

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 646/8557

Review Hearing

DECISION

Case of:	Mr Oliver Eaton
Committee:	Mr Richard Davies (Chair) Ms Rama Krishnan (Lay member) Mr Kenneth McLean (Osteopathic member)
Legal Assessor:	Mr Jonathan Whitfield QC
Representation for Council:	Ms Grace Hansen
Representation for Osteopath:	N/R
Clerk to the Committee:	Miss Nyero Abboh
Date of Hearing:	16 April 2019

Preliminary Matters

None

Facts and Submissions

1. This is a review hearing of the Suspension Order imposed on Mr Eaton ('the Registrant') for a period of three months by the Professional Conduct Committee (PCC) on the 7th January 2019.
2. Ms Hansen referred to the GOsC's bundle of papers, stating that the facts of the case were summarised in the 11-page judgement of the PCC. She said that the judgement set out those matters which were admitted and gave rise to the finding of UPC and the order for suspension. She advised there was no additional material from the GOsC or the Registrant and stated that the decision as to what order to make is a matter for the Committee alone. She had no specific representations to make.

3. In brief, this case concerned the Registrant publishing material on four websites for an unknown but lengthy period that he knew to be incorrect namely that he held a Masters' degree in osteopathy when in fact he only had a Bachelor's Degree. The Registrant was entered onto the Register on 28 March 2014. This matter came to light on 8 February 2017 at which time the GOsC wrote to him. On 8 March 2017 the Registrant contacted the GOsC confirming that he did not have an MSc and that all the online references had been amended save one to which he did not have immediate access.
4. The case came before the PCC on 7 January 2019 at which time the Registrant admitted the facts alleged. When determining the facts, the PCC found that the Registrant's conduct lacked integrity and was dishonest. The Registrant gave evidence and accepted that he had acted dishonestly and without integrity in overstating his qualifications. He explained that he had done so because he had completed all the study and training for a Master's Degree, but was prevented from receiving the award because of university rules as to when his dissertation could be submitted and resubmitted. He explained that he was bitter at being unable to qualify in a timely manner and considered that he had done everything to justify a Masters' award. The Registrant accepted that patients could have been misled by his actions.
5. The PCC found that the Registrant's conduct amounted to UPC. It involved dishonesty in part of his professional life; it took some forethought and planning; he was aware patients could be misled; and that it might have a financial benefit by attracting more patients. The Registrant's actions were found to breach the following standards of the OPS:

D14 Act with integrity in your professional practice

2.1 your advertising is legal, decent, honest and truthful...

2.2 the information you provide about your professional qualifications ... is of a high standard and factually accurate

D17 Uphold the reputation of the profession through your conduct

2.7 Not falsifying records or other documents

2.9 Maintain the same standard of professional conduct in an online environment as would be expected elsewhere

6. Following a review of the various aggravating and mitigating features the PCC imposed a 3-month suspension order. In so doing the Committee took account of the fact that the Registrant was at the start of his career; he had received positive feedback from patients; and there was no risk to public safety (a finding accepted by the GOsC). In particular, the PCC determined that *"the Registrant had demonstrated sufficient insight, such that it was satisfied that the Registrant was not likely to act dishonestly or with a lack of integrity in*

future.” It determined that “a period of suspension was required to mark the gravity of the conduct....to declare and uphold proper standards of conduct and behaviour.”

7. The Registrant elected to give evidence under oath and to be cross-examined. He said that prior to the hearing on 7 January 2019 he had reflected at length upon what he had done, and he had changed as a person. He had become a practising Christian and his faith-values together with the values and philosophy of the profession had helped him. He felt a sense of gratitude in this change and for the process by which it had occurred. He recognised that this was intended to maintain the reputation of the profession of which he was proud to be a member. He had learned from his reflection and the disciplinary process itself. In the three months since his suspension the Registrant said that he had been on two courses to maintain his CPD and improve his practice. He had also maintained his study and reading. He said he wished to advance his practice for the future.
8. When questioned about his reflection and respect for the profession the Registrant said this had been strengthened. He said he respected patients and acknowledged the importance of being honest with them. He said that he was committed to caring for them and to treating them effectively. Looking back upon his conduct he said he felt upset that his bitterness at not having gained a Masters’ degree had led him to be dishonest and to act in a way that lacked integrity. He said, “I am not proud of myself” and recognised that he should have focussed on sustaining proper professional standards. He respected the profession because it had helped him overcome his difficulties and he wanted to be the best osteopath he could be.
9. Regarding direct contact with patients, the Registrant said that he always endeavoured to be honest with them. He appreciated that patients are vulnerable - more so when they are in pain. He observed that as such a vulnerable patient he had been misled into spending money on unhelpful treatment, and he was thus doubly aware of the need to be honest.
10. When asked about how he would guard against any future thought or pressure to act dishonestly or without integrity the Registrant said he would first place trust in his faith to guide him. In further practical terms he referred to being a member of the Institute of Osteopathy to which he could turn for guidance and to the GOsC. He was also surrounded by other healthcare professionals including his wife and her parents and the fact that they worked from a GP practice where a ‘high level of conduct’ was expected. He said that he did not have other osteopath colleagues to turn to.

11. The Registrant was asked what had changed in himself since these events. He explained that at the time he was trying to build up a reputation and a practice which led him to act as he did. He said that prior to his suspension he had become an established practitioner. He had gained confidence in himself and he understood the significance of upholding professional standards. He said that he recognised the importance of being honest and upholding the osteopathic standards, and that his faith now assisted him. He confirmed that he did not currently advertise as an osteopath since he was suspended from the register. Were he to be readmitted to the register he would start to advertise again and make it clear to patients that he is regulated.
12. When asked if he had re-acquainted himself with the Code regarding honesty and integrity whilst he had been suspended the Registrant said he had not but that he had done so prior to the January hearing.

Decision:

Discussion

13. The Committee assessed the case both in terms of the allegations as admitted and in the round. It took account of what the Registrant has done to reflect upon and improve his insight and his clinical practice during the operational period of the Order of Suspension.
14. The Committee accepted the advice of the Legal Advisor.
15. Looking at the matter in the round the Committee observed that the Registrant had progressed during the three months of suspension. He had maintained and/or improved upon the degree of insight noted by the PCC on 7 January 2019. He had reflected upon events and was clear about his responsibility to be honest and to respect patients. He demonstrated a patient-centred and caring mindset. The Committee noted that his last answer confirming that he had not re-read the Code prior to today but that he had done so prior to the January hearing was transparently an honest answer. His self-assessment that he was not proud of himself appeared genuine.
16. The Committee noted that these events occurred in the context of a young man bitter at what he regarded as an injustice and, he focussed more on that than his professional and personal obligations. It was clear to the Committee that the Registrant had put these matters behind him and was now aware of where his duties and obligations lay. On 7 January 2019 the PCC was satisfied that he was "not likely" to act in this way again. This Committee accepted that he had recognised his wrongdoing and was of a similar view.

Decision

17. Having come to the above conclusions the Committee considered its powers of sanction. In making its decision the Committee has taken account of all the submissions and it has accepted the advice of the Legal Assessor. It has balanced the public interest and the need to protect patients against the Registrant's interests. It has considered the findings of the previous PCC and the reasons for the existing order.

No Order

18. The Committee first considered making no order. The previous PCC imposed a 3-month suspension order for declaring and upholding standards. It was satisfied that repetition of this conduct is unlikely. This Committee is in accord with that decision and, is satisfied that the Registrant has further demonstrated the remoteness of repetition. It is further satisfied that the period of suspension has marked the gravity of the conduct both to the public and the Registrant and that the public interest has been properly served. In so concluding the Committee has decided that there should be no further order. The practical effect of this is that the existing order will continue until its conclusion at which point it will lapse.
19. The Committee tested the correctness of making no order by looking at whether a Condition of Practise Order or a further Suspension Order should be imposed. It concluded that neither would be a proportionate response to the case as it now stood.
20. Finally, the Committee noted that, despite having other healthcare colleagues to turn to and his new-found faith, he does not appear to engage systematically with fellow osteopaths either formally or informally. The Committee observes that he may be missing out on the protection, support and mentoring available to him through other practitioners. It would encourage him to engage further with his colleagues both in principle but also considering what has occurred and of the fact that he is yet in the early stages of his career.

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.

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 646/8557

Professional Conduct Committee Hearing

DECISION

Case of:	Mr Oliver Eaton
Committee:	Mr Andy Skelton (Chair) Dr Pamela Ormerod Ms Claire Cheetham
Legal Assessor:	Mr Gary Leong
Representation for Council:	Mr Christopher Gillespie
Representation for Osteopath:	Mr Oliver Eaton was present but unrepresented
Clerk to the Committee:	Ms Jemima Francis
Date of Hearing:	Monday, 7 January 2019

Summary of Decision:

The Committee found the factual particulars proved based on the Registrant's admissions, pursuant to Rule 27 of the General Osteopathic (Professional Conduct Committee) (Procedure) Rules Order of Council 2000.

The Committee also found the facts found proved amounted to Unacceptable Professional Conduct.

The Committee imposed a sanction of suspension for a period of three months.

Allegation:

The allegation is that Mr Eaton (the Registrant) has been guilty of Unacceptable Professional Conduct, contrary to section 20 (1) (a) of the Osteopaths Act 1993, in that:

1. *between 14 December 2016 and 8 March 2017, the Registrant was responsible for online references on the following websites, which referred to him as holding a Master's degree in Osteopathy when he knew he did not hold such a degree:*
 - a) *prohealthclinic.co.uk*
 - b) *ihealthclinic.co.uk*
 - c) *fountainsctc.co.uk*
 - d) *linkedin.com;*
2. *The Registrant's conduct described at paragraph 1 above:*
 - a) *demonstrated a lack of integrity; and/or*
 - b) *was dishonest.*

Background:

1. The Registrant applied to be entered onto the Register in January 2014. As part of his application, the Registrant disclosed his primary osteopathic qualification as 'Batchelor [sic] of Osteopathy' and provided proof of his qualification.
2. The Registrant was entered onto the Register on 28 March 2014.
3. On unknown dates before 8 February 2017, the Registrant published or was responsible for the publication of material online that stated he held a Master's degree in osteopathy. The Registrant has not obtained a Master's degree in osteopathy.
4. On 8 February 2017, the GOsC wrote to the Registrant about information available online regarding his osteopathic qualification, specifically on the following four websites, which referred to him as having a Master's degree in osteopathy:

- a) prohealthclinic.co.uk
 - b) ihealthclinic.co.uk
 - c) fountainsctc.co.uk
 - d) linkedin.com.
5. In the same letter, the Registrant was asked to provide the GOsC with details of his most recent osteopathic qualification.
 6. On 8 March 2017, the Registrant telephoned the GOsC and confirmed that he had not obtained a Master's degree in osteopathy.
 7. The Registrant confirmed over the telephone that he had amended the various online references to his osteopathic qualification and removed any reference to a Master's degree, with the exception of one website to which he had no access at the time.

Preliminary Matters:

Conflict of interest

8. In accordance with Rule 6 of the General Osteopathic (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("the Rules"), the Committee considered whether there was any reason why any member of this panel of the Committee would not be eligible to hear this case. The Committee determined that there was no such reason.

Proceeding in private

9. The Committee was aware from the papers matters relating to the Registrant's health and private life were to be discussed as part of this application. It raised the possibility of the parts of the hearing, where reference was to be made to such matters, being heard in private.
10. The Registrant told the Committee that it was his preference that matters relating to his health be heard in public. He said that his previous health issues were an integral part of him and his practice, and that it had a direct impact on the way he practised osteopathy. The Committee determined that, in the circumstances, there was no need for an order for such matters to be heard in private.

Determination on the facts

11. At the start of proceedings, the Registrant admitted all the factual particulars.
12. The Committee was satisfied that the Registrant's admissions were correct in that his actions, in knowingly advertising that his degree was of a higher level than it in fact was, did not adhere to the level of integrity expected of a registered osteopath.
13. The Committee was aware of the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* with sets out the test for dishonesty in these proceedings. Ordinary and decent people would consider the Registrant's actions as set out above to be dishonest.
14. Accordingly, the Committee found particulars 1(a), 1(b), 1(c), 1(d), 2(a) and 2(b) proved pursuant to Rule 27 of the Rules.

Unacceptable Professional Conduct

15. The Committee next considered whether the facts it had found proved amounted to conduct falling short of the standard required of a registered osteopath – namely, whether they amount to Unacceptable Professional Conduct (UPC).
16. Mr Gillespie submitted that the facts found proved were serious enough to amount to UPC. He drew the Committee's attention to the background to the case and the relevant cases.
17. At this stage the Committee heard evidence from the Registrant. The Registrant told the Committee of the surrounding circumstances at the time when he stated that he had a Master's degree in osteopathy. He accepted that, by stating he had such a degree when he did not, he had demonstrated a lack of integrity and had been dishonest by the standards of ordinary members of the public.
18. The Registrant stated that it was not his intention to deceive when he stated that he had a Master's degree. He said that he had been frustrated because, in his opinion, he had completed the required work for a Master's degree, whilst working through a period of ill health, but could not be awarded a Master's degree because of university rules. He initially submitted his dissertation in June 2013, at which point the dissertation did

not pass. He re-submitted his dissertation in September 2013; it again did not pass. At this point he was invited to re-submit his dissertation once again with two options available. The first option was to submit it again in December 2013. However this option would only entitle him to a Bachelor's degree in osteopathy, should it pass. The second option would be to re-submit the dissertation in June 2014 and this would entitle him to a Master's degree qualification, should it pass. He chose the former option. The Registrant said that the University rules only permitted the award of a Bachelor's degree at that point in the academic year (January 2014), and not a Master's degree.

19. As a result of his bitterness and frustration at the potential delay in commencing income generating employment as a qualified osteopath, having completed all the course work, he considered himself justified in recording his qualifications at Master's level. However, the Registrant accepted that the statement that he had a Master's degree could have misled potential patients, and that they could have chosen to come to his clinic when they would otherwise might not, had they known he had a Bachelor's degree in osteopathy.
20. The Committee accepted the advice of the Legal Assessor.
21. The Committee bore in mind that there is no standard of proof to be applied at this stage and that the consideration as to whether the threshold for Unacceptable Professional Conduct has been reached is a matter of judgment. The Committee took into account the Unacceptable Professional Conduct guidance and applied the guidance of Mr Justice Irwin in Spencer v The General Osteopathic Council [2012] EWHC 3147 (Admin), that a finding of UPC implies moral blameworthiness and a degree of opprobrium. Mr Justice Kerr in Shaw v The General Osteopathic Council [2015] EWHC 2721 (Admin) provided additional guidance, stating that:

"...most people would consider the failings identified in the decision as conveying a degree – and I stress it need not be a high degree- of moral opprobrium"

22. The Committee also took into account the observations of Collins J in Nandi v General Medical Council

"The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct

which would be regarded as deplorable by fellow practitioners.”

23. The Committee reminded itself that although it should have regard to the Osteopathic Practice Standards (“OPS”) which lays down the standards of conduct and practice expected of a registered Osteopath, not every omission or instance of poor practice necessarily constitutes UPC. A departure from the OPS is a starting point and is relevant; but it is not determinative of UPC and does not create a presumption of UPC.
24. In assessing the Registrant’s conduct, the Committee looked at the Registrant’s behaviour in the round. This is because particular 2 was dependent on particular 1, and the lack of integrity was intrinsically linked to the dishonesty.
25. In coming to its decision on UPC, the Committee took into account the following features of the Registrant’s conduct:
 - a) the dishonesty was an attempt to misrepresent his qualifications in a clinical setting, and was part of his professional life as an osteopath;
 - b) it required a degree of forethought and planning. The Registrant’s conduct would have required him to compose and edit the entries before he put them on to the websites. This was done over a protracted period of time for four different websites. The Registrant could have changed his mind at any time during that period up until he uploaded his profile to the fourth and final website, but he did not do so;
 - c) he knew that patients could potentially be misled;
 - d) he accepted that patients may have been more likely to prefer a practitioner with a Master’s qualification over one with a Bachelor’s qualification, in the absence of any other information to differentiate between them. He accepted that his actions could have potentially brought more patients into his clinic.
26. The Committee also determined that the Registrant’s actions breached the following standards of the OPS:

D14 Act with integrity in your professional practice.

- 2.1 *Your advertising is legal, decent, honest and truthful ...*
- 2.2 *The information you provide about your professional qualifications, ... is of a high standard and factually accurate.*

D17 Uphold the reputation of the profession through your conduct.

- 2.7 *Not falsifying records or other documents.*
- 2.9 *Maintaining the same standard of professional conduct in an online environment as would be expected elsewhere.*

- 27. The Committee determined that other members of the profession would regard the Registrant's actions to be deplorable, and members of public would regard it as serious misconduct.
- 28. The Committee determined that the Registrant's actions amounted to UPC.

Sanction

- 29. The Committee took full account of the submissions of Mr Gillespie on behalf of the Council, and those of the Registrant.
- 30. The Registrant gave evidence at this stage of proceedings. He told the Committee that there have been changes in his life that meant that his outlook was different. He told the Committee that having become a Christian, his attitudes and outlook have dramatically changed. He said that as a result of that change, he was meticulously honest and even if something was unclear, he would make sure it was clear.
- 31. The Registrant told the Committee that he was a sole practitioner and that an extensive period of suspension, or removal from the register, would adversely affect his patients, and would cause him financial hardship.
- 32. Mr Gillespie drew the Committee's attention to the Sanctions Guidance issued by the Council. He submitted that the aggravating features of this case were as follows:
 - a) the Registrant's transgression was serious and not trivial; and

- b) it did persist for a substantial period of time involving four websites.
33. Mr Gillespie also submitted that the mitigating feature of this case were as follows:
- a) the Registrant was of previous good character;
 - b) there is evidence that the Registrant's conduct was partly attributable to health issues at the time;
 - c) there was not harm, or risk of harm, caused to patients in this case;
 - d) when these matters were brought to the Registrant's attention, he amended the websites immediately;
 - e) there has been no repetition since these matters were brought to his attention;
 - f) the positive testimonials that have been provided on his behalf by professional colleagues who were aware of these proceedings; and
 - g) these matters took place towards the beginning of his career.
34. Mr Gillespie further submitted that, in the light of the above factors, the appropriate sanction in this case was one of suspension for a period to determine by the Committee.
35. The Committee accepted the advice of the Legal Assessor.
36. The Committee had regard to the guidance set out in the Indicative Sanctions Guidance, the Conditions of Practice Order Guidance and the Conditions Bank set out in Annex A. It bore in mind that Section 22(2) of the Osteopaths Act 1993 (as amended) requires the Committee to impose a sanction in this case, given that it has found that the Registrant's conduct amounts to UPC and that any sanction must be proportionate – balancing the interests of the Registrant with the wider interests of the public and the profession. It noted that the purpose of sanctions is not to be punitive although they may have that effect.
37. The Committee bore in mind that its over-arching objective is
- a) to protect, promote and maintain the health, safety and wellbeing of the public;

- b) to promote and maintain public confidence in the Osteopathy profession; and
 - c) to promote and maintain proper professional standards and conduct for members of the Osteopathy profession.
38. The Committee considered the aggravating and mitigating factors in this case. The Committee agreed with the factors outlined by Mr Gillespie in his submission. Further, the Committee considered it to be an aggravating feature that the Registrant had not corrected his misrepresentation until the Council contacted him.

Admonishment

39. The Committee does not consider the Registrant's failings to be at the lower end of the spectrum. These failings cannot be properly characterised as an isolated incident as they relate to persistent fundamental omissions over a significant period of time.
40. Furthermore, given the nature and seriousness of the failings, the Committee was not persuaded that an admonishment is a sufficient or proportionate sanction.

Conditions of Practice

41. The Committee considered that there were no identifiable areas of the Registrant's practice that were an on-going cause for concern. These are not matters that relate to lack of competence on the part of the Registrant. Therefore Conditions of Practice were not appropriate in this case, nor sufficient to mark the seriousness of the Registrant's conduct.

Suspension

42. The Committee considered the imposition of a period of suspension. It determined that a period of suspension was the proportionate sanction. The Committee determined that the factors outlined in the Sanctions Guidance in relation to suspension as a sanction were present, and the Committee took them into account namely:

- a) there has been a serious breach of the Osteopathic Practice Standards but the conduct is not fundamentally incompatible with continued registration. The Committee recognised that there are different forms of dishonesty, and that it should distinguish between them. The Committee noted that the Registrant's dishonesty was not criminal. However, the Committee considered that his conduct could undermine the public's trust in the profession;
- b) Removal of the Registrant from the Register would not be in the public interest. There is no criticism about the Registrant's competency as an osteopath. The Committee notes the positive feedback received from his patients and also contained in the reference provided on his behalf;
- c) suspension can be used to send a message to the Registrant, the profession and the public that the serious nature of the osteopath's conduct is deplorable;
- d) there was no risk to patient safety in this case. This was accepted by the Council in this case;
- e) the Committee determined that the Registrant has demonstrated sufficient insight, such that it was satisfied that the Registrant was not likely to act dishonestly or with a lack of integrity in future.

Duration of order

43. The Committee has decided that the appropriate length of the Suspension Order is one of three months. The Committee was satisfied that the Registrant was not likely to act dishonestly or with a lack of integrity in future, but that a period of suspension was required to mark the gravity of the conduct. The Committee determined that a period of three months was sufficient to mark the gravity of the Registrant's conduct in this case, and to declare and uphold proper standards of conduct and behaviour. The Committee took into account that any period of suspension would significantly adversely affect the Registrant's financial circumstances but determined that three months was the shortest period it could impose in these circumstances.

44. Notwithstanding that the sanction is imposed solely to mark the gravity of the misconduct, and as required under Rule 37 of the Rules, the Committee directs that a Review Hearing will take place shortly before the expiry of the three month 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. 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.