

GENERAL OSTEOPATHIC COUNCIL

DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE

In the case of:

Mr Roy Wallis
Registration Number: 2233

28th November 2011

The Tribunal: Dr Vicki Harris (Chair)
Mrs Jean Johns
Mr Andrew Kerr

Legal Assessor: Mr Alastair McFarlane

For the Council: Mr Guy Micklewright

For the Osteopath: Not in attendance nor represented

In attendance: Miss Vanessa Tailor (Clerk)

DECISION

Extend the current period of suspension to the 31st December 2012.

The Committee has carefully considered all the documentation before it, the submissions of Mr. Micklewright, for the GOsC and the correspondence received from Mr. Wallis and his solicitor. The Committee has accepted the Advice of the Legal Assessor.

Both the GOsC and Mr. Wallis invite this Committee to extend the suspension order for a further period of 12 months. This is because Mr. Wallis has not sat an ACP since the last Review in February 2011 and has stated in his letter of 19th October 2011 that he needs “considerably more time to prepare” than he had last time.

Irrespective of any agreement between the parties, the decision at any review is a matter for the Committee’s judgment alone. The Committee has considered all the original information and all the developments to date. In exercising its powers, the Committee has had regard to Mr. Wallis’s right to pursue his career and its overriding duty to ensure public protection.

The Committee has noted the decisions of the previous Committees on 10th September 2010 and 25th February 2011, which set out the history of the matter and the unacceptable professional conduct that was found proved. It is not necessary to repeat them here.

In the Committee's judgment it is significant that Mr. Wallis failed the ACP in January 2011. It is satisfied in the light of conclusions of the examiners, that a real risk of harm to the public was then present; and it has not received any independent evidence that this risk has since reduced.

The Committee notes that Mr. Wallis has indicated that he has performed extensive CPD this year. However, he has not submitted the proof of this. He also indicated that his domestic circumstances may have contributed to why he felt he has not yet had sufficient time to prepare for re-taking the ACP.

Mr. Wallis appears to be demonstrating some insight. He clearly accepts the need for assessment and training. However, in the absence of any evidence of a significant improvement in his competencies, the Committee considers that there remains a risk of repetition and that this involves a real risk of significant harm to patients.

The Committee considered whether it would be sufficient to make no further direction. Given the identified risk to the public, this was clearly inappropriate.

The Committee next considered whether to direct a Conditions of Practice Order. There was no evidence before the Committee that a workable order would be possible; and in light of the ACP failure, it decided in any event, that such an order would not be sufficient to protect the public.

Consequently the Committee has decided that it is appropriate and proportionate to extend the current period of suspension to the 31st December 2012.

In deciding the length of the period of suspension, the Committee has taken account of the length of time both the Council and Mr. Wallis himself consider necessary for him to address the findings of the original panel and the concerns of the ACP. The period of suspension is the minimum the Committee considers necessary for the protection of the public.

The Committee would add that with a Review hearing listed towards the end of this period, it considers that there is plenty of time for Mr. Wallis to prepare for the ACP.

Suggested information to be supplied at the next review hearing.

The Committee noted that at the previous review, it was suggested to Mr. Wallis that besides the ACP, he might take certain other actions which might assist this Committee in its review. The Committee is disappointed that he has chosen not to provide evidence relating to these actions.

This Committee cannot bind or influence the Committee which will hear the next review and it will exercise its own judgment on the facts then in front of it.

However, this Committee suggests that the following actions by Mr. Wallis, may assist at the next review hearing.

- Evidence to show the successful outcome of any retraining that he has undertaken.
- Evidence of his successful completion of an ACP.
- Given the total length of suspension, evidence him keeping up to date.
- Evidence of the recording system that he plans to put in place and how that properly addresses the recording failures proved in this case.

Interim Suspension Order (ISO)

The GOsC has sought the imposition of an Interim Suspension Order in order to cover the period before this extension of the suspension period takes effect, and if any appeal is made, until that appeal is disposed of. The Committee has seen Mr. Micklewright's skeleton argument and accepted the advice of the Legal Assessor.

The Committee accepts the position as set out in paragraph 22 of Mr. Micklewright's skeleton. It is satisfied that the extension of the Suspension Order, it has just directed, is a "relevant decision" within S.24 (10) of the Osteopath's Act 1993 and therefore there is power to impose an Interim Suspension Order. The Committee adopts the reasoning given by the Committee on 25th February 2011.

The Committee has decided that it necessary to impose an Interim Suspension Order in order to protect members of the public. This is for the same reasons as given in the substantive decision. The Order will last until the appeal period expires or if an appeal is made until the appeal is withdrawn or disposed of.

REVIEW HEARING DECISION - 28 NOVEMBER 2011

Proceeding in the absence of Mr Wallis

The Committee has decided to proceed with this review hearing in the absence of Mr Wallis. The reasons for this decision are as follows:

i) Service

The Committee is satisfied on the documentation before it, that service has been effected in accordance with the Rules. It is further satisfied that Mr. Wallis has received the Notice of this Review.

ii) Interests of justice

The Committee next considered whether to proceed under rule 20. The Committee has considered the letter from Mr Wallis' solicitor dated 10th August 2011 and Mr. Wallis' own letter, dated 19th October 2011. It is satisfied that Mr. Wallis has voluntarily waived his right to attend. An adjournment would be unlikely to secure his attendance and, in any event, the Committee is satisfied that its duty to ensure public protection requires that the Review take place today. For all these reasons, the Committee is satisfied that it is in the interests of justice to proceeding his absence.

Chronology

This is a second Review Hearing of a suspension order that was imposed on Mr. Wallis on 10th September 2010. On that occasion, the PCC imposed a suspension order that was to last until 31st December 2010. Their intention was that Mr. Wallis would take an Assessment of Clinical Performance (ACP) in November 2010 and for an early review. However, following a joint application by the parties, on 13th October 2010, the PCC conducted a review and agreed an extension of the suspension until 2nd March 2011. Mr. Wallis undertook the ACP on 12th January 2011 and failed it. A Review Hearing took place on 25th February 2011. At that hearing, the Committee extended the suspension order until 31st December 2011. They indicated that at any Review they would expect to see:

- Evidence to show the successful outcome of any retraining that the Osteopath has undertaken.
- Evidence of the successful completion of an ACP.
- Given the total length of suspension, evidence of keeping up to date.
- Evidence of the recording system that he plans to put in place and how that properly addresses the recording failures proved in this case.

GENERAL OSTEOPATHIC COUNCIL

DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE

In the case of:

Mr Roy Wallis
Registration Number: 2233

25th February 2011

The Tribunal: Ms Judith Worthington (Chair)
Ms Margaret Wolff
Mr Andrew Kerr

Legal Assessor: Mr George Alliot

For the Council: Mr John Hepworth

For the Osteopath: None

In attendance: Miss Anna Ripley (Clerk)

REVIEW HEARING DECISION

Proceeding in the absence of Mr Wallis

The committee has decided to proceed with this review hearing in the absence of Mr Wallis and his representative. The reasons for this decision are as follows:

iii) Service

Rule 45 requires notice of a review hearing to be sent to the registrant not less than 28 days before the hearing. Rule 65 requires the notice to be served on Mr Wallis's last known address if it differs from his address in the register by recorded delivery service. The committee find that the notice was served on Mr Wallis's last known address by recorded delivery on the 22nd December 2010. Whilst not necessary to prove receipt, the committee finds that Mr Wallis did receive the notice on the 23rd December 2010. Accordingly the committee is satisfied that all reasonable steps have been taken to serve the notice of the hearing on Mr Wallis.

iv) Interests of justice

The committee next considered whether to proceed under rule 20. Whilst Mr Wallis has a right to be present and represented, his solicitor has stated to the GOsC that neither he nor his representative will be present at the hearing and has confirmed that it can go ahead in his absence. Further, a previous committee has already determined that a suspension order is necessary for the protection of the public and a review hearing is required before the current order expires on the 2nd March 2011 in five days time. The committee has decided that there would be no procedural prejudice to Mr Wallis in proceeding in his absence and that it would be in the interests of justice to do so.

Summary – the previous hearing

This case concerns Mr Wallis's treatment of a single patient at his clinic in Brighton on fifteen occasions between July 2008 and February 2009. In the course of a five day hearing in September 2010, which Mr Wallis attended, the committee found that he failed in the following respects: eliciting an adequate case history, conducting an adequate osteopathic examination, forming a working diagnosis, adequately monitoring the patient's response to treatment or keeping proper records of the patient consultation.

The committee identified numerous and extensive breaches of the Standard of Proficiency and the Code of Practice and expressed concerns about his limited insight during the hearing. It took account of the fact that he had been practising for twenty four years, accepting that he had been a caring, committed professional during that time. The committee took the view that Mr Wallis may have fallen into a habitual mode of practice which did not satisfy the requirement of the CoP and SoP and had the potential for posing a risk to the public.

The committee determined that these failings amounted to UPC and decided that the appropriate and proportionate sanction was a suspension order until 31st December 2010. The committee ordered that a review hearing take place before the expiry of the order.

The committee also set out the actions that Mr Wallis was required to undertake as follows.

- 1) "To undertake successfully the Assessment of Clinical Performance on the 10th November 2010. This is to be at Mr Wallis's own cost."
- 2) "To produce evidence at the review hearing of the recording system that he plans to put in place. Any such recording system should properly address the recording failures proved in this case."

This review hearing

This committee has today reviewed the order imposed on the 10th September 2010, as extended and altered by agreement on the 13th October 2010, to run until the 2nd March 2011.

This committee has carefully considered the two bundles of documents submitted by the GOsC along with copies of two email exchanges from Mr Wallis's legal representative and the submissions made by Mr Hepworth on behalf of the GOsC. Neither Mr Wallis nor his legal representative was present. The committee has considered and accepted the advice tendered by the legal assessor.

The committee has decided to extend Mr Wallis's suspension from the register until the 31st December 2011. There will be a further review hearing before the expiry of the period of suspension. The committee will set out later in this decision suggestions as to the sort of information that this committee thinks may assist the committee reviewing the case on the next occasion.

The reasons for this decision are as follows;

- a) Based upon the findings of fact and UPC by the PCC at the hearing in September 2010, this committee agrees that a suspension order was and is necessary for the protection of the public. This committee repeats and adopts the reasoning of the original PCC. For convenience a copy of their decision is attached.
- b) Since the hearing in September 2010 Mr Wallis has adopted the suggestion of the PCC and attended an Assessment of Clinical Performance on the 12th January 2011. The committee has the ACP evaluation forms and the summary outcome report, which the committee considers is very significant. The summary concludes:-

"This applicant does not display a clinical competence profile which fulfils the S2K criteria.

Specifically:

- Doesn't gather sufficient information from case history to direct his clinical examination
- Clinical examination is not contextually relevant and it doesn't inform clinical reasoning
- Underdeveloped clinical reasoning leading to an inability to formulate working diagnosis, which didn't however stop him from treating the patient

- Gaps in the underpinning knowledge of pathology/clinical sciences, which has an impact on his ability to justify differential diagnoses.

Below the required level for autonomous clinical practice”

- c) The committee considers that the findings of the ACP demonstrate that Mr Wallis would continue to pose a serious risk of harm to the public were he to be allowed to resume practice. There is real risk of him repeating his conduct and, were he to do so, there would be significant harm to patients.
- d) The committee considered whether it would be sufficient to make no further direction. Given the risk to the public identified this was clearly inappropriate.
- e) The committee next considered whether to direct a Conditions of Practice Order. The committee decided that such an order would not be sufficient to protect the public and that such an order would be impracticable given the findings of the ACP.

Consequently the committee decided that the appropriate and proportionate decision is to extend the current period of suspension to the 31st December 2011.

In deciding the length of the period of suspension the committee has taken account of the length of time it considers necessary for Mr Wallis to address the findings of the original panel and the concerns of the ACP. It has ensured that the period of suspension is the minimum it considers necessary for the protection of the public. It would appear that the original PCC thought that he should be given an opportunity to demonstrate his clinical competence in a relatively short period of time. Unfortunately this has not proved to be the case. The committee considered that Mr Wallis remains a risk to the public unless and until he can demonstrate clinical competence.

A further matter taken into consideration is that Mr Wallis has indicated that he would like to have a second opportunity to complete the ACP but that owing to domestic issues he does not envisage doing this until August 2011 at the earliest. The committee considers he needs at least this time and probably more in which to allow him to seek advice and bring his clinical skills and knowledge up to the required standard.

Suggested information to be supplied at the next review hearing.

This committee cannot bind or influence the committee which will hear the next review and it will exercise its own judgment on the facts then in front of it.

However, this committee suggests that the following actions may assist at the next review hearing.

- Evidence to show the successful outcome of any retraining that the Osteopath has undertaken.
- Evidence of the successful completion of an ACP.
- Given the total length of suspension, evidence of keeping up to date.
- Evidence of the recording system that he plans to put in place and how that properly addresses the recording failures proved in this case.

Interim Suspension Order (ISO)

The Law.

All references to the Act in this section are references to the Osteopaths Act 1993.

On the 10th September 2010 the PCC made an order under section 22 (4) (c) to suspend Mr Wallis's registration until the 31st September 2010.

At a review hearing on the 13th October 2010 by agreement the suspension was extended to the 2nd March 2011.

Mr Wallis's suspension will therefore expire on the 2nd March 2011 unless extended.

The decision to extend the period of suspension is made under s. 22 (8) of the Act.

By virtue of s. 31 (2) of the Act, such a decision does not have effect before the expiry of the period within which an appeal against the decision may be made (28 days) or where an appeal has been made, before the appeal is withdrawn or otherwise disposed of.

Hence without an ISO Mr Wallis will be free to practise from the 2nd March 2011 until the 25th March 2011 or much later if he appeals this decision.

This is clearly unsatisfactory. Mr Hepworth submits that nothing can be done under the Act and Rules.

The power to impose an ISO arises under s 24 of the Act.

The power arises under s 24 (1) (b) of the Act where a PCC reaches a "relevant decision."

A "relevant decision" is defined in s 24 (10) as an order under s 22 (4) (c).

Mr Hepworth submits that as an extension is made pursuant to s 22 (8) so it does not fall within the definition of “relevant decision”, i.e. an order under s 22 (4) (c).

Having taken the legal assessor’s advice, the committee disagrees. The committee does not consider that it is making a new order. The committee has decided to extend the period of an existing order made under s 22 (4) (c). The power to extend arises out of s 22 (8) but the order remains one made under s 22 (4) (c), i.e. it is a “relevant decision”. As such the committee finds that it does have the power to make an ISO.

ISO

The committee has decided to impose an Interim Suspension Order on Mr Wallis’s registration with effect from the 2nd March 2011 in order to protect members of the public and the order will last until the appeal period expires or if an appeal is made until the appeal is withdrawn or disposed of. This is for the same reason as above.

GENERAL OSTEOPATHIC COUNCIL

DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE

In the case of:

Mr Roy Wallis
Registration Number: 2233

Monday 6th, Tuesday 7th, Wednesday 8th and Thursday 9th and Friday 10th
September 2010

The Tribunal: Mr David Plank (Chair)
Mr Rodney Varley
Ms Jackie Salter

Legal Assessor: Mr Alastair McFarlane

For the Council: Ms Teresa Murphy

For the Osteopath: Mr Stuart Sutton

In attendance: Miss Anna Ripley (Clerk)

Allegation:

It is alleged that you, Roy Wallis, are guilty of unacceptable professional conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993, in that you, at consultations with Patient A between 8 July 2008 and 18 February 2009:-

1. At your first consultation with Patient A on 8 July 2008, failed to elicit an adequate case history in respect of:
 - 1.1 Patient A's lower back pain
 - 1.2 Patient A's difficulties with her walking gait

2. At your first consultation with Patient A on 8 July 2008, failed to record an adequate case history in respect of:
 - 2.1. Patient A's lower back pain
 - 2.2. Patient A's difficulties with her walking gait

3. At your first consultation with Patient A on 8 July 2008, failed to conduct an adequate osteopathic examination of Patient A in that you:
 - 3.1. Failed to conduct, adequately or at all, passive motion tests
 - 3.2 Failed to conduct, adequately or at all, a palpatory evaluation

4. At your first consultation with Patient A on 8 July 2008, failed to form an osteopathic diagnosis

5. At your first consultation with Patient A on 8 July 2008 failed to record adequately or at all:
 - 5.1 The results of any passive motion tests
 - 5.2 The results of any palpatory evaluation
 - 5.3 An osteopathic diagnosis

6. Following your first consultation with Patient A on 8 July 2008, you failed to monitor, adequately or at all, Patient A's response to osteopathic treatment

7. In respect of consultations with Patient A between 22 July 2008 –18 February 2009 inclusive, failed to record adequately or at all:
 - 7.1 Your clinical findings in respect of Patient A
 - 7.2 Osteopathic treatment provided to Patient A
 - 7.3 Patient A's response to osteopathic treatment

8. Failed to maintain records in respect of your consultations with Patient A on 8, 14, 20, 28 January 2009 and 18 February 2009

9. At your consultation with Patient A on 8 January 2009, failed to obtain valid consent from Patient A in respect of the osteopathic manipulation of her left hip.

10. Between 8 July 2008 and 18 February 2009 inclusive, you provided osteopathic treatment to Patient A, which was unjustified in that such treatment was not supported by:

- 10.1 An adequate case history
- 10.2 An adequate osteopathic examination
- 10.3 An osteopathic diagnosis

The Committee has carefully considered all of the evidence it has received, both oral and documentary as well as the submissions of Mr Sutton for Mr Wallis and Ms Murphy for the GOsC. It has accepted the advice of the Legal Assessor and reminded itself that the burden of proving the facts alleged is on the GOsC alone and that the standard of proof is the ordinary civil standard, namely the balance of probabilities.

Background:

Patient A attended Mr Wallis's clinic in Brighton on 15 occasions between July 2008 and February 2009. She had sought Mr Wallis's help because he had been recommended to her as he specialised in using the diagnostic technique of Applied Kinesiology (AK).

One of the issues that has arisen in this case has been what constitutes osteopathic practice. It is not the function of this Committee to set limits or attempt to define osteopathy. This Committee's function is to deal with the complaints referred to it that are made against registered osteopaths. It is the Committee's view that osteopaths can and do use a variety of diagnostic techniques and treatment modalities, for example AK and acupuncture, as well as more mainstream manual therapy. Some of these techniques and modalities are not limited to the profession of osteopathy. However, in the Committee's judgement, if a registered member of this profession, holding himself out as an osteopath chooses to use them, then he is doing so in the course of his practice as an osteopath and accordingly is subject to the professional requirements of a registered osteopath.

1. At your first consultation with Patient A on 8 July 2008, failed to elicit an adequate case history in respect of:

1.1 Patient A's lower back pain

It is agreed evidence between Mr Wallis and Patient A that her lower back pain was her secondary complaint when she first attended his clinic on 8 July 2008. Her primary complaint was of high blood pressure. The Committee accepts Mr

Wallis's evidence that he elicited information from Patient A about the back pain while he was taking a case history. Given that Mr Wallis was made aware of the low back problem and because of the possible link between low back pain, high blood pressure and an abdominal aortic aneurism, he needed to establish whether the low back pain was related to the presenting complaint of high blood pressure or was mechanical in nature.

The Committee is satisfied that Mr Wallis did not take an adequate case history in respect of the lower back pain as he did not ask sufficient questions about it. The Committee accepts the evidence of Mr Piper, the expert witness called by the GOsC, in respect of the following matters which Mr Wallis ought to have elicited. The additional factors were: the time of onset; aggravating and relieving factors; the progression since onset; the daily pattern; previous treatments and outcomes; and whether it occurred at night. These matters were absent from Mr Wallis's case history and, accordingly, he did not take an adequate case history in this regard. Therefore, Part 1, particular 1.1 of the Allegation is proved.

1.2 Patient A's difficulties with her walking gait

The Committee found that Patient A did not have a clear recollection as to whether she mentioned walking difficulties. Mr Wallis was clear that patient A did not mention difficulties with her walking gait and the Committee accepts his account. In the circumstances, the Committee is not persuaded that Mr Wallis was required, as part of the taking of an adequate case history, to question Patient A about difficulties with her walking gait. Accordingly, Part 1, particular 1.2 of the Allegation is found not proved.

2. At your first consultation with Patient A on 8 July 2008, failed to record an adequate case history in respect of:

2.1. Patient A's lower back pain

The Committee considers that this allegation of failing to record an adequate case history is an alternative to failing to elicit one. Given the Committee's finding that Mr Wallis did not elicit an adequate case history in respect of Patient A's back pain, the alternative must fall. Accordingly Part 2, particular 2.1 is not proved.

2.2. Patient A's difficulties with her walking gait

Given the Committee's finding that there was no obligation to elicit a case history in respect of Patient A's difficulties with her walking gait there can be no obligation to record it. Accordingly, Part 2, particular 2.2 of the Allegation falls.

3. At your first consultation with Patient A on 8 July 2008, failed to conduct an adequate osteopathic examination of Patient A in that you:
 - 3.1. Failed to conduct, adequately or at all, passive motion tests
 - 3.2 Failed to conduct, adequately or at all, a palpatory evaluation

Mr Wallis accepts that he did not conduct passive motion tests or a palpatory evaluation of Patient A at the consultation on 8 July 2008. He stated that he did not do these tests as he had decided not to treat her low back with osteopathic manipulation. He said that in the circumstances it would be “a waste of time” to do an osteopathic examination. At paragraph 224 of his witness statement Mr Wallis said that an osteopathic examination “was neither appropriate nor necessary”.

Mr Piper stated that passive motion tests and a palpatory evaluation were essential parts of an adequate examination for musculo-skeletal complaints.

The Committee is satisfied that Mr Wallis had a duty to conduct those tests given Patient A’s presentation. It accepts Mr Piper’s evidence on this point. In order to establish an appropriate treatment plan, Mr Wallis had an obligation to perform those tests. The Committee notes that Mr Wallis did perform AK tests but is not persuaded that these absolved him from the responsibility to conduct the tests listed at 3.1 and 3.2.

Accordingly, Part 3, particulars 3.1 and 3.2 of the Allegation are proved.

4. At your first consultation with Patient A on 8 July 2008, failed to form an osteopathic diagnosis

The Committee accepts Mr Piper’s evidence that the proper procedure for any osteopath in dealing with a patient is to take a staged approach. First, an adequate case history should be taken. Second, an adequate examination of the patient should be conducted. Third, using this information, an appropriate diagnosis should be formulated. Only thereafter should treatment be planned and started.

It is agreed evidence that Mr Wallis did not treat Patient A on the first consultation on 8 July 2008. However, Mr Wallis accepted that he had reached a conclusion as to the treatment approach he was going to undertake. He intended to use bio-magnetic therapy. He started this treatment on Patient A’s second treatment on 22 July 2008. There was no evidence before the Committee that Mr Wallis had formed a diagnosis at any stage. Given that he had reached a decision on his treatment plan on 8 July 2008 the Committee is satisfied that he ought to have

first formed a diagnosis on that day. The Committee is satisfied that he had not done this and therefore Part 4 of the Allegation is proved.

5. At your first consultation with Patient A on 8 July 2008 failed to record adequately or at all:

5.1 The results of any passive motion tests

5.2 The results of any palpatory evaluation

5.3 An osteopathic diagnosis

The Committee is satisfied that part 5 which alleges recording failures in respect of passive motion test, palpatory evaluation and osteopathic diagnosis is an alternative to the failures found proved at parts 3 and 4. Accordingly, part 5 is not proved for this reason.

6. Following your first consultation with Patient A on 8 July 2008, you failed to monitor, adequately or at all, Patient A's response to osteopathic treatment

This part alleges that Mr Wallis failed adequately to monitor Patient A's response to treatment after the first consultation.

Mr Wallis started his treatment of Patient A on 22 July 2008. He denied doing any "osteopathic treatment" until 8 January 2009, when he performed a leg pull. The Committee disagrees and finds that he carried out osteopathic treatment from 22nd July 2008. The Committee is satisfied that an osteopath using techniques, such as AK with bio-magnetic therapy, is still providing "osteopathic treatment" as it is treatment provided an osteopath. In any event, the Committee is satisfied, that even using the Registrant's own definition of osteopathic treatment being limited to "manipulation", he carried out core osteopathic techniques and procedures when seeing Patient A. These included: soft tissue techniques, which he said were an "automatic" part of his treatment when undertaking bio-magnetic therapy; joint mobilisation of the neck; use of a power assisted micro-manipulator and use of an activator machine on the talus bone of the foot to move or re-position the bone.

The Committee accepts that over the consultations after 8 July 2008 Mr Wallis did do some monitoring of Patient A's response to treatment. For example, he did re-check the left femur head and record his finding after the leg pull in January 2009. Further, he did record some of Patient A's comments, for example, when she reported that her "back [was] better than for years". He also did perform objective monitoring of her when he undertook repeat AK testing on her muscles. He monitored the use of the activator for example by subsequent ticks in his notes indicating that corrections were holding. Further, the Committee is

prepared to accept that some element of the palpatory work he undertook would have amounted to part of his objective monitoring process.

Nonetheless, the Committee is satisfied that Mr Wallis's actions do not amount to an adequate monitoring of Patient A's response.

In respect of the low back there was no evidence of passive motion testing in this period. The Committee accepts Mr Piper's opinion that adequate monitoring would have included looking at movement and mobility, noting pain scores, an objective examination including recording palpatory findings and muscle tone improvement. Mr Wallis's monitoring of the response to the low back treatment was deficient in these regards.

Furthermore, in respect of the presenting problem of blood pressure, the Committee is satisfied that Mr Wallis's monitoring was inadequate. Mr Wallis did not at any time measure Patient A's blood pressure. While Patient A said she measured it herself, Mr Wallis did not seek to record any of her blood pressure measurements. The only reference in the notes after 8 July 2008 is the case note for the 22 July 2008 stating "BP getting good". Mr Wallis had not recorded what the reading was. No objective blood pressure measurement was obtained on that date or subsequently. Mr Wallis did note a three day headache on 22 July 2008 which was a possible sign of high blood pressure but even then he did not measure her blood pressure or obtain a precise measure from her.

Accordingly Part 6 is found proved.

7. In respect of consultations with Patient A between 22 July 2008 –18 February 2009 inclusive, failed to record adequately or at all:

7.1 Your clinical findings in respect of Patient A

7.2 Osteopathic treatment provided to Patient A

7.3 Patient A's response to osteopathic treatment

This part alleges that Mr Wallis failed to make adequate records of his clinical findings, his treatment provided and patient A's response to treatment at all of the consultations between 22 July 2008 and 18 February 2009. The Committee have considered Mr Wallis's case notes for this whole period which are set out on two pages only (page 14 and 14a of the bundle). It is self evident that Mr Wallis had his own particular system of note keeping. While he stated that they were clear to him and that he could explain to others where they recorded clinical findings, treatment and patient A's response to that treatment, he accepted that for others they would be impossible to understand. He provided a key and during his evidence explained the meaning of his notes. The Committee has no doubt that

to anyone other than Mr Wallis his notes are unclear and confusing. They cannot be described as comprehensive or easily understood.

Mr Wallis accepted that on one occasion he made no record of an emergency treatment he gave to patient A. He also accepted that he did not record the soft tissue massage that he said was his “automatic” treatment at most appointments when using bio-magnets.

The Committee has considered the adequacy of the notes in respect of each the areas specified particulars 7.1 7.2 and 7.3. The Committee found there was a general lack of clear and specific recording of clinical findings. It has no doubt that the records of the clinical findings are not adequate and are not clear to anyone other than Mr Wallis. As an example of inadequacy Mr Wallis himself accepted (paragraph 268 of his statement) that he did a passive motion test and palpatory examination on 02 October 2008 but did not record them.

In respect of recording treatment the Committee finds that only some treatment was recorded and that this was often only indicated by a dash (-). The treatment was not written in words and specifics of it were not given on these occasions. As stated above some treatments were not recorded at all.

Apart from recording ticks and occasionally subjective comments from patient A the Committee is satisfied that Mr Wallis did not adequately record patient A's response to treatment. For example, on 08 January 2009 patient A's back went into spasm after the leg pull Mr Wallis performed. He did not record this.

The Committee noted and accepted Mr Piper's observations on the adequacy of the records and is satisfied that Mr Wallis' records were inadequate in each of the particulars alleged.

Accordingly Part 7 in all particulars is found proved.

8. Failed to maintain records in respect of your consultations with Patient A on 8, 14, 20, 28 January 2009 and 18 February 2009

The GOsC offered no evidence on this part at the outset of the hearing and therefore the Committee found it not proved.

9. At your consultation with Patient A on 8 January 2009, failed to obtain valid consent from Patient A in respect of the osteopathic manipulation of her left hip.

The Committee has assessed the credibility and accuracy of patient A's and Mr Wallis' recollection of what Mr Wallis explained to patient A before he carried out a leg pull on the 08 January 2009. The Committee accepts that Mr Wallis was both talkative and informative of the procedure he intended to carry out and that he did obtain appropriate valid consent, which was both specific and informed, for

this treatment. The Committee notes that even patient A's account is that she was "warned" by Mr Wallis that this was a different treatment to previous ones and the Committee has no doubt that Mr Wallis made every effort to explain it and its consequent risks. The Committee accepts that this was a gentle procedure while recognising that patient A did suffer brief muscle spasm in her back immediately following the treatment.

Accordingly, part 9 is found not proved.

10. Between 8 July 2008 and 18 February 2009 inclusive, you provided osteopathic treatment to Patient A, which was unjustified in that such treatment was not supported by:

- 10.1 An adequate case history
- 10.2 An adequate osteopathic examination
- 10.3 An osteopathic diagnosis

This part contends that the treatment Mr. Wallis provided was unjustified in the sense that it was not supported by an adequate case history, an adequate osteopathic examination and an osteopathic diagnosis.

The Committee accepts Mr. Piper's evidence that these three sequential elements as set out in particulars 10.1 10.2 and 10.3 are an essential pre-requisite to ensure that any osteopathic treatment is justified.

Given the Committee's findings that there was not an adequate case history taken on 08 July 2008, or subsequently; that there was not an adequate osteopathic examination on the 08 July 2008, or subsequently; and that no diagnosis was made on 08 July 2008, or subsequently, it follows that the osteopathic treatment Mr Wallis provided was unjustified by reason of those failings. (For the avoidance of doubt the Committee made clear subsequently in the hearing that its finding, on the totality of the evidence, was that after 8 July 2008, as well as on that date, Mr Wallis did not take an adequate case history, did not carry out an adequate osteopathic examination or form an osteopathic diagnosis.)

The Committee concludes that these essential building blocks for proceeding to osteopathic treatment were missing and that therefore Mr Wallis' osteopathic treatment was not justified on this basis. Accordingly, part 10 in all particulars is found proved.

Unacceptable Professional Conduct.

The Committee next asked itself whether the facts that it has found proved amount to conduct falling short of the standard required of a registered osteopath, namely unacceptable professional conduct.

The Committee is satisfied that Mr. Wallis's proved failings do amount to unacceptable professional conduct and its reasons are as follows.

Eliciting an adequate case history, conducting an adequate osteopathic examination and forming a working diagnosis are essential pre-requisites to providing safe treatment. Adequately monitoring a patient's response to treatment is also essential to delivering safe care. Proper records are also an essential tool of ensuring safe patient care.

Mr Wallis's omissions constituted the following breaches of the Code of Practice and Standard of Proficiency in respect of each part of the allegation found proved as follows:

- 1, 1.1: COP, paragraph 66; SOP J1
- 3, 3.1 and 3.2: SOP J, paragraph 22, J4 and J5
- 4: SOP J6;L, paragraph 25 and L2
- 6: SOP: L;M, paragraph 28 and M5; N, paragraph 31 and N1
- 7, 7.1 and 7.2 and 7.3: COP paragraph 116; SOP J9;K7;N, paragraph 31 and N5
- 10,10.1and 10.2 and 10.3: COP paragraph 66, SOP J6 and N2

In the Committee's judgment these are numerous and extensive breaches of the Code of Practice and Standard of Proficiency, and are failures that fall short of the standard expected of a registered osteopath.

Sanction

The Committee has carefully considered the submissions put before it and has had regard to the GOsC's Indicative Sanctions Guidance. It has accepted the advice of the Legal Assessor and reminded itself that any sanction must be proportionate to the unacceptable professional conduct found. The Committee has considered the sanctions available to it in ascending order of seriousness.

The Committee has taken account of the fact that Mr. Wallis has been practising as an osteopath for 24 years and that he has had no previous complaints made against him and none since. It further notes that he is held in very high regard by his patients and the Committee has noted an impressive range of testimonials. While the Committee does have significant concerns as to Mr. Wallis's level of insight into his failings, it notes that he has attended courses on "Clinical Reasoning and Practical Safety" and on hip impingement and has taken some steps to change his record keeping approach. The Committee notes that Mr. Wallis stated that Patient A's case was an unusual one and that in 98% of his practice he did treat people in accordance with osteopathic principles, but no documentary evidence to support this has been put forward to the Committee.

Admonishment

Mr. Sutton realistically conceded that an Admonishment was not a sufficient sanction and the Committee agrees with him. The failures here were not isolated although they relate to one patient and there is a potential for harm to the public, in particular from the failures to monitor Patient A's responses to treatment and from the inadequacy of the records. The Committee is also concerned that the failures relating to this Patient in terms of a case history, conducting an examination, forming a diagnosis and leading to unjustified treatment, may be generic to his practice.

Conditions of Practice Order

There are discrete aspects of Mr. Wallis's practice that are problematic – in particular with getting the essential osteopathic building blocks in place before moving on to treat patients and in respect of his monitoring of patients and record keeping. The Committee noted Mr. Sutton's submissions as to possible conditions but is concerned that given the width of the failings, it is not possible to formulate appropriate and practical conditions of practice that would ensure public protection during the currency of any Order.

Suspension Order

The Committee is satisfied that the appropriate and proportionate sanction is a Suspension Order until 31st December 2010.

The Committee accepts that Mr. Wallis has been a caring and committed professional for many years. In its judgment the Committee thinks that Mr. Wallis may have fallen into an habitual mode of practice which does not satisfy the requirements of COP and SOP and has the potential for posing a risk to the public. There is no evidence of harmful deep seated personality or professional attitudinal problems. The evidence of insight before the Committee today is very limited. The Committee has no doubt that it is possible to formulate appropriate, practicable and assessable action that can be undertaken during the period of suspension. The action we require Mr. Wallis to undertake is

- i. To undertake successfully the Assessment of Clinical Performance on 10th November 2010. This is to be at Mr. Wallis's own cost.
- ii. To produce evidence at the Review hearing of the recording system that he plans to put in place. Any such recording system should properly address the recording failures proved in this case.

There will be a Review Hearing before the expiry of this Order.

INTERIM ORDER

The Committee has decided to impose an Interim Suspension Order on the Registrant's registration with immediate effect for the protection of the public and this Order will last until the appeal period expires or if an appeal is made until the appeal is disposed of. This is for the same reasons as for the substantive decision.

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. Mr Wallis's name will be included in this report together with details of the allegations we have found proved and the sanction that we have applied today.