrants named Mr Anthony Agius. This notice relates to Mr Anthony Agius, registration number 6583, who practices at City Healing, Southampton.

The Anthony Agius referred to in this notice has no connection with Anthony Joseph Agius who practices in Chingford London E4, Highbury London N5, Enfield EN2 and at the Royal London Hospital of Integrated Medicine.

Monday 9 to Monday 16 December 2013

The Tribunal:	Ms Judith Worthington (Chair) Ms Colette Neville (Lay member) Mr Nicholas Woodhead (Registrant member)
Legal Assessor:	Mr Alastair McFarlane
For the Council:	Ms Teresa Murphy
For the Osteopath:	None
In attendance:	Ms Vanissa Tailor (Clerk)

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 Agius. 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

It is alleged that you, Anthony Agius, are guilty of Unacceptable Professional Conduct contrary to Section 20(1)(a) of the Osteopaths Act 1993, in that:

Patient Dignity & Modesty

1. You failed to respect Patient A's dignity and modesty in that:

    1.1 At a consultation on 6 April 2012, you:

        1.1.1 failed to leave the room whilst Patient A undressed;
        1.1.2 failed to provide Patient A with an appropriate cover;
        1.1.3 failed to ensure that Patient A removed the minimum amount of clothing required;
        1.1.4 commented on Patient A's tan whilst Patient A was in a state of undress.

    1.2 At a consultation between 6 April and 17 May 2012 inclusive, prior to carrying out colonic irrigation, you asked Patient A, in an inappropriate manner, why she had not removed her slip.

Examination & Treatment of Intimate Areas

2. At consultations with Patient A between 6 April and 17 May 2012 inclusive, prior to carrying out colonic irrigation on Patient A you failed to:

    2.1 obtain written consent
    2.2 offer a chaperone to Patient A

3. At a consultation with Patient A between 6 April and 17 May 2012 inclusive, prior to inserting a colonic irrigation tube into Patient A's anus you:

    3.1 sucked the colonic irrigation tube;
    3.2 stated "we'll use my lubricant today", or words to that effect;
    3.3 stated "there's more germs in your arse than in my mouth", or words to that effect.

Professional Boundaries

4. On or around 6 May to 17 May 2012 inclusive, you allowed Patient A to live in your home as part of a residential programme.

5. In exchange for Patient A taking part in a residential programme at your home on the dates set out in paragraph 4, you allowed Patient A to:

    5.1 contribute to your household expenses;
    5.2 clean your home;
    5.3 clean your clinic;
    5.4 assist with the marketing of City Healing (the clinic).

6. Between 6 April and 17 May 2012 inclusive, you:

    6.1. told Patient A that she was going to be your "personal slave" or words to that effect;
    6.2 allowed Patient A to accompany you to golf;
    6.3 allowed Patient A to accompany you to the cinema;
    6.4 allowed Patient A to pay for cinema tickets;
    6.5 accepted a gift of clothes from Patient A
    6.6 used Patient A's car;
    6.7 allowed Patient A to pay for your petrol.

7. On a date between 6 April and 17 May 2012 inclusive, you informed Patient A that in order to cure her fluctuating hormones she should:

    7.1 drink sperm, or words to that effect;
    7.2 have acupuncture in her vagina, or words to that effect.

8. On a date between 6 April and 17 May 2012 inclusive you stated, in reference to you putting sperm in Patient A's drink, "don't worry, I wouldn't have been able to do it that quickly", or words to that effect.

9. On a night between 6 April and 17 May 2012 inclusive, you asked Patient A to come into your bedroom, and asked her to:

    9.1 turn off the lights;
    9.2 lie on your bed.

10. On the occasion specified in paragraph 9 above, Patient A was wearing her night gown.

11. On a morning between 6 May and 17 May 2012 inclusive, you invited Patient A into your bedroom whilst you were still in bed.

12. In preparation for a trip to London you:

    12.1 informed Patient A that whilst you were in London Patient A would be your PA, or words to that effect;
    12.2 booked a hotel apartment for you and Patient A with a double bed.

13. During a trip to London on or around 13 May to 15 May 2012 inclusive, you:

    13.1 allowed Patient A to stay with you in a hotel apartment;
    13.2 allowed Patient A to contribute towards the cost of the accommodation;
    13.3 asked Patient A to record your training session on an Ipad.

14. On or around 15 May 2012, whilst driving back from London, you had a conversation with Patient A which was sexual in nature.

Verbal & Physical Assault

15. On or around 8 May 2012, during a personal training session with Patient A you:

    15.1 communicated inappropriately with Patient by saying to her: "you're a spastic, no in fact you're even worse than a spastic, and even a retard could do this better than you", or words to that effect
    15.2 hit Patient A on the arm;
    15.3 physically pushed Patient A

16. On or around 14 May 2012, during a trip to London you:

    16.1 screamed at Patient A for switching off the fridge;
    16.2 threw a dirty towel in Patient A's face
    16.3 shouted "you fucking idiot, you twat" at Patient A, or words to that effect.

17. On or around 17 May 2012 you shouted at Patient A "why don't you just piss off. Go on piss off you ungrateful bastard", or words to that effect

Examination

18. At consultations with Patient A between 6 April and 17 May 2012 inclusive you:

    18.1 failed to carry out, adequately or at all, an examination of Patient A prior to manipulating:

        18.1 Patient A's neck,
        18.2 Patient A's back;

Consent

    18.2 failed to obtain valid consent prior to:

        18.2.1 treating Patient A's knees,
        18.2.2 manipulating Patient A's neck,
        18.2.3 manipulating Patient A's back,
        18.2.4 using Patient A as a model for teaching purposes.

Using Patient A as a Model

19. On or around 14 May 2012, you failed to ensure that the student/s that you were teaching:

    19.1 acted in accordance with the course objectives namely, the clinical diagnosis and examination of the lower extremity in that you allowed the student/s to:

        19.1.1 manipulate Patient A's neck;
        19.1.2 Administer treatment to Patient A's knee

    19.2 obtained valid consent from Patient A prior to:

        19.2.1 carrying out a neck manipulation,
        19.2.2 examining and/or treating Patient A's knee.

20. By your actions in paragraph 19 above, you failed to adequately supervise your students.

21. You failed to maintain any patient records for the teaching session during which Patient A was used as a model.

22. Your conduct as described in paragraphs 2.2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 was:

    22.1 a breach of professional boundaries;
    22.2 sexually motivated

Decisions

The Registrant has not attended and is not represented. Ms. Murphy for the Council has applied to proceed in the absence of the Registrant.

Under Rule 20 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000, the Committee may proceed in the Registrant's absence if it is satisfied that all reasonable steps have been taken to serve the Notice of Hearing on the Registrant.

Service
Having carefully considered the bundle of documentation provided by the Council as to service, the Committee is satisfied that service was effected in accordance with the Rules as the Notice of Hearing dated 7th November, 2013 was sent by Recorded Delivery to the Registrant's registered address in accordance with Rule 65. Further, it notes the service on his solicitors and is satisfied that the Registrant is aware of the hearing date and venue, and that all reasonable steps have been taken to serve the notice of the hearing.

Proceeding in Absence
The Committee next had to consider whether to proceed in the absence of the Registrant. It had specific regard to the criteria approved by the House of Lords in *R v. Jones* and to the authorities of *Gatawa v. the Nursing and Midwifery Council* and *Chaudhari v. the General Pharmaceutical Council* referred to by Ms. Murphy. The Committee has reminded itself that the Registrant has a right to attend and participate in the hearing and that it should exercise the utmost care and caution before deciding to proceed in the absence of the Registrant. It accepted the advice of the Legal Assessor.

The Committee has noted the history of this matter and that the Registrant, until very recently, had solicitors acting on his behalf. It has noted that those solicitors made an application which the Committee concludes was meant to be dated 18th November 2013 (not 18th October 2013) to adjourn this hearing because the Registrant was not fit to attend as he was 'simply not well enough'. They relied upon a letter dated 11th November, 2013 from a Mr. Simon Dermody, a Consultant in Child and Family Therapy, who had assessed the Registrant on 31st October, 2013 as suffering from an 'anxiety-depressive disorder'. The Chair of this Committee, by a decision dated 21st November, 2013, rejected the Registrant's application for an adjournment for the reasons set out at page 34 of the bundle and noted that Mr.

Dermody's opinion was that the Registrant's anxiety would reduce 'the sooner these matters can be resolved'. The Chair specifically referred to the fact that Mr. Dermody did not state that the Registrant would be unable to attend or participate in a hearing, or give instructions to his lawyers.

Since that decision no medical evidence addressing these central issues has been received by the Committee. A letter from his solicitors dated 28th November, 2013 indicates that they cannot receive instructions from the Registrant and that they will cease acting for him from 2nd December, 2013. The letter also states, in apparent contradiction, that the Registrant advises the solicitor 'that he is unwell and not able to attend' and suggests an adjournment of a further 2 months. By an e-mail dated 29th November, 2013 the solicitors contacted the Council to inform them that they were 'now dis-instructed'.

The Committee is clear that the burden is on the party who claims not to be fit to attend a professional disciplinary inquiry to demonstrate that his health prevents attendance and/or the ability to instruct solicitors. There is no such evidence before this Committee. The Committee is not persuaded that there is any medical reason for this hearing not to proceed.

The Committee has carefully considered all of the information before it and concludes that the Registrant has voluntarily waived his right to attend this hearing. This is evidenced by his failure to respond to all communications from the Council including letters, e-mails and telephone messages, his disengaging from his solicitors and his disengagement from this process.

The Committee is not persuaded that any adjournment would be likely to result in the Registrant participating in the process or attending any adjourned hearing.

The Committee has also considered the interests of the Council's witnesses, the wider public interest, the duty to ensure the expeditious conduct of its business and the effect of further delay on the fairness of the hearing. It has also borne in mind that it does have the Registrant's account in the bundle before it and is satisfied that the risk of it arriving at a wrong decision on the merits because of the Registrant's absence is thereby reduced.

For all these reasons it is satisfied that it is appropriate and fair to proceed with the case in the absence of the Registrant. It reminds itself that the Registrant's absence is not an admission of guilt and adds nothing to the Council's case.

Allegation

The Committee has carefully considered all of the evidence it has received – oral, documentary and expert – and has noted the submissions of Ms Murphy for the Council. It has reminded itself that the burden of proof is on the Council alone and that the Registrant's absence adds nothing to the Council's case and is not an admission of guilt. It has accepted the advice of the Legal Assessor.

Background

The allegation in this case relates to concerns raised by one patient, Patient A, against the Registrant.

The Registrant is an osteopath who practices from his clinic in Southampton. Patient A is a 31 year old female who first saw the Registrant in March 2011 and subsequently returned to him on 6 April 2012. The allegations relate to the Registrant's conduct between 6 April 2012 and 17 May 2012. They concern issues of sexual misconduct, professional boundaries, patient dignity and modesty, physical and verbal assault, consent, communication, examination and the use of Patient A as a model. The core of the Council's case concerns the Registrant's actions while he had Patient A living at his home address for a period of ten days until the 17 May 2012. The Registrant has denied all allegations and any inappropriate behaviour.

The Registrant did not attend this hearing and was not represented. At the outset the Committee determined that the Registrant had voluntarily absented himself from the hearing and that it was in the interests of justice to proceed with this case in his absence.

Given the absence of the Registrant, the Committee was mindful of ensuring that the process was as fair as it could be in those circumstances. To this end, it received into evidence the Registrant's "response" to Patient A's first statement; a series of letters from witnesses produced by the Registrant, and all the documentary evidence he has submitted to the Council in advance of this hearing, including Patient A's clinical notes and a "transcript" of those notes prepared by him. The Council's bundle included all this documentation and ran to some 172 pages. It had been served on the Registrant in advance of the hearing.

In determining the allegations where only Patient A and the Registrant were present, the Committee made an assessment of the credibility and veracity of the evidence of both Patient A and the Registrant. The Committee was able to see and hear Patient A give her sworn evidence and see it tested by questioning. It has not had the opportunity of seeing or hearing from the Registrant. His evidence has not been given on oath or tested under cross examination. This is because the Registrant elected not to attend and participate in the hearing.

The Committee is satisfied that the Council's case stands or falls on the evidence of Patient A. She gave her oral evidence over two days and the Committee saw her three witness statements dated 7 March 2013, 5 August 2013 and 31 October 2013 as well as her two statements to the police dated 12 June 2012 and 17 July 2012 and the notes from her counsellor to whom she reported concerns and which were made close to the events.

The Committee found Patient A to be a credible witness. Her evidence was generally consistent and the Committee finds that she gave authentic, plausible reasons for her actions. For example, when asked why she remained at the Registrant's house for ten days despite her allegations as to his behaviour, she explained that her father brought her up always to finish

something once she started and that the Registrant said she could lose two stones in weight in two weeks, which she was highly motivated to achieve. The Committee was particularly impressed by her openness and sincerity when giving evidence which was clearly at some personal cost. It found her evidence to be fair and balanced; for example if she could not remember she would say so. The Committee noted that she complimented the Registrant about some aspects of his treatment and advice. She volunteered that she still follows some of his advice. The Committee concluded that this added to her credibility. Having had the opportunity of seeing and hearing her, it found that she gave her evidence with great sincerity even though at times these were clearly difficult matters for her to revisit. It believed her and found her to be a convincing witness.

The Committee considered the Registrant's response to Patient A's first witness statement and his summarised record of his police interview on 6 August 2012 and other documents and letters from supporting witnesses. The Registrant's response contained a great many denials and assertions that Patient A was fabricating her account.

In determining what weight to attach to the totality of the Registrant's evidence, the Committee has born in mind that the Registrant and his witnesses have not given their accounts on oath and that also they have not been subject to any testing by questioning and that the Committee has not been able to see and hear them.

The Committee was unimpressed by the "transcript" the Registrant produced of his clinical notes. This document clearly went well beyond what was recorded in the manuscript notes. For example, the typed "transcript" on page 73 for the consultation on the 2 May 2012 contains many more details than the manuscript record entered for that day at page 65 and it is clearly not a "transcript". The Committee considered the letters from the Registrant's witnesses, and noted that they are not formal statements with a declaration of truth and that none of them have come to give sworn testimony by cross examination. In any event there is some question mark over the independence of some of those individuals given their close connection to the Registrant.

Overall, the Committee has concluded that for the reasons set out above, it is right to attach considerably less weight to the Registrant's evidence in comparison with the weight it attaches to Patient A's evidence.

The Committee specifically considered the issue of Patient A's motivation and any basis as to why she might have fabricated her account as the Registrant suggests. The Committee notes the Registrant's comments in his police interview to the effect that Patient A was angry with him because of the way the detox programme turned out. It notes that Patient A volunteered that she did receive some benefit from the programme. The Committee accepts Patient A's explanation that there was no personal gain to her in making these allegations and that she was putting herself through this because she did not want it to happen to anybody else. It also rejects any argument – whether express or implied - that Patient A was attracted to the Registrant and had made up her account owing to a sense of rejection.

The Committee is satisfied that Patient A told the truth and determines that where her account contradicts the Registrant's, it prefers the account of Patient A.

The Committee notes that the Registrant uses different treatment modalities besides osteopathy including, for example, acupuncture and colonic irrigation. The Committee is satisfied that while a registered osteopath can choose to use different techniques, he is bound by and must comply with the obligations set out in the Code of Practice, irrespective of what treatment modality is chosen.

Part 1.

Sub-Particular 1.1.1
Patient A told the Committee how conscious she was about her weight and gave clear evidence that the Registrant stayed in the treatment room while she undressed, that he hurried her up and acted as if she was "silly". In his response document the Registrant relied upon on what he says is his usual practice, i.e. that he would leave the room. His apparent recollection was that when he came back into the room on this occasion, Patient A was in her underwear.

In the Committee's judgement, Patient A's self consciousness provides a reason for her recollection of this incident and concludes that her account is detailed and consistent, and that she has remembered it correctly. Accordingly Sub-Particular 1.1.1 is proved.

Sub-Particular 1.1.2
For the same reasons as set out in Sub-Particular 1.1.1 above, the Committee is satisfied that Patient A's account is correct. Accordingly Sub-Particular 1.1.2 is proved.

Sub-Particular 1.1.3
Patient A was in the consultation room in her bra and pants. The Registrant agrees that she was not wearing a gown or towel. Patient A states that it was at this point in the consultation that she told the Registrant about her symptoms. The Committee accepts this and therefore concludes that during that part of the consultation Patient A did not need to have removed her clothes. Accordingly Sub-Particular 1.1.3 is proved.

Sub-Particular 1.1.4
In his response document, the Registrant accepted that he commented on Patient A's tan whilst she was in a state of undress. The Committee is satisfied that the comment on her tan was not appropriate or professional as it drew attention to her state of undress, had no clinical significance and impacted on her modesty. Accordingly Sub - Particular 1.1.4 is proved.

Particular 1.2
Patient A stated that at previous colonic irrigation treatments with the Registrant she had always worn her slip. The Committee accepts her account that on this occasion he asked her

in a manner which she describes as "abrupt and scary" why she had not removed her slip. In the absence of any clinical reason for her removing it and considering the manner in which he asked her to remove it, the Committee is satisfied that this amounts to a failure to respect Patient A's dignity and modesty. Had he respected her dignity and modesty he would have allowed her to leave it on as on previous occasions, and not mention it at all. Accordingly Particular 1.2 is proved.

The Committee is satisfied that each of the Sub-Particulars under Particulars 1.1 and 1.2 amount to failures to respect Patient A's dignity and modesty.

Part 2.

Particular 2.1
Colonic irrigation procedures are self evidently intimate procedures and are covered by paragraph 28 of the Code of Practice which specifies that for rectal examinations and techniques, written consent must be obtained.

At page 62 of the bundle there is a form signed by Patient A at the first consultation with the Registrant on 6 April 2012. At the bottom of the first page it states "please sign for consent of (sic) examination and treatment". Patient A signed this. The Committee is satisfied on the balance of probabilities that Patient A signed this in advance of any case history taking or examination.

The Committee accepts Mr McClune's opinion that for valid written consent to be given, an osteopath should – as a minimum – explain the procedure, make sure the patient understands it and is clear what the osteopath wants to achieve, and what will happen. The Committee is satisfied that the Registrant did not do this with Patient A. The Committee accepts Patient A's description of the Registrant's general approach to his consultations with her. She told the Committee that ' he acted like he knew what he was doing and he did it like he didn't have time to explain… he always said I ask too many questions so I stopped asking". When asked if the Registrant explained any risks associated with proposed treatment, she said ' no, never".

For consent - written or otherwise – to be valid it must be specific and informed. The Committee is satisfied that the Registrant failed to obtain written consent to these procedures. Accordingly Particular 2.1 is proved.

Particular 2.2

In the Registrant's response document he states that his usual practice is to offer a chaperone. Patient A told the Committee that when the Registrant provided colonic irrigation to her, he did not say that she could have someone with her. The Committee accepts her account. Accordingly Particular 2.2 is proved.

Part 3.

Particulars 3.1, 3.2 and 3.3

Patient A gave the Committee a detailed description of the incident in her oral testimony. She described the Registrant's manner on this occasion as "weird – like on a high". Patient A has provided a consistent account of this incident. The Committee has noted her description of it to her counsellor on 5 June 2012, in two statements to the police and in her witness statements to this Committee.

The Registrant says that Patient A's account is a total fabrication and is not true.

Patient A rejected any suggested of invention and in response to questions stated "I wouldn't be able to think that up. It was disgusting".

The Committee considers Patient A's account to be credible and convincing and is satisfied that the Registrant sucked the colonic irrigation tube prior to insertion and used words to the effect specified in particulars 3.2 and 3.3. Accordingly Part 3 and all Particulars are proved.

Part 4

It is not disputed by either Patient A or the Registrant that the Registrant allowed Patient A to live at his home as part of a residential programme for about 10 days during this period. Accordingly Part 4 is proved.

Part 5

Particulars 5.1, 5.2, 5.3 and 5.4

The Registrant stated that the agreement was that Patient A would purchase her own food for the programme and clear away after meals but do no more than some tidying. She was not asked to clean the clinic. The Committee accepts and prefers Patient A's account that the Registrant allowed her to buy food, clean his home, clean his clinic and assist with marketing of the clinic in exchange for her staying at his house and taking part in the programme. Accordingly Part 5 and all Particulars are proved.

Part 6

Particular 6.1
There is a direct conflict between Patient A and the Registrant as to whether he used the expression "personal slave". Patient A explained that while she hoped this expression was just a silly joke, the Registrant definitely said it. The Committee accepts her account and is satisfied that the phrase was said. Accordingly Particular 6.1 is proved.

Particulars 6.2, 6.3 and 6.4

Patient A's account was that during her stay at the Registrant's house, he took her to golf on one occasion and that they went to the cinema together. In his response document, the Registrant did not dispute this. The Committee is satisfied that the Registrant allowed her to do these things and accordingly Particular 6.2 and Particular 6.3 are proved. Patient A stated that the Registrant told her that she was to pay for the cinema tickets. She explained that she felt she could not say no and detailed the costs. The Registrant's response document indicates he believed he paid for his own ticket. The Committee prefers Patient A's account and therefore Particular 6.4 is proved.

Particular 6.5
It is not disputed that Patient A purchased some clothes for the Registrant. The Registrant told the police he did not ask for them. Patient A stated that having had a discussion about his clothing the Registrant said, "Well, you buy some for me", that she did, and that he accepted them. The Committee accepts Patient A's account and is therefore satisfied that he did accept a gift of clothes notwithstanding the subsequent return of them. Therefore, Particular 6.5 is proved.

Particular 6.6
It is not disputed that the Registrant used Patient A's car. Whether or not Patient A offered it as the Registrant as stated or, as Patient A stated, he told her he was taking it to play golf, Particular 6.6 is proved.

Particular 6.7
The Committee has carefully considered the wording of this particular. The Committee is not persuaded that the evidence is sufficient to establish on the balance of probabilities that the Registrant "allowed Patient A to pay for [his] petrol". Accordingly Particular 6.7 not proved.

Part 7

Particulars 7.1 and 7.2
Patient A detailed to the Committee how she was "shocked and gobsmacked" and uncomfortable at the comments she maintains the Registrant made about her drinking sperm and having acupuncture in her vagina. She gave a detailed account of this episode in answering the Committee's questions. The Registrant asserts in his response document that it is a "total fabrication".

The Committee found Patient A's account to be credible and is therefore satisfied that Particulars 7.1 and 7.2 are proved.

Part 8

This refers to a further inappropriate comment made subsequently and related to the comments set out in Particular 7.1. For the same reasons as set out above, the Committee is satisfied that Patient A's account is correct. Part 8 is therefore proved.

Part 9

Particulars 9.1 and 9.2
Patient A described this incident which she says occurred during her stay at the Registrant's house. The Registrant woke her up to do a "relaxation" which involved her coming into his bedroom and lying on his bed in the dark while he was also lying on the bed. Patient A had a detailed recollection about this which included what she was wearing, where they were lying and what the discussions were about, the memories it bought back and how she ended up crying at these memories. She said it was like a counselling session.

The Registrant stated in his response document that this was untrue.

The Committee finds that Patient A gave a detailed and credible account which it accepts and therefore Part 9 and its Particulars are proved.

Part 10

The Committee accepts Patient A's evidence that during the episode specified in Part 9 she was wearing her night gown and therefore Part 10 is proved.

Part 11

Patient A explained to the Committee that on each day of her stay with the Registrant the Registrant would wake her early before they left together to go to the clinic. However, on one occasion this did not occur and she went to look for the Registrant at about 8.30am. He was in bed and he told her to come into his room and talk to him, which she did.

The Registrant's response document does not address this.

The Committee finds Patient A's account credible and accordingly Part 11 is proved.

Part 12

Particular 12.1
The Committee accepts Patient A's account, which she also mentioned to the police, that the Registrant told her that he wanted her to come to London with him and that he did use words to the effect of her acting as his PA and as a model. The Committee notes that the Registrant accepts that he invited Patient A to go to London with him for a case study, that she did go to London and that she performed a number of duties during the stay including filming the Registrant teaching. Accordingly, Particular 12.1 is proved.

Particular 12.2

The Committee accepts that the Registrant booked a hotel apartment for him and Patient A and that it had a double bed. Whilst it notes that Patient A accepted that the Registrant had told her in advance that he would be sleeping in a separate area, Particular 12.2 is proved as a fact.

Part 13

Particular 13.1
It is not disputed that the Registrant allowed Patient A to stay with him in the hotel apartment. According Particular 13.1 is proved.

Particular 13.2
Patient A told the Committee that she paid for the entire cost of the accommodation (£200). The Registrant says Patient A paid about £100 towards it. On either account the Committee is satisfied that the Registrant allowed Patient A to contribute towards the cost of the accommodation and therefore Particular 13.2 is proved.

Particular 13.3
The Committee accepts as credible Patient A's account that she filmed the Registrant teaching on an iPad and that he told her to do this as he wanted pictures for his website. Accordingly, Particular 13.3 is proved.

Part 14
On Tuesday 15 May 2012, the Registrant and Patient A left London and drove back to Southampton. The Registrant asserts that Patient A attempted to start a sexual conversation with him and that he closed it down.

Patient A has consistently maintained that the Registrant started talking about sex which included asking her what kind of sex she liked. She detailed how she attempted to avoid talking to him by trying to phone a friend and how uncomfortable she felt. In answering questions she described his behaviour as "weird" and "mental". The Committee has no doubt having heard her that Patient A's account is correct and accordingly part 14 is proved.

Part 15

Particulars 15.1, 15.2 and 15.3
This relates to events on the third day of the residential programme. Patient A stated that during a personal training session, the Registrant hit her on her left arm when she was on the treadmill and then subsequently in the same session physically pushed her hard while she was doing some lunges, causing her to fall. He then said to her the words set out in Particular 15.1.

The Registrant denied this in the summary of his police interview and in his response document, stating that he was only pushing her on verbally.

The Committee accepts the Patient A's account as it found her credible and accepted that her recollection was accurate. Accordingly Part 15 and all its Particulars are proved.

Part 16

Particulars 16.1, 16.3 and 16.3

This relates to events to 14 May 2012 while the Registrant was with Patient A in London. Patient A told the Committee that she did accidentally switch off the fridge in the hotel apartment they were sharing. Her account was that that the Registrant went "berserk" at this error and was screaming and swearing at her. The Registrant accepts that Patient A had turned off the fridge and that the food was ruined but denies that he screamed, shouted or swore.

The Committee found Patient A's account to be detailed and convincing. She was able to recollect details such as the quantity of water on the floor. In the Committee's judgement, this rings true and is therefore supportive of her credibility and accuracy.

Accordingly Part 16 and all its Particulars are proved.

Part 17

This relates to the final day's stay with the Registrant. The Committee is satisfied that there was an acrimonious end to the stay, and that this began with the Registrant shouting at Patient A because she had done something wrong on the computer while working for him.
In his response document the Registrant asserts that he did not swear at Patient A, but in the summary of his police interview he accepted that he shouted at her and "shouted her out of the clinic".

The Committee accepts that the Registrant shouted and swore at Patient A using the words alleged in Part 17. Accordingly Part 17 is proved.

Part 18

Particular 18.1 and Sub-Particulars 18.1.1 and 18.1.2
The Registrant has denied in his response document that he ever performed osteopathic manipulation on Patient A. Patient A told the Committee that she had had experience of osteopathic treatment both before and after seeing the Registrant. The Committee accepts that Patient A is an experienced patient who understands what osteopathic manipulation is. In her statement and oral evidence Patient A described in detail spinal manipulative techniques that she said the Registrant performed. She explained that the Registrant did not examine her as other osteopaths had done and that he was always in a rush "as though he had no time for me" and was more "crack, crack". The Committee found her account convincing. Mr McClune,

the expert witness, stated that Patient A's description suggests typical neck and lower back manipulations. The Committee accepts this opinion and finds on the balance of probabilities that the Registrant did manipulate Patient A on several occasions.

Having made this finding, the question for the Committee is whether the Registrant adequately examined Patient A before carrying out these manipulations to her neck and back. Mr McClune's opinion was that before manipulating the neck, an osteopathic examination should include at least:

i) observation of the neck, upper back and shoulder areas
ii) palpation of the neck, upper back and shoulder areas
iii) active mobility testing of the neck and upper back
iv) passive mobility testing of the neck and upper back

In relation to the back, Mr McClune opined that an osteopathic examination should include:

i) observation of the lower and mid back including pelvic structures
ii) palpation of the lower and mid back including pelvic structures
iii) active mobility testing of the lower and mid back
iv) passive mobility testing of the lower and mid back.

The only evidence in the Registrant's clinical notes of any osteopathic examination relates to a consultation on 10 May 2012, where the Registrant did record active mobility testing of the cervical, thoracic and lumber spine. Mr McClune's opinion was that if the notes reflected the examination, then the examination was inadequate because it did not include postural observation, palpatory and passive mobility testing of the relevant areas of Patient A's spine.

The Committee accepts Mr McClune's opinion and Patient A's description of the Registrant being slapdash in his approach and style. The Committee accepts Patient A's evidence that when the Registrant cracked her neck and back, "he didn't really examine me like other osteopaths did". The Committee is therefore satisfied that on the occasions when the Registrant did manipulate Patient A's neck and back, he did not carry out an adequate examination of Patient A. Accordingly Part 18.1 and its Sub-Particulars are proved.

Particular 18.2 and Sub-Particulars 18.2.1, 18.2.2 and 18.2.3

Sub-Particulars 18.2.1 18.2.2 and 18.2.3 relate to an allegation that the Registrant failed to obtain valid consent prior to treating Patient A's knees, manipulating her neck and manipulating her back. The Committee accepts Patient A's evidence and repeats its conclusions in relation to the consent form in use as set out under Part 2 above. It accepts Mr McClune's opinion set out at paragraph 28 of his report dated 28 October 2013 as to the matters he would expect an osteopath to discuss with a patient prior to treatment in order to obtain valid consent. The Committee is satisfied that this extends to an osteopath administering acupuncture to a patient.

The Committee accepts Patient A's description of the Registrant's general approach as to how he treated her and the way he spoke to her, for example, telling her to stop asking questions, and is satisfied that for all the treatments specified in the sub particulars the registrant did not obtain Patient A's valid (specific and informed) consent prior to carrying them out. The Committee concludes that the Registrant's influence upon Patient A was such that he told her what to do and that she felt she had no choice.

Accordingly Sub-Particulars 18.2.1, 18.2.2 and 18.2.3 are proved.

Sub-Particular 18.2.4
The Committee concludes that Patient A was not given sufficient information by the Registrant to be able to form an informed view and give valid consent to being used as a model for teaching purposes. It is the Committee's conclusion that she went along with the Registrant's request because she felt she had to. In the context of the relationship between the Registrant and Patient A at the time, the Committee is satisfied that the Registrant failed to obtain valid consent. This is despite her comment to David Lintonbon (another osteopathic teacher) that when he asked her if she was okay being a model, she responded "that was fine". The Committee accepts Patient A's evidence that she felt she had no option.

Accordingly Sub-Particular 18.2.4 is proved.

Part 19

On 14 May 2012 the Registrant was engaged in teaching Italian osteopathic students. It is not disputed that the course objectives were limited to clinical diagnosis and examination of the lower extremity. Patient A stated that on this occasion her neck was manipulated by one of the students. She said he "cracked my neck" and that the Registrant told the student "normally you should tell the patient that you can kill them by doing that". The same student subsequently turned Patient A on her side and twisted her knee causing her cry out in pain and the Registrant then told the student he had done it "the wrong way".

The Registrant in his response document denied that any student cracked Patient A's neck or twisted her knee.

Sub-Particular 19.1.1
The Committee prefers Patient A's recollection that her neck was manipulated and concludes that this constituted a failure by the Registrant to ensure that the student acted within the course objectives.

Accordingly Sub-Particular 19.1.1 is proved.

Sub-Particular 19.1.2
In respect of the alleged treatment to Patient A's knee, the Committee accepts Mr McClune's opinion that it would be very difficult for a patient to differentiate between a procedure being

used solely for examination and the same procedure being used in treatment. While the Committee notes that in the summary of the Registrant's interview to the police, the Registrant referred to one of the students doing a "treatment" to the knee, given Mr McClune's expert opinion, the Committee is not satisfied that this Sub-Particular has been proved to the required standard.

Accordingly Sub-Particular 19.1.2 is not proved.

Particular 19.2

Sub-Particular 19.2.1
This relates to the Registrant failing to ensure that his student obtained valid consent prior to carrying out the neck manipulation. Patient A explained how two students came forward and felt her neck while the others were observing, and that without any explanation one of them then cracked her neck. Furthermore, she described her astonishment when she heard the Registrant tell the students that cracking necks can kill people. The Committee accepts that this was the first time she heard of any risks of neck manipulation. In the absence of this vital information, the Committee is satisfied that the Registrant failed to ensure that the student obtained valid consent from Patient A and therefore Sub-Particular 19.2.1 is proved. The Committee would add that its finding of fact as to her astonishment demonstrates that consent to any previous neck manipulation could not have been fully informed.

Sub-Particular 19.2.2
The Committee accepts that Patient A was not told what was going to happen with her knee by the student before the student twisted it. It is therefore satisfied that the Registrant failed to ensure that the student obtained valid consent from Patient A to the examination of her knee and accordingly Sub-Particular 19.2.2 is proved.

Part 20

By failing to ensure that the student remained within the course objectives as found at Sub-Particular 19.1.1 and by failing to ensure that the student obtained valid consent to the neck manipulation and knee mobilisation, the Committee is satisfied that the Registrant failed to adequately supervise the students and Part 20 is proved.

Part 21

Given the Committee's finding that treatment was given to Patient A at this teaching session, it is satisfied that the Registrant had an obligation to record this in Patient A's notes. He made no records of the teaching session and accordingly Part 21 is proved.

Part 22

Particular 22.1

The Committee has considered whether the conduct listed in Part 22 which it found proved breached professional boundaries. In determining professional boundaries the Committee the Code of Practice (May 2005) ('The Code') applicable at the relevant time. It emphasises that trust is an essential part of the osteopath/patient relationship: 'Your professionalism and observance of the ethical standards laid down in the Code ...will reinforce this trust. It goes on:

- You must not abuse your professional position by pursuing a close personal or sexual relationship with a patient. 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 into such a relationship.
- The closer your relationship with a person, the more likely your ability to provide objective treatment to them will be compromised…. It is your duty to maintain clear professional boundaries in relation to the treatment of patients particularly to ensure your clinical judgement is objective.
- It is fundamental to good osteopathic practice that you treat patients with respect. This, together with your professionalism and observance of ethical standards, will earn your patients' trust. You must never abuse this trust. When a patient consults you their wellbeing must come first.

The Committee finds that Patient A was an anxious and vulnerable patient. She had shared with the Registrant her long-standing and deep desire to lose weight. She explained to the Committee 'At the time I would have tried anything because I was desperate to get better' and 'I was excited at the prospect of losing two stone in two weeks'. By his actions, the Registrant put her in a position of dependency in the knowledge that her desire to lose weight was so overwhelming that she was prepared to submit to the residential programme and its implications. For example, the Registrant controlled what food she ate and at what time she got up and the exercise she took; described her as his personal slave; had her cleaning his home and clinic and decided when she came and went (to golf, to the cinema and accompanying him on a trip to London). She stated 'He told me to do things, he didn't ask, I didn't agree to clean his car or office, I did it because he told me to' and '…he gave me no option…'

The Committee concludes that the Registrant manipulated her by his controlling behaviour. Patient A said 'He was almost acting like he owned me and I didn't have a say. I felt angry at the way he was making me feel, he was too controlling but I didn't feel I could say anything to him'. Patient A said the Registrant told her that 'I should appreciate what he was doing for me and the fact that I was getting free treatment.' 'He messed with my mind by putting me down and then saying how proud he was of what I was achieving.'

Such conduct was a clear abuse of the Registrant's power as a health professional over a patient. He did not treat Patient A with respect; he abused her physically and verbally, invited her into his bedroom, and conducted inappropriate sexualised conversations with her. The Committee has no doubt that the conduct in Part 22 therefore constituted a serious breach of professional boundaries. Accordingly Particular 22.1 is proved.

Particular 22.2
In considering the Registrant's conduct between 6 April and 17 May 2012 as set out in Part 22 and in deciding whether this conduct was sexually motivated, the Committee has taken account of the CHRE guidance *'Clear sexual boundaries between healthcare professionals and patients' (January 2008)* ('the Guidelines') where sexualised behaviour is defined as 'Acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires'. It has also considered Appendix B of the Guidelines which set out examples of sexualised behaviour by healthcare professionals towards patients or their carers to have specific relevance to this case.

In the Committee's view what happened at the first consultation on 6 April 2012 was the first step in a course of conduct which amounted to a pattern of sexualised behaviour towards Patient A. At the Registrant's behest, Patient A undressed while he was still in the room and did not offer her a chaperone as would be particularly important in the light of the intimate procedure he was about to perform. The Committee concluded this was not an innocent omission but a deliberate act designed to create an atmosphere where it was 'normal' for a patient to undress and remain undressed in front of him.

The Committee considered the nature of the agreement and how Patient A came to reside in the Registrant's home in May 2012; the duties the Registrant made her perform including cleaning and contributing to expenses and the social activities in which he made her participate. The Committee noted her evidence: 'I kept doing what he told me to do because I kept thinking that I couldn't afford to go to an actual boot camp which costs around £1000 and I couldn't afford to pay for the colonics that Mr. Agius was giving me as they cost £50 each, so I kept telling myself he's a bit weird but it's okay'. The Committee considered that this conduct (set out at Parts 4, 5 and 6) must be viewed in the context of the totality of the relationship and interaction between the Registrant and Patient A.

The Committee considered the nature of the language used in the comments made by the Registrant to Patient A as set out in Parts 3, 7 and 8 and the conversation that took place in the car on the journey back from London. Taken together they amount to inappropriate use of sexual humour, sexual and demeaning comments and intrusive personal questions about her sexual preferences, together with the sharing of his own sexual experiences.

On one occasion the Registrant woke Patient A and invited her into his bedroom, asked her to turn off the lights and lie on his bed whilst in her nightgown. She was there for about an hour and described it as being like a counselling session during which she became upset and she began to cry. The Committee considers that this was part of a deliberate course of conduct, attempting to cultivate an empathetic relationship with the patient, and a 'shoulder to cry on' as set out in the Guidelines.

In connection with the visit to London the Registrant had booked a one-room apartment in which he and Patient A then stayed overnight. The Committee concluded that this crossed sexual boundaries.

While the Committee notes that Patient A acknowledged that no actual sexual contact occurred, considering the totality of the conduct in Part 22, the Committee is satisfied that the Registrant exploited Patient A for his own gratification and therefore this was sexually motivated. Accordingly Particular 22.2 is proved.

Unacceptable Professional Conduct

The Committee next considered whether the facts found proved amount to conduct falling short of the standard required of a registered osteopath, namely, whether they amount to Unacceptable Professional Conduct (UPC). The Committee has borne in mind the guidance of Irwin J in *Spencer v the General Osteopathic Council* as to the meaning of UPC and the threshold required to reach UPC, and the observations of Collins J in *Nandi v the General Medical Council*. It reminds itself that not every omission or instance of poor practice would reach this threshold and that the failings must be judged to be serious to amount to UPC.

In this case the failings were extensive and serious; the Registrant repeatedly crossed professional boundaries; aspects of his conduct were sexually motivated; he assaulted her physically and verbally; he failed on a number of occasions to carry out an adequate clinical examination of Patient A and he also failed on a number of occasions to obtain valid consent before undertaking treatment procedures, including treatment involving an intimate area of the body. Furthermore, he failed to adequately supervise students when Patient A was being used as a model.

Patient A was a vulnerable patient. She was preoccupied with her overwhelming desire to lose weight. The Registrant breached his professional position of trust by allowing Patient A to live at his home for a residential programme, ostensibly to help her lose weight and by his behaviour before, during and at the end of that period.

Furthermore, on a number of occasions the Registrant performed manipulative treatment on Patient A's neck and low back without carrying out an adequate osteopathic clinical examination, without explaining the potential serious risks of the treatment and without obtaining valid consent.

These failings occurred repeatedly over a six week period.

The Code of Practice specifies the standard of conduct and practice required of osteopaths and requires that osteopaths make the care of their patients their primary concern by maintaining clear professional boundaries, by treating every patient politely and considerately and by providing appropriate care and treatment. Furthermore, the Standard of Proficiency specifies the standards to which osteopaths must be capable of performing. As a result of the failings

specified above, it is clear that the Registrant has fallen seriously short of the standards required of a registered osteopath.

The Registrant's conduct would be regarded as deplorable by fellow practitioners and deserving of opprobrium. For these reasons the Committee has no doubt that the Registrant is guilty of Unacceptable Professional Conduct.

Sanction

The Committee carefully considered the submissions of Ms Murphy and has reminded itself that any sanction must be proportionate and protect the public interest. It has had regard to the Indicative Sanctions Guidance and has accepted the advice of the Legal Assessor and has noted the testimonials that have been submitted.

The Committee has found that the failings regarding Patient A were very serious. The Registrant's failings amount to fundamental breaches of a number of sections of the Code of Practice (2005) including those concerned with relationships with patients, undue influence on patients, communicating with patients, consent, examining and treating intimate areas, modesty, the involvement of chaperones, and professional and personal standards.

The Committee has the gravest concerns about both clinical and ethical aspects of the Registrant's practice. The Committee is satisfied that his failings amounted to a serious and deliberate abuse of his position with regard to Patient A. It is further satisfied that the boundary failings and sexual misconduct have caused Patient A harm. The Committee is satisfied that the Registrant has no insight into his failings and considers it significant that he has continued to accept patients into his home subsequent to the episode with Patient A. This demonstrates not only a lack of insight but a real risk of repetition. There have been no expressions of regret or apology from the Registrant.

Admonishment

The Committee does not consider these failings to be at the lower end of the spectrum. They were not an isolated incident and the Committee is not satisfied that an admonishment is sufficient or proportionate in the circumstances.

Conditions of Practice Order

The Committee does not consider that the failings can adequately be addressed by a Conditions of Practice Order. The failings relate to a wide range of areas of practice, as set out in the Code of Practice, in which the Registrant's performance is deficient, there is evidence of the Registrant having a deep-seated attitudinal problem and the Committee has not received evidence of the Registrant demonstrating insight into these failings or a willingness to address them. Indeed, these failures occurred despite the fact that the Registrant had previously attended a number of courses designed to demonstrate a clear and proper understanding of the ethical standards required for the profession, before he was allowed to be registered. The Committee does not consider that conditions of practice can be formulated to protect the

public adequately and is therefore not satisfied that a Conditions of Practice Order is sufficient or proportionate in the circumstances.

Suspension
The Registrant has ceased to engage with the fitness to practice process. The Committee is not satisfied that there is potential for remediation or re-training as previously stated above. He has shown no insight. Accordingly the Committee is not satisfied that a Suspension Order is a sufficient or proportionate sanction.

Removal
The Registrant has exhibited a serious departure from the professional standards set out both in the Code of Practice and Standard of Proficiency, including the repeated and serious abuse of trust involving a vulnerable patient. The Committee concludes that the failures amount to a reckless disregard for the principles set out in the Code of Practice and for patient safety; are a serious departure from appropriate professional standards and undermine the reputation of the profession and the confidence the public are entitled to place in osteopaths. Furthermore, the Committee considers that the Registrant poses a continuing risk of harm to other patients. For all these reasons the Committee is satisfied that the behaviour is fundamentally incompatible with continuing registration and that removal from the Register is the only sufficient sanction.

Interim Suspension Order
Ms. Murphy invited the Committee to make an immediate Interim Suspension Order pending any appeal period on the ground of public protection.

The Committee is satisfied, given its view as to the seriousness of the failings and the continuing risk to the public that the Registrant presents, that it is necessary in order to protect the public to impose an immediate suspension order. The Committee repeats its reasoning and conclusions as to the real risk of harm that it considers the Registrant presents as set out in the Committee's substantive decision above. This Order is imposed immediately until the expiry of the appeal period or, if an appeal is made, until that appeal is disposed of.

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.