

**GENERAL OSTEOPATHIC COUNCIL**

**DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE**

In the case of:

**Mr John Walsh**  
**Registration Number: 1840**

**8 Month Condition of Practice Order**

*A Conditions of Practice Order has been imposed on Mr Walsh. In accordance with Section 31 of the Osteopaths Act 1993, the decision of the Professional Conduct Committee takes effect after the expiry of the Registrant's period for appealing (28 days). The Order will therefore begin on 24<sup>th</sup> June 2010 and last for eight months. The Conditions are:*

- 1. Mr Walsh is required to allow an independent audit to be made of his new patient records, by an auditor appointed by the Council. Mr Walsh must take account of any advice proffered by the auditor in developing and improving his record card and as to the recording of patient consent. Such audit is to take place on two occasions, the first not later than three months from the start of the order and the second not later than seven months from the start of the order. This audit is to include an assessment of Mr Walsh's record keeping from a random sample of new patients selected by the auditor.*
- 2. Mr Walsh is required to seek out and attend a course exploring the nature and implementation of valid consent.*
- 3. This Conditions of Practice Order will be reviewed by the Professional Conduct Committee with the benefit of the auditor's report, anonymised copies of the patients' records considered and evidence of attendance of the course specified under condition 2, before the expiry of the order.*

*The full decision of the Professional Conduct Committee follows.*

**GENERAL OSTEOPATHIC COUNCIL**

**DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE**

In the case of:

**Mr John Walsh**  
**Registration Number: 1840**

Tuesday 25<sup>th</sup>, Wednesday 26<sup>th</sup> and Thursday 27<sup>th</sup>  
May 2010

**The Tribunal:** Ms Judith Worthington (Chair)  
Mr Rodney Varley  
Ms Jackie Salter

**Legal Assessor:** Mr Alastair McFarlane

**For the Council:** Mr Chris Alder

**For the Osteopath:** Mr Craig Barlow

**In attendance:** Miss Anna Ripley (Clerk)

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**Allegation:**

It is alleged that you, John Walsh, are guilty of unacceptable professional conduct, contrary to Section 20(1)(a) of the Osteopath's Act 1993, in that you, at a consultation on 23 September 2008:-

- 1 Failed to elicit an adequate case history from Patient A, in that you failed to explore:
  - 1.1 The character, nature and past history of Patient A's presenting symptoms
  - 1.2 Patient A's musculoskeletal health
  - 1.3 Other areas of discomfort
  - 1.4 The aggravating and alleviating factors of Patient A's presenting symptoms
  - 1.5 The daily pattern of Patient A's presenting symptoms
  
- 2 Failed to conduct an adequate examination of Patient A, in that you failed t:

- 2.1 Conduct and adequate active motion test
  - 2.2 Conduct and adequate passive motion test
  - 2.3 Conduct and adequate palpatory evaluation of Patient A
  - 2.4 Conduct the slump test and/or straight leg raising test
- 3 Failed to reach a proper working diagnosis and/or hypothesis
- 4 Failed to formulate an adequate treatment plan for Patient A
- 5 Failed to record adequately or at all:
- 5.1 A working hypothesis and/or diagnosis of Patient A
  - 5.2 The results of active and passive motion tests
  - 5.3 The results of a slump test and/or straight leg raising tests
  - 5.4 The results of a palpatory evaluation of Patient A
  - 5.5 The results of your observation of Patient A
  - 5.6 Patient A's case history
  - 5.7 Patient A's consent to treatment
  - 5.8 A treatment plan for Patient A
  - 5.9 Any advice of self-help given to Patient A
  - 5.10 Patient A's reaction to treatment or treatment outcomes
- 6 Failed to obtain valid consent from Patient A to treatment.
- 7 Failed to respond adequately or at all to Patient A's complaint of pain:
- 7.1 During Patient A's treatment
  - 7.2 After Patient A's treatment

**Decision:**

The Committee has carefully considered all the evidence it has received in this case and the submissions made by Mr Alder for the Council and Mr Barlow on behalf of Mr Walsh. It has reminded itself that the burden of proving the facts is on the Council alone and that the standard of proof is the ordinary civil standard, namely the balance of probabilities.

Particular 1 in its entirety and particulars 2.4, 5.3 and 5.6 of the Allegation were withdrawn by the Council at the outset of the hearing and the Committee was not asked to adjudicate on them.

The Committee has found that particulars 2.1, 2.2, 2.3, 3, 4, 7.1 and 7.2 have not been proved. The Committee has found that particular 6 has been proved. Particular 5 was proved by virtue of Mr Walsh's admission.

The Committee's reasons are as follows:-

The Committee heard oral evidence from Patient A and Mr Walsh. It found them both to be credible and honest witnesses who were doing their best to assist the Committee with their recollections of the consultation on 23 September 2008. The Committee finds Patient A's recollection of events to be more reliable than Mr Walsh's. It accepts that she had particular reason to remember that day because of the pain she was suffering. Mr Walsh, on the other hand, admitted to the Committee that he did not fully recollect the details of the consultation. As has been found proved, his recording of the consultation at the time was inadequate and it was not until some 6 months afterwards that he attempted to provide an account of it.

The Committee also heard the expert opinion evidence of Ms Wallace on behalf of the Council and Mr McClune on behalf of Mr Walsh, and considered a joint statement from them.

**Particular 2**

The Committee is satisfied that there is a clear duty on an osteopath to conduct an adequate examination as particularised.

**Particular 2.1 Failing to conduct an adequate active motion test**

It was common ground between Patient A and Mr Walsh that active examination with the patient standing and bending was carried out. It was the view of both experts that the description of the test would amount to an adequate one and the Committee agrees. Accordingly, particular 2.1 is not proved.

**Particular 2.2 Failing to conduct a passive motion test**

Mr Walsh described how he carried out passive motion testing with the patient on the couch which was supported by the patient's account of events. The Committee accepts this evidence and concludes that it was done. Similarly, both experts were of the view that the passive test

described by Mr Walsh would amount to an adequate one. The Committee agrees. Accordingly, particular 2.2 is not proved.

**Particular 2.3 Failing to conduct adequate palpatory evaluation**

Patient A described Mr Walsh moving his hands down her spine during the standing observation and also gently manipulating her back with his finger tips when she was on the couch. Mr Walsh contended that this amounted to his palpatory evaluation of Patient A. Although the results of this evaluation are not recorded in the records, the Committee accepts that he did in fact carry out a palpatory evaluation and that this was likely to have been an adequate one. Accordingly, particular 2.3 is not proved.

**Particular 3 Failing to reach a proper working diagnosis**

The Committee is satisfied that there is a clear duty on an osteopath to reach a proper working diagnosis before treating a patient. The parties have not contended otherwise.

Mr Walsh has not recorded any diagnosis in the patient's records. The Committee accepts Patient A's evidence that he did not communicate any diagnosis to her. Further, the first written reference to a diagnosis – namely a "myo-ligamentous strain" is in the document entitled "Transcript of Treatment Notes" which the Committee was told was compiled by Mr. Walsh some six months after the incident. It is not a verbatim transcript but was based on his original notes, his recollection, and what would be his normal practice. Despite these deficiencies, the Committee is satisfied on balance that Mr Walsh did make a working diagnosis on 23 September 2008. Patient A attended his clinic complaining of low back pain radiating into the right buttock. It is clear from Mr. Walsh's evidence and the clinical notes made at the time that he undertook compression and distraction tests as well as testing reflexes and carrying out a muscle power assessment. In the Committee's judgement, these were not tests carried out at random but were related to Patient A's complaint in an attempt to narrow down the differential diagnoses. The Committee concludes that these were indicative of a thought process in respect of a working diagnosis. Further, Mr Walsh went on to treat the soft tissues and the lumbar-sacral joint. Such treatment is consistent with what Mr Walsh maintained before this Committee was his diagnosis. For these reasons the Committee accepts that he did reach a working diagnosis of myo-ligamentous strain on 23 September 2008 even though he did not record it.

The Committee notes that the experts described Mr Walsh's diagnosis as "vague". The Committee disagrees with this. It appears to the Committee that the expert witnesses' suggested diagnosis of "non-specific mechanical low back pain" is more general than the one proffered by Mr Walsh. On the basis of the case history elicited from Patient A and Mr Walsh's examination of her, the Committee is persuaded that Mr Walsh's diagnosis was a proper working diagnosis for him to have adopted. Accordingly, particular 3 is not proved.

**Particular 4 Failing to formulate an adequate treatment plan**

The Committee is satisfied that there is a clear duty on an osteopath to formulate an adequate treatment plan for every patient. The parties have not contended otherwise.

Mr Walsh has not recorded any treatment plan in the clinical records, nor is there any detail in his 'Transcript'. Further, the Committee accepts Patient's A account that no treatment plan was communicated to her by Mr Walsh. Against this, Mr Walsh contended that he was presented with a patient complaining of a very acute condition and that his plan was firstly to relieve

Patient A of her pain, then to allocate a further appointment and to reassess at that appointment. He carried out techniques that were related to her presenting complaint and asked Patient A to make another appointment which she did. The Committee is satisfied on Mr Walsh's account that this did amount to a treatment plan that he made at the time. The Committee noted Ms Wallace's expert opinion that an adequate plan in these circumstances would have been to calm down the pain and do a "first aid treatment" and subsequently reassess. The Committee is satisfied that this is what Mr Walsh did and therefore his treatment plan was an adequate one. Accordingly particular 4 is not proved.

### **Particular 6 Failing to obtain valid consent to treatment**

The Committee is satisfied on the expert evidence that there is a duty to obtain valid consent before treating.

The Committee rejects Mr Barlow's contention made in his closing submissions as to the interpretation of particular 6. He argued that because Patient A consented to the second high velocity thrust (HVT) the charge cannot be proved because there was consent to some treatment. The Committee's view is that this is not a realistic interpretation of the charge. It was not how the GOsC put their case. In the Committee's view "treatment" clearly means all the treatment that took place on the 23 September 2008.

Again, there is no record of any consent in Mr Walsh's case notes. It is clear from Patient A's account of events, which the Committee accepts, that no consent was sought from her by Mr Walsh before he undertook the soft tissue work, mobilisation and the first HVT. Further, Mr Walsh himself frankly accepted that he did not obtain specific consent from Patient A for the first HVT. The Committee rejects Mr Barlow's argument that there was an implied consent to treatment on the basis that Patient A had had osteopathic treatment before and that consent was implicit in her mere attendance. The Committee is satisfied that valid consent – namely specific and informed consent – was not obtained and accordingly particular 6 is proved.

### **Particular 7 Failing to respond adequately to Patient A's complaint of pain**

#### **7.1 During treatment**

The Committee accepts Patient A's account that she complained of pain and described it to Mr Walsh during the consultation, and that she was in significantly greater pain after the first HVT. Patient A described a knife-like pain going down the back of her right leg to her ankle. She also detailed Mr Walsh's responses. He told her that it was "normal" for bones to click during manipulation, that painkillers would help and that the pain would settle down shortly. In addition, before performing the second HVT, he did ask permission which she gave. Accordingly, on Patient A's account there were responses from Mr Walsh to her complaints of pain.

The Committee heard the experts' views as what would have constituted an adequate response. This included determining the extent and level of pain and calming the pain down by performing the second HVT. Whilst Mr Walsh may not have fully communicated to Patient A his understanding of her level of pain, the Committee is not persuaded that Mr Walsh's responses fell short of adequacy in all the circumstances. Accordingly, particular 7.1 is not proved.

## **7.2 After Treatment**

After the treatment and before Patient A left the treatment room on the 23 September 2008 she stated that Mr Walsh reassured her as to the pain again; stated that it would settle down over 48 hours; advised her as to medication again, and confirmed that he would be happy to see her for further treatment. She made another appointment with the receptionist before she left. On these facts the Committee is satisfied that he responded adequately to her complaint of pain after the treatment. Accordingly, particular 7.2 is not proved.

## **Unacceptable Professional Conduct**

The Committee next considered whether the facts it has found proved under particulars 5 and 6 constituted conduct falling short of the standard required of a registered osteopath (unacceptable professional conduct). The Committee is satisfied that Mr Walsh's proved failings do amount to unacceptable professional conduct. Its reasons are as follows:

Mr Walsh failed to record adequately in Patient A's case notes a working hypothesis or diagnosis, the results of active and passive motion tests, the results of a palpation evaluation, the results of his observation of the patient, her consent to treatment, treatment plan, any advice or self help given and her reaction to treatment or treatment outcomes.

Proper records are a fundamental tool for ensuring the delivery of safe and competent care. It is essential that they are accurate and comprehensive so that they may be easily understood by any subsequent practitioner. Mr Walsh has breached the duty he owes under paragraph 116 of the Code of Practice. This states:

"You must keep accurate, comprehensive, easily understood, contemporaneous, signed and dated case notes". It then sets out in detail 15 key elements which it is necessary to record as a minimum. Although the matters set out relate to one patient at a single consultation it was clear from Mr Walsh's own evidence that he found the structure of the record card difficult to use. However, he had worked at this clinic for a period of four years without seeking to change the format. It was his professional responsibility to do so. The Committee has no doubt the wide spread recording failures here are serious and constitute unacceptable professional conduct.

Mr Walsh's failure to obtain valid consent from Patient A is a breach of paragraphs 23, 24, 25 and 26 of the Code of Practice.

Paragraph 23 states: "your patients have a right to determine what happens to them and consent is their agreement for you to provide the care that you propose. Obtaining consent is a fundamental part of your practice and a legal requirement".

Paragraph 24 states: "before you examine or treat patients you must obtain their consent. To be valid, consent must be specific, informed and given by the patient.... Specific means that the patient consents to each distinct procedure and informed means that a full explanation has been given..."

Paragraph 25 states: "patients are entitled to choose whether or not to accept your advice or treatment..."

Paragraph 26 states: "obtaining consent is an ongoing process.... do not assume that a patient has consented to a specific treatment just because they have consented to that treatment in the past"

Effective communication between an osteopath and a patient is essential to ensure that valid and ongoing consent to treatment is obtained. The Committee has no doubt that a lack of communication was a significant factor in the proved failure here.

The importance of obtaining consent from a patient cannot be overstated and consent runs through every aspect of the consultation. Mr Walsh's failure to obtain Patient A's consent clearly constitutes conduct falling short of the standard required of a registered osteopath.

Therefore, both individually and collectively the proved particulars constitute unacceptable professional conduct.

## **Sanction**

The Committee has considered the submissions of Mr. Barlow on behalf of Mr. Walsh and those of Mr. Alder on behalf of the GOsC. It has had regard to the GOsC's Indicative Sanctions Guidance and borne in mind that any sanction must be proportionate to the level of unacceptable professional conduct. The Committee has taken account of the mitigation bundle submitted by Mr. Walsh. The Committee has had specific regard to its duty to ensure public protection.

The Committee has considered the sanctions available to it ascending order of seriousness.

### **Admonishment**

The Committee notes that the proved case refers to one treatment session and accepts that Mr. Walsh has a previous good history. There is no evidence of any repetition of the behaviour since September 2008. The Committee has also seen a large number of supportive, up to date testimonials from patients and colleagues who are aware of the matters under consideration. It is clear that Mr. Walsh is held in high regard. Nonetheless the proved failings did have the potential to cause harm to patients.

The Committee heard from Mr. Walsh how he has experimented with different record cards and has been using the present record card for the last month. He explained how he now conducts his examination and assessment of new patients and stated that he is "fairly happy" with this record card, but accepts that he could "fine tune" it. He has also produced a new "Welcome Letter" given to new patients, which does seek to deal with consent issues, although he accepted that it does not deal with the issue of ongoing consent for specific treatments that arise during the consultation. He told the Committee that he now communicates far more with patients during the consultation and asks his patients if they understand what he is proposing to do and are happy for him to do it. He stated that when he does a specific treatment he uses the acronym PACRO (Patient Advised of Common Risks and Outcomes) in his records to demonstrate that he has sought appropriate consent. There is thus evidence that he has

taken some rehabilitative steps recently. He has not, however, submitted any anonymised patient notes to show how his new approach is working in practice.

The Committee is concerned that Mr. Walsh has not shown sufficient insight into the issue of consent. When questioned as to the purpose of consent in the hearing, he did not identify its central purpose of ensuring patient involvement and safety, but rather that the main purpose of securing consent was to protect himself from complaint.

The Committee's view is that at this point in time insufficient rehabilitative and corrective steps have been taken in respect of both Mr. Walsh's record keeping and his approach to the issue of securing consent. Further, given its view as to the limited extent of his insight the Committee has decided that an Admonishment Order would not be sufficient to protect the public.

### Conditions of Practice Order

The Committee went on to consider a Conditions of Practice Order. It is possible to identify discrete aspects of Mr Walsh's practice that are problematic and it is possible to formulate appropriate and practical conditions. Mr. Walsh has only been using his new record card for about one month and no anonymised completed cards have been made available to the Committee so that it can verify how he is using it in practice. The Committee seeks re-assurance that the records are reflecting his evidence as to his approach now to both proper record keeping and the issue of consent. Accordingly, the Committee has decided that it is appropriate and proportionate to impose a Conditions of Practice Order for eight months with the following conditions:

Mr Walsh:

You are to allow an independent audit to be made of your new patient records, by an auditor appointed by the Council. You are to take account of any advice proffered by the auditor in developing and improving your record card and as to the recording of patient consent. Such audit is to take place on two occasions, the first not later than three months from the start of the order and the second not later than seven months from the start of the order. This audit is to include an assessment of your record keeping from a random sample of new patients selected by the auditor. The costs of the audit are to be borne by you.

You are to seek out and attend a course exploring the nature and implementation of valid consent.

This Conditions of Practice Order will be reviewed by the Professional Conduct Committee with the benefit of the auditor's report, anonymised copies of the patients' records considered and evidence of attendance of the course specified under condition 2, before the expiry of the order.

You have a right of appeal against this decision.

You will be notified of this 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. Your name will be included in this report together with details of the allegations the Committee have found to be proved and the sanction that we have applied today.

That concludes the hearing.