

GENERAL OSTEOPATHIC COUNCIL

DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE

In the case of:

Ms Tracy Wilkinson (a.k.a. Lewis)
Registration Number: 2550

Tuesday 5th, Wednesday 6th, Thursday 7th and Friday 8th October 2010

The Tribunal: Ms Judith Worthington (Chair)
Ms Jean Johns
Mr Andrew Kerr

Legal Assessor: Mr Christopher Kinch QC

For the Council: Ms Teresa Murphy

For the Osteopath: N/A

In attendance: Miss Priya Popat (Clerk)

Decision

Suspension Order

There are serious aspects to this case, involving significant departures from the relevant professional standards, as the Committee has set out in its previous determination, in particular the finding of dishonesty and the nature of the conduct underlying the criminal offences. Such conduct, as the Committee has previously stated, has the potential to damage public trust and confidence and the reputation of the profession of osteopathy. However, the evidence before the Committee was that the dishonesty was confined to that single incident when Mr Jay came to her house. It was opportunistic and there was no evidence that it was persistent or systematic. As for the criminal convictions, although they were matters of some significance and there were repeated incidents, they were confined to a limited period of time. In the event despite the risk, there was no evidence of any actual harm to others.

The Committee therefore concluded that a period of suspension would be appropriate in this case and sufficient to send a strong message to the Registrant, the profession and members of the public as to the importance of maintaining proper professional standards thereby ensuring that patients' interests are respected and that the integrity of the profession is preserved.

The Committee has decided that a period of 20 months is necessary and sufficient in this case.

Shortly before the expiry of this order, a review will be held.

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FULL DECISION OF THE PROFESSIONAL CONDUCT COMMITTEE

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Allegation:

1. It is alleged that you, Tracy Wilkinson (a.k.a. Tracy Lewis), have been convicted of criminal offences, pursuant to Section 20(1)(c) of the Osteopaths Act 1993.
2. The particulars of the offences are: -
 - 2.1 On 7 October 2009 you were convicted at Crawley Magistrates Court of driving a motor vehicle with excess alcohol for which you were fined £170; disqualified from driving for 36 months; and ordered to pay costs of £85.
 - 2.2 On 8 September 2009 you were convicted at Mid Sussex Magistrates Court of failing to provide a specimen for analysis for which you were fined £115; disqualified from holding/obtaining a driving licence for 14 months; and order to pay costs of £85.
 - 2.3 On 16 October 2009 you were convicted of dangerous driving for which, on 24 May 2010 at Lewes Crown Court, you were sentenced to 9 months imprisonment

suspended for 24 months; disqualified from driving for 5 years until you have passed an advanced drivers test; and had you licence endorsed.

2.4 On 16 October 2009 you were convicted of failing to provide a specimen for analysis for which, on 24 May 2010 at Lewes Crown Court, you were sentenced to 4 months imprisonment suspended for 24 months.

2.5 On 16 October 2009 you were convicted of failing to stop a mechanically propelled vehicle when required by a constable for which, on 24 May 2010 at Lewes Crown Court, you were sentenced to 4 months imprisonment suspended for 24 months.

3. The above convictions are of material relevance to your fitness to practise

4. It is alleged that you, Tracy Wilkinson (a.k.a. Tracy Lewis), are guilty of unacceptable professional conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993, in that on 13 July 2009 you: -

4.1 Held yourself out (whether expressly or by implication) as being a practising osteopath despite

4.1.1 Being registered at the time as non practising and/or

4.1.2 Not having adequate professional indemnity insurance

5. Your actions set out in allegation 4.1.1 were dishonest

On the application of the Council and with the agreement of the Registrant, the Committee permitted an amendment of the allegation at Paragraph 5 by amending 4.1.1 to read 4.1.

DECISION

The Committee accepted the advice of the Legal Assessor.

The Committee decided to determine the facts relating to the allegation of Unacceptable Professional Conduct first.

In relation to Allegation 4, it is common ground between the parties that the Registrant was registered at the time (in 2009) as a non practising osteopath and that she had only "run off" professional indemnity insurance. The Committee has to decide whether the Council have proved that she held herself out as being a practising osteopath.

The evidence against the Registrant comes from Mr Jay, an investigator instructed by the GOsC. On 13th July 2009 he visited the Registrant's home address. He found a banner and sign outside the premises suggesting there was a registered osteopath and sports injury clinic

“now here” at the premises. Both signs exhibited the Registrant’s telephone number, which the Registrant herself told the committee was the number for that address. The Registrant conceded that the signs gave rise to a logical presumption for any passer-by that an osteopath was operating at the premises but she asserted the correct interpretation of them was that she was preparing to resume practice, an explanation the committee have concluded must be rejected on the basis that there was a clear implication from the banner and sign that an osteopath was practising from those premises.

There is a dispute over the conversation that took place between the Registrant and Mr Jay. He stated that she indicated he had come to the right place for an osteopath and she would be able to treat Mr Jay’s mother and indeed could see her the following morning. He also stated that she gave details of her fees. The Registrant’s evidence was that she felt intimidated by Mr Jay and wanted to cut short the exchange. She did give him certain details but she said they were in general terms and she intended to refer Mr Jay’s mother to another osteopath for any treatment that might be required. She criticised Mr Jay’s accuracy and good faith. The Registrant stressed that the premises were in an unsuitable condition for use as a clinic and moreover she did not have access to her equipment which was in storage elsewhere. However, in the course of her evidence, it became apparent that the Registrant had carried out some limited treatment for friends and members of her family. The treatment included mobility maintenance, soft tissue work, massage and joint mobilisation. These are all treatments that can be carried out without the need for any specialised equipment.

What is clear is that despite her claim to be intimidated by Mr Jay, she did write down her own telephone number for him on an out of date brochure, logically in order to facilitate future contact. In this as in other aspects of her evidence, the Committee found the Registrant to be inconsistent and in addition, some of her answers in cross examination to be evasive. Taking the evidence as a whole and bearing in mind the appearance of the banner and sign outside the house and the giving of her telephone number to Mr Jay, the Committee is in no doubt that the Registrant was, both expressly and by implication, holding herself out as a practising osteopath on 13th July 2009.

The Committee finds allegation 4.1 proved.

Under allegation 5, it is alleged that the registrant acted dishonestly in holding herself out as a practising osteopath. The Committee has taken into account her good character in relation to honesty and her 12 years of unblemished practice. It has not taken any account, in this regard, of her convictions for driving matters. The Committee has tried to see if there is room for concluding that there was an element of mistake or some innocent misleading of Mr Jay. It has concluded that when confronted by Mr Jay’s request for information about treatment for his mother, there was a point of no return when, had the Registrant been acting honestly, she would have referred Mr Jay to another practitioner. Because she chose instead to give her own details, the committee has been driven to the conclusion that she acted dishonestly and must have known that she was dishonest by the ordinary standards of reasonable honest people.

The Committee finds allegation 5 proved.

As to whether the facts proved amount to Unacceptable Professional Conduct, the Committee noted that there was no allegation of actual clinical treatment of Mr Jay's mother. Although it formed no part of the allegations, the Committee were also concerned at the admitted treatment of family and friends and the Registrant's comments that this was of no consequence because they were unlikely to claim and they knew about her non practising status. In any event, the Committee were satisfied that the evidence demonstrated an intent to treat, reinforced by the information displayed on the signs outside her home, this despite having only run off insurance and non practising registration status. This means that patients would not be protected in case harm came to them as a result of treatment because they would not be covered for any claims they may need to make. In these circumstances, the Registrant failed to act in the best interests of patients. There was a clear disregard of a practitioner's obligations under the code of practice and the standard of proficiency which set out the minimum requirement for registered osteopaths. This includes:

- Paragraph 91 of the code of practice relating to professional indemnity insurance.
- Sections H1-3 of the standard of proficiency relating to professional and legal responsibilities.
- Section H6 which relates to professional integrity and in particular the right to use qualifications. The committee takes the view this embraces claims to practising status.

The Committee took the view that the claim to practising status by a non practising osteopath was inconsistent with the commitment to maintaining the integrity of the profession required by section H6 because of the false claim to practising status.

In relation to the matter of dishonesty, the Committee noted page 3 of the Code of Practice which requires an osteopath to be "honest and trustworthy" in order to justify public trust and confidence. The Registrant's conduct in this respect breached a fundamental tenet of professional behaviour.

The Committee was satisfied that the facts proved reflect conduct falling short of the standard required of a registered osteopath.

Allegations 1 and 2 were admitted by the Registrant and the Committee found them proved. The Registrant had been convicted of a series of offences arising from incidents between December 2008 and August 2009. The offences involved one incident of driving with excess alcohol (26 December 2008) and two offences of failing to provide a specimen (10 June 2009 and 5 August 2009): the incident on 5 August 2009 being accompanied by an offence of dangerous driving and failing to stop when required by a constable. The Committee noted that the offences did not relate to the clinical practice of osteopathy and that there was no allegation of treating a patient when intoxicated. However the Committee has had to consider the nature of the criminal behaviour in order to assess whether it reflected on the qualities and integrity of a professional person and any impact there might be on the public perception of the profession. These offences involve a wilful refusal to follow legal requirements to provide specimens and in one case to follow the lawful instructions of a police officer. The Committee noted the Registrant's comments regarding her lack of culpability but the fact remains that having originally pleaded not guilty she did enter pleas of guilty and has not appealed the

convictions. The offence of dangerous driving involves a high risk of harm to members of the public.

The nature of the offences involving disregard for the authority of the law and their repetition lead the committee to the conclusion that there is a clear and material relevance to fitness to practice on the basis that these convictions and the underlying conduct plainly have the potential to undermine public confidence and damage the reputation of the profession.

DECISION ON SANCTION

In considering the question of what sanction is appropriate, the Committee has accepted the advice of its legal assessor. The object is not to be punitive but to ensure the protection of the public, the maintenance of public confidence in the profession and proper standards of professional behaviour.

The Committee is aware that the criminal court has imposed suspended sentences of imprisonment on the registrant for the criminal offences to which she pleaded guilty in May 2010. The period of suspension will last until May 2012. As part of the sentence, the Registrant is required to undergo supervision until May 2011, although she has said that there is a possibility that period may be shortened at the request of the probation service. As things stand therefore, the Registrant will not have completed her sentence until May 2012. Alongside the convictions the Committee has to consider the unacceptable professional conduct reflected in the Registrant dishonestly holding herself out as a practising osteopath when she had registered as non-practising and her professional insurance was inadequate to cover any current osteopathic treatment of patients.

The Committee must ensure that the sanction chosen is proportionate to the conduct in question. In order to achieve that, the Committee has followed the guidance contained in the Indicative Sanctions Guidance and has looked at the available sanctions in ascending order.

In addition to the evidence received during the fact finding stage of these proceedings (which included documentary and oral evidence submitted by Ms Murphy on behalf of the Council and documentary and oral evidence from the Registrant and her friend Mrs Ruth Burns) the Committee has considered submissions made by Ms Murphy and the Registrant's own submissions, oral and written, the additional evidence of Ruth Burns and a number of written reports and testimonials. The personal testimonials from Mrs Burns and three former patients indicate the high regard in which the Registrant is held by those who know her.

The Committee has borne in mind that the behaviour under consideration occurred during a nine month period between December 2008 and August 2009 and is in contrast to many years of honest and creditable endeavour on the Registrant's part. It is also likely that the behaviour was contained within a period of some turbulence in the Registrant's personal life. There was no allegation of clinical shortcomings in this case and no evidence has been produced to suggest any criticism of her clinical ability. She has indicated her regret and sorrow for her conduct.

The problem the Committee has confronted is that the positive material in the Registrant's favour does not address the matters that brought her before the committee. The totality of the evidence and other material produced by the registrant in mitigation has left a concern that the Registrant does not fully understand her obligations to the profession and the wider public. She appeared to lack insight into the importance of her insurance status and the proper framework for good and safe professional practice. The Committee has set out in its earlier determination, the potential impact on patients (friends and family or otherwise) of treating them without proper insurance being in place, should any harm arise.

In the Committee's view, the conduct that had to be considered was too serious to be dealt with by an admonishment. Furthermore, the behaviour was deliberate. It was far from isolated and, as set out above, the Registrant has demonstrated a lack of insight.

Neither is it appropriate for the matter to be dealt with by a Conditions of Practice Order. In the first place, the Committee had to consider issues around the Registrant's conduct rather than her clinical practice. The Committee considered it was not possible to formulate appropriate conditions given its serious findings.

There are serious aspects to this case, involving significant departures from the relevant professional standards, as the Committee has set out in its previous determination, in particular the finding of dishonesty and the nature of the conduct underlying the criminal offences. Such conduct, as the Committee has previously stated, has the potential to damage public trust and confidence and the reputation of the profession of osteopathy. However, the evidence before the Committee was that the dishonesty was confined to that single incident when Mr Jay came to her house. It was opportunistic and there was no evidence that it was persistent or systematic. As for the criminal convictions, although they were matters of some significance and there were repeated incidents, they were confined to a limited period of time. In the event despite the risk, there was no evidence of any actual harm to others.

The Committee therefore concluded that a period of suspension would be appropriate in this case and sufficient to send a strong message to the Registrant, the profession and members of the public as to the importance of maintaining proper professional standards thereby ensuring that patients' interests are respected and that the integrity of the profession is preserved.

As to the length of the suspension, the Committee has noted that the Registrant has been subject to an interim suspension for the past 14 months. However, the Committee has to deal with matters today on the basis of the facts found proved during these proceedings. The Committee has also taken into account that there has been no evidence of any personal development or any attempt by the Registrant to keep her knowledge base up to date during that period of interim suspension. Furthermore, the Committee has already expressed its concern as to the Registrant's limited insight, even at this stage, into her professional responsibilities.

The period of suspension must allow sufficient time for the Registrant to address the serious issues the Committee has identified. It also needs to be long enough for the Registrant to complete satisfactorily the operative period of the suspended sentences imposed by the criminal court. Consequently, the Committee has decided that a period of 20 months is necessary and sufficient in this case.

Shortly before the expiry of this order, a review will be held. The Committee on that occasion will be assisted by evidence from the Registrant that she has full insight into her failings and the matters that brought her here, details of any training courses attended evidence of professional development and evidence of continuing good conduct in the intervening period.

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

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.