

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 502/7875

Professional Conduct Committee Hearing

DECISION

Case of:	Mr Peter Orwell
Committee:	Mr Andy Skelton (Chair) Ms Colette Neville Mr Andrew N F Kerr
Legal Assessor:	Ms Sarah Plaschkes
Representation for Council:	Mr Scott Ivill
Representation for Osteopath:	N/A
Clerk to the Committee:	Miss Vanissa Tailor
Date of Hearing:	Monday 19 to Friday 23 October 2015

Allegation and Facts

It is alleged that you, Peter Orwell, are guilty of unacceptable professional conduct contrary to Section 20(1) (a) of the Osteopaths Act 1993, in that:

Between September 2012 and July 2013, you taught Patient A as a lecturer on the "XXXX Course".

1. In or around July 2013, you accepted Patient A as your patient and saw her at your practice at The Shooters Hill Clinic, Eglinton Hill, London ("the practice").
2. From around July 2013 to September 2014, you provided treatment to Patient A on a regular basis which varied from about once a week to about once a month.

3. From your conversations and email exchanges with Patient A, you knew or ought to have known that Patient A was vulnerable.
4. After the first three appointments, you did not charge Patient A for any treatments you provided to her during 2013 and 2014.
5. At one or more appointments with Patient A, you:
 - a) did not offer Patient A the services of a chaperone;
 - b) did not offer Patient A, a towel or gown;
 - c) remained in the room whilst Patient A undressed and dressed;
 - d) frequently talked about sex;
 - e) made comments to Patient A about oral sex improving function in the jaw;
 - f) hugged Patient A and kissed her on the cheek when saying goodbye.
 - g) did not maintain any or any adequate records of the treatment you provided to Patient A.
6. At the first appointment with Patient A in or around July 2013, you:
 - a) did not take a full case history from Patient A;
 - b) did not formulate any or any adequate working diagnosis and/or treatment plan;
 - c) placed your hand on Patient A Uterus and stated that her uterus "felt like a cargo net which was very tight and contracted and that this made you want to blow into a bag and expand it" or words to that effect.
7. At the second appointment with Patient A, you made inappropriate comments about Patient A's underwear.
8. At the second or third appointment with Patient A, and on a date prior to 10 August 2013, you asked Patient A:
 - a) "how often do you masturbated" or words to that effect;

- b) if she had "thought about using something that was not her hand, like a toy" or words to that effect.
9. At the third or fourth appointment with Patient A, you:
- a) asked Patient A if she normally wore a bra;
 - b) asked Patient A why she was wearing a bra on this particular occasion.
10. At all subsequent appointments with Patient A, you allowed Patient A to remove her top and to leave her breasts exposed during the treatment provided by you.
11. From November 2013 to September 2014, you allowed Patient A to be completely naked during the treatment provided by you.
12. On a number of occasions, you touched Patient A's perineum and applied pressure to it with your thumb, whilst she was naked on the treatment plinth.
13. Before touching Patient A's perineum, you failed to obtain valid consent from Patient A.
14. By emails dated 8 December 2013 and 9 January 2014, you asked Patient A if she would be interested in doing a "massage swap" with you.
15. On or around 14 January 2014, you:
- a) allowed Patient A to give you a massage at the practice.
 - b) undressed whilst Patient A was in the room;
 - c) were completely naked during the massage provided by Patient A.
16. You sought further massages from Patient A, including by emails dated 4 February 2014; 12 February 2014; and 17 February 2014.
17. At the appointment with Patient A on 14 February 2014, you:
- a) allowed Patient A to be completely naked on the treatment plinth;

- b) asked Patient A if she had “thought about having an internal to move the uterus to remove any blockage” or words to that effect;
 - c) placed your fingers inside Patient A’s vagina.
18. At an appointment with Patient A in or around March 2014, you:
- a) allowed Patient A to be completely naked on the treatment plinth;
 - b) placed your fingers inside Patient A’s vagina.
19. At the final appointment with Patient A in or around September 2014, you:
- a) massaged Patient A whilst she was completely naked on the treatment plinth;
 - b) stroked Patient A’s vagina;
 - c) touched Patient A’s clitoris;
 - d) placed your hand on Patient A’s abdomen and stated “I think I had better stop there”, or words to that effect.
20. You failed to obtain valid consent from Patient A before touching her vagina or clitoris.
21. From about August 2013 to February 2015, you corresponded with Patient A by email and made inappropriate comments in the emails as specified in Schedule A.
22. Your actions as specified at paragraphs 5, and 7 to 21 above:
- a) were sexually motivated;
 - b) transgressed sexual and/or professional boundaries;
 - c) were an abuse of your professional position.

Schedule of Allegations – Schedule A

A. In an email on 9 August 2013 at 21.37;

“Lol, Herbal rems are ok but if you are trying to increase your sex drive, have you tried Tantra”

B. In an email on 24 August 2013 at 20.48;

“Tantra teaches us to release tensions through orgasm and the most powerful orgasm can be reached via oral sex, mouth/vagina and penis/mouth. We also have the greatest contrail of the orgasm with our tongue, the organ that to a large extent controls our destiny”

C. In an email on 29 August 2013 at 22.01;

“I’m sure once you understand more about your issues around sex you will feel a huge release”

“Ps, have you tried masturbating without using your hands or toys, using just your mind?”

D. In an email dated 10 March 2014 at 21.44

“Glad to hear I’m helping you have so much lovely sex LOL lucky you!”

E. In an email on 25 March 2014 at 08.41;

“LOL don’t forget about sex! Sex is an important part of life itself and being connected, its how we stay in touch with our inner us. One way to feel the inner you, is through sex. Reaching the height of arousal triggers a chain of events that is felt by the whole body and every cell becomes active. Sounds a bit deep I know!!! Sex doesn’t have to be a complicated, wild or passionate it can be very powerful when controlled!!!!”

F. In an email dated 1 April 2014 at 12.21;

“I think you have come such a long way since our first meeting. Allowing me deep inside you has opened up so many channels. You being comfortable naked is a big step”

Decision:

Proceeding in the absence of the Registrant

The Committee carefully considered the GOsC's application to proceed in the absence of the registrant. It accepted the advice of the legal assessor.

The Committee first considered whether service of the Notice of Hearing had been properly effected in accordance with the Rules.

The Committee received a bundle of documents, which showed that the Notice of Hearing dated 31 July 2015 was sent by Special Delivery to the registrant's address and to his solicitor, with the date and location of the hearing.

By letter dated 10 August 2015 the registrant's solicitor informed the GOsC that he had "instructions from Mr Orwell to the effect that he does not wish to appear at the hearing." In a further letter dated 14 September 2015 the registrant's solicitor stated:

- the registrant did not want to appear before the Committee "no matter when it was listed",
- there was no application for a postponement,
- the registrant would not be legally represented at any hearing,
- he accepted the Notice of Hearing and Schedule of Allegations had been served, and
- he relied on his representations that had previously been served.

Subsequent correspondence between the GOsC and the registrant's solicitor identified those representations as the "Statement of Registrant" dated 30 March 2015.

The Notice of Hearing was sent with a covering letter dated 18 September 2015 by Special Delivery, which enclosed a copy of the allegations and the bundle of documents to be produced before the Committee. Royal Mail "Track and Trace" showed the Notice had been delivered.

The Committee was satisfied that all reasonable steps had been taken to serve the Notice of Hearing on the registrant.

The Committee next considered whether to exercise its discretion to proceed in the registrant's absence. The Committee proceeded with the utmost care and caution, reminding itself that the registrant's right to a fair trial included the right to attend and participate fully in the hearing. It paid specific regard to the criteria

approved by the House of Lords in *R v Jones* (2003) 1 AC 1 and the factors listed at page 2 of the GOsC's Practice Note "Proceeding in the absence of the registrant" effective from 20 June 2013.

The Committee was satisfied that the registrant had voluntarily absented himself and waived his right to be legally represented and that an adjournment/postponement would not alter the position. Further, the Committee was satisfied that he was aware of the hearing, the allegations and the evidence to be adduced before the Committee. From the written representations provided by the registrant's solicitors, it was aware of his position in respect of each of the allegations, which would minimise the risk of the Committee reaching the wrong decision on the merits of the case.

The Committee had to balance the interests of the registrant against the general public interest and the particular interests of the witnesses that a hearing take place within a reasonable time of events to which the allegation relates and the effect of delay on the memory of the witnesses.

Having carefully considered all the circumstances the Committee was satisfied that it was appropriate and fair to proceed to hear the case in the absence of the registrant.

Application for anonymity

The Committee then heard an application by the GOsC that the witnesses XXXXXXXX be anonymised to prevent any publicity that may identify them.

The Committee accepted the advice of the legal assessor and noted that rule 17 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("the Rules") requires that the proceedings of the Committee shall be held in public. It had regard to the procedure in criminal courts where there is a prohibition on the publication of any information that could lead to the identification of a complainant in a sexual offence and to the established custom and practice in disciplinary tribunal proceedings to provide the same protection to witnesses where the allegation is of a sexual nature.

Here the Committee knows the names of the complainant, the witnesses and the relevant locations. The GOsC's application is that they will not be referred to in open session nor would appear on the transcript of the hearing.

The Registrant has been provided with all the relevant names. The Committee was satisfied there is no injustice or prejudice to him.

The Committee was concerned with the wider public interest to ensure that measures were taken to ensure, so far as possible, complainants and witnesses were not deterred from reporting concerns to the GOsC and from giving evidence.

The Committee carefully considered the application and in exercising its discretion concluded that it was necessary and proportionate to anonymise the patient and witnesses, XXXXXXXX. The Committee concluded that naming XXXXXXXX would not lead to the identification of the patient or other witnesses.

Application to amend the complaint

Next the Committee heard an application by the GOsC to amend the complaint under Rule 24 as particularised in the Allegations and Schedule A. The amendments sought were as follows:

- Allegation 6c

Replace "placed your hand on Patient A Uterus" with "placed your hand on Patient A's body in the area of her uterus."

- Allegations 12, 17a, 18a and 19a

Added the word "couch" after "plinth" as an alternative description.

- Allegation 21

Replace "August 2013" with "July 2013"

- Schedule A

Replace paragraph B "contrail" with "control"

The registrant's solicitor was notified of these proposed amendments by e-mail from the GOsC sent on 12 October 2015 and was asked whether there was objection to them.

The registrant's solicitor replied by e-mail on 13 October 2015 stating that the registrant had no objection to them.

The Committee received and accepted the advice from the legal assessor.

The Committee was satisfied that the amendments were necessary and desirable as they provided greater clarity, ensured that the typographical errors were corrected and did not substantively change anything in the allegation.

The Committee was satisfied that no injustice would be caused as the amendments were of a minor nature and the registrant did not object to them.

Application for the use of a screen

The GOsC applied for Patient A to give evidence with a screen preventing her being seen from the public gallery.

By e-mail dated 12 October 2015 the GOsC had informed the registrant's solicitor of the application. The registrant's solicitor in an email dated 14 October 2015 stated he had no objection to screens but did wonder from whom she was being screened.

The Committee followed the advice of the legal assessor.

Rule 27(5) anticipates that witnesses will be called and cross-examined but does not deal with the way in which that evidence would be given to the Committee. There is no express provision in the Osteopaths Act 1993 ("the Act") or the rules that allows for the provision of screens. However, paragraph 21 of the Schedule to the Act enables the Committee to regulate its own procedures. The Committee has had regard to the guidance in the GOsC's Practice Note 2014/04 "Evidence" effective from 1 May 2014.

The GOsC provided a statement from Patient A to the Committee in which she explains that she is nervous and anxious about giving evidence, and that it will be emotionally difficult for her to relive the experience. Further, that a screen shielding her from the public gallery would help her nerves and anxiety and enable her to give her best evidence to the Committee.

The Committee has carefully considered the interests of the registrant, Patient A and the wider public interest. The registrant was neither present nor represented and had raised no objection to the use of a screen. Patient A has expressed a strong desire for such a measure. The Committee was mindful of the desirability of receiving the best evidence. It has also had regard to the wider public interest of ensuring that there is public confidence in the proceedings and encouraging complainants and witnesses to come forward. In all the circumstances the Committee has decided to grant the application for a screen to shield Patient A from the public gallery for the duration of her evidence.

Decision on whether to receive a closing speech

Mr Ivill, who represents the GOsC, invited the Committee to hear his closing address before considering the case in private and determining whether the facts alleged were proved. The Committee received advice from the legal assessor.

The Committee had regard to the wording of rule 28(4), which expressly provides for an address by the GOsC solicitor at the close of all the evidence. Rule 28(4) states;

“The Solicitor may then address the Committee following which the osteopath or his representative may also address the Committee.”

The Committee also had regard to the cases of *R v Paul* (2013) EWCA Crim 978 and *R v Cojan* (2014) EWCA Crim 2512 and the principles set out in those judgements.

In exercising its discretion the Committee approached the issue as a matter of balance and fairness. It concluded that it had an overriding duty to ensure the registrant received a fair hearing. The Committee carefully assessed all the relevant circumstances of this case. Those circumstances included:

- The Council had submitted a written skeleton argument and made an oral opening address.
- The Committee had received and had regard to the registrant’s detailed written submissions on the allegations and observations provided by the registrant’s solicitor.
- The registrant’s absence was voluntary.
- The registrant had waived his right to legal representation at the hearing.

The Committee after careful consideration of the particular circumstances of this case concluded that it would not be unfair to receive a further address from the GOsC.

Determination of the Facts

The Committee has carefully considered all the evidence it has received. It heard oral evidence from Patient A, Witnesses A, B, C and D and received a bundle of documents, which included contemporaneous emails between Patient A and the registrant. The evidence included the written “Statement of Registrant” dated 30 March 2015.

The Committee has accepted the advice of the Legal Assessor.

The Committee found Patient A gave careful and considered answers often from memory and without recourse to any previous statement. Her evidence was consistent with the contents of the contemporaneous emails. When she gave evidence, she was thoughtful, articulate and made concessions about intimate matters. For example, she conceded on occasions that she had been naïve. She was not antagonistic towards the registrant and questioned whether she was partially to blame for his conduct. The Committee concluded she was an honest and credible witness.

The Committee considered that parts of the statement from the registrant were inconsistent with the contemporaneous emails. For example, he averred that it was agreed from the outset that he and Patient A could “swap therapies”, i.e. massage. However, the emails made it clear that he suggested she massage him only from 8 December 2013, after numerous appointments. He also admitted that an email he had sent Patient A about his practice of “tantra massage” for many years was not true. The explanations for his behaviour were not credible. For example, he stated that he instigated Patient A stopping coming to see him, following a disclosure from Patient A about her relationship with her current boyfriend. He stated he did not want to be party to information that could be about someone he knew. In fact, it was clear from a previous email that the registrant had known about this relationship for many months, and it was no longer current.

Additionally, the registrant stated that when he told Patient A that their sessions must come to an end she “turned on a sixpence” and became rude and abusive, saying “fuck you, fuck you” and walked out of the building. The Committee felt this was entirely inconsistent with the friendly tone of the emails exchanged the following morning, and the polite further exchange in October 2014 when Patient A explained that she had “come full circle” with him and wanted “more classical osteopathy” and the registrant’s reply saying he totally understood and wished her well.

The Committee felt that these matters seriously undermined the registrant’s credibility.

Stem

‘Between September 2012 and July 2013, you taught Patient A as a lecturer on the “XXXX Course”.’

In his statement, the registrant accepted that he had been a lecturer on that course at the XXXX.

The Committee considered the stem was admitted and heard evidence from other witnesses to confirm this. It is therefore found proved.

Paragraph 1

'In or around July 2013, you accepted Patient A as your patient and saw her at your practice at The Shooters Hill Clinic, Eglinton Hill, London ("the practice").'

In his statement the registrant stated that Patient A "was never a patient in that she was never treated with osteopathy by the Registrant."

The first email Patient A sent to the registrant on 14 July 2013 asked to "book an appointment" to see him at his "clinic".

In evidence Patient A said she attended the registrant's "clinic" for osteopathic treatment and was able to describe it in detail, which included the furniture in the clinic and that the registrant was wearing a t-shirt which had the word "osteopath" on it. The Committee accepted Patient's A's evidence.

Accordingly paragraph 1 is proved.

Paragraph 2

'From around July 2013 to September 2014, you provided treatment to Patient A on a regular basis which varied from about once a week to about once a month.'

In his statement the registrant "maintains that there were no 'treatments' as such and if there were 'treatments' they were of an energy releasing nature and at no point were there any osteopathic treatments." The registrant accepted that the timescale was approximately right.

The contemporaneous emails dated 19 July 2013, 24 August 2013, 31 March 2014 use the word "treatment".

Patient A's evidence was that she had specifically attended for osteopathic treatment.

Patient A's detailed evidence of the techniques the registrant used upon her were of a technical nature. Some terms used were unique to or commonly used in osteopathy e.g. "standing examination", "high velocity thrust", "articulation", "stalk test" and "fascial release".

Accordingly paragraph 2 is proved.

Paragraph 3

'From your conversations and email exchanges with Patient A, you knew or ought to have known that Patient A was vulnerable.'

The registrant said in his statement; "There did not appear to be anything that showed any vulnerability so far as Ms A was concerned... until she sent an e-mail dated 17th February 2015."

The contents of the emails that Patient A sent the registrant on 9 August 2013, 10 August 2013 and 28 August 2013 were of an intimate and personal nature, which demonstrated she was a vulnerable person. The registrant knew or ought to have known from those emails alone that Patient A was vulnerable. Further, he knew that she was seeing a cognitive behavioural therapist which was referred to in emails from Patient A to the registrant from February 2014. The Committee accepted Patient A's evidence that those issues were also discussed during the appointments.

Accordingly paragraph 3 is proved.

Paragraph 4

'After the first three appointments, you did not charge Patient A for any treatments you provided to her during 2013 and 2014.'

In his statement the registrant describes that at the end of the first meeting Patient A gave him either £20 or £25 towards the cost of the room for that day. "Thereafter, no charges were made either way and Ms A did not keep her side of the bargain in relation to massages (save as for one occasion)." The registrant says "these were not osteopathy treatments" but "both parties were supposed to be giving each other reciprocal energy type treatments based on chakras."

Patient A said she paid £50 at the first appointment and half at the next appointment.

It is not in dispute that no money changed hands between the parties after the third appointment.

Accordingly paragraph 4 is proved.

Paragraph 5

'At one or more appointments with Patient A, you:

- a) did not offer Patient A the services of a chaperone;
- b) did not offer Patient A, a towel or gown;
- c) remained in the room whilst Patient A undressed and dressed;
- d) frequently talked about sex;
- e) made comments to Patient A about oral sex improving function of the jaw;
- f) hugged Patient a and kissed her on the cheek when saying goodbye;
- g) did not maintain any or any adequate records of the treatment you provided to Patient A.'

In his statement the registrant says "It is accepted that no chaperone was offered..." and that he "offered Ms A a towel, for example if it was cold, but she always declined. He did not have a gown to offer her".

He states that it was, to some extent true that he remained in the room whilst Patient A dressed and undressed, however, Patient A did not undress in the sense that she removed clothing so that she was either naked or partially naked.

The registrant states it was Patient A, who initiated the sexual content in their conversations.

The registrant denied making the comment at 5e.

The registrant admitted that there were "reciprocal hugs and kisses" but it was because they were friends.

The registrant states; "There were no records written or kept because there were no osteopathic treatments given."

The Committee found:

5(a) There is no dispute that no chaperone was offered. Accordingly sub-paragraph 5a is proved.

5(b) There was a conflict of evidence. The Committee preferred the evidence of Patient A and found this proved.

5(c) The Committee accepted Patient A's evidence and found this proved.

5(d) There was no dispute between the parties that there were conversations about sex. The Committee considered that it did not matter who initiated those conversations. This sub-paragraph is found proved.

5(e) There was a conflict of evidence. The Committee preferred the evidence of Patient A and found this proved.

5(f) The registrant admitted he had hugged and kissed Patient A, therefore, this was proved.

5(g) The registrant admitted that he did not write or keep records, therefore, this is proved.

Paragraph 6 as amended.

'At the first appointment with Patient A in or around July 2013, you:

- a) did not take a full case history from Patient A;
- b) did not formulate any or any adequate working diagnosis and/or treatment plan;
- c) placed your hand on Patient A's body in the area of her uterus and stated that her uterus "felt like a cargo net which was very tight and contracted and that this made you want to blow into a bag and expand it" or words to that effect.'

In his statement, the registrant accepts; "he did not take a case history" or formulate a diagnosis or treatment plan. The registrant states; "he thought he could sense tightness in and around" the abdominal chakra and said "it was akin to a cargo net." He denied making a comment about "blowing into bags or anything of the like".

The Committee found:

6(a) and 6(b) were not in dispute and found both sub-paragraphs proved.

6(c) Patient A's evidence was that these comments were made and consequently she had some strange dreams. The "cargo freight and net" were mentioned in Patient A's email dated 9 August 2014. The Committee found this proved.

Accordingly paragraph 6 is proved in its entirety.

Paragraph 7

'At the second appointment with Patient A, you made inappropriate comments about Patient A's underwear.'

The registrant says that there "were no such comments" and that he cannot recall seeing Patient A's underwear.

The Committee found Patient's A evidence was credible on this issue and that the comments that were made were inappropriate.

Accordingly paragraph 7 is proved.

Paragraph 8

'At the second or third appointment with Patient A, and on a date prior to 10 August 2013, you asked Patient A:

- a) "how often do you masturbate" or words to that effect;
- b) if she had "thought about using something that was not her hand, like a toy" or words to that effect.'

The registrant admitted asking "how often do you masturbate". He also admitted mentioning sex toys and Patient A's evidence was that comments about sex toys were made. The Committee found that the registrant had used words to the effect of those set out in 8(b).

Accordingly paragraph 8 is proved in its entirety.

Paragraph 9

'At the third or fourth appointment with Patient A, you:

- a) asked Patient A if she normally wore a bra.
- b) asked Patient A why she was wearing a bra on this particular occasion.'

The registrant denied asking those questions.

The Committee accepted the evidence from Patient A that these questions had been asked.

Accordingly paragraph 9 is proved.

Paragraph 10

'At all subsequent appointments with Patient A, you allowed Patient A to remove her top and leave her breasts exposed during the treatment provided by you.'

In his statement the registrant says "This never happened" and that Patient A wore a revealing top, but she was never topless.

The Committee accepted the evidence from Patient A that this had occurred.

Accordingly paragraph 10 is proved.

Paragraph 11

'From November 2013 to September 2014, you allowed Patient A to be completely naked during treatment provided by you.'

The registrant states "Ms A was never naked in the Registrant's presence."
The Committee accepted the evidence from Patient A that she was completely naked during the treatments and that the registrant allowed this. In the email dated 1 April 2014 the registrant wrote; "You being comfortable naked is a big step."

Accordingly paragraph 11 is proved.

Paragraph 12 as amended

'On a number of occasions, you touched Patient A's perineum and applied pressure to it with your thumb, whilst she was naked on the treatment plinth/couch.'

The registrant states that Patient A was never naked on his plinth and secondly, he never touched her perineum with his thumb or at all.

The Committee found that Patient A had been naked (see paragraph 11) and accepted Patient A's evidence on this issue.

Accordingly paragraph 12 is proved.

Paragraph 13

'Before touching Patient A's perineum, you failed to obtain valid consent from Patient A.'

The registrant states that he did not need to obtain consent because he did not touch her perineum.

Patient A says that he did not obtain her consent. This was an intimate examination and Patient A's evidence was that the registrant touched her unexpectedly. The Committee was satisfied that the registrant failed to obtain valid consent, either explicit or implied.

Accordingly paragraph 13 is proved.

Paragraph 14

'By emails dated 8 December 2013 and 9 January 2014, you asked Patient A if she would be interested in doing a "massage swap" with you.'

The registrant states; "This was a gentle reminder of the arrangement made at the first meeting."

This paragraph was admitted in the registrant's statement.

Accordingly paragraph 14 is proved.

Paragraph 15

'On or around 14 January 2014, you:

- a) allowed Patient A to give you a massage at the practice.
- b) undressed whilst Patient A was in the room.
- c) were completely naked during the massage provided by Patient A.'

The registrant admitted that he allowed Patient A to give him a massage at his practice.

The registrant says he did undress in the room but kept his boxer shorts on. This was a partial admission. The Committee accepted Patient A's evidence.

Accordingly paragraph 15 is proved.

Paragraph 16

'You sought further massages from Patient A, including by emails dated 4 February 2014; 12 February 2014 and 17 February 2014.'

The registrant says this "is true". The allegation is not disputed and accordingly paragraph 16 is proved.

Paragraph 17 as amended

'At an appointment with Patient A on 14 February 2014, you:

- a) allowed Patient A to be completely naked on the treatment plinth/couch;
- b) asked Patient A if she had "thought about having an internal to move the uterus to remove any blockage" or words to that effect;
- c) placed your fingers inside Patient A's vagina.'

The registrant denies allowing Patient A to be naked. The Committee accepted Patient A's evidence, which was credible on this issue.

The registrant denies allegations 17(b) and (c).

Patient A gave clear, cogent and detailed evidence about this incident. Patient A's evidence was found to be credible and was accepted by the Committee.

Accordingly paragraph 17 is proved in its entirety.

Paragraph 18 as amended

'At an appointment with Patient A in or around March 2014, you:

- a) allowed Patient A to be completely naked on the treatment plinth/couch;
- b) placed your fingers inside Patient A's vagina.'

The registrant denies the allegation.

The Committee had already found that Patient A was naked for her treatments. The Committee accepted Patient A's evidence, in which she described how the registrant placed his fingers into her vagina.

Accordingly paragraph 18 is proved in its entirety.

Paragraph 19 as amended

'At a final appointment with Patient A in or around September 2014, you:

- a) massaged Patient A whilst she was completely naked on the treatment plinth/couch;
- b) stroked Patient A's vagina;
- c) touched Patient A's clitoris;
- d) placed your hand on Patient A's abdomen and stated "I think I had better stop there", or words to that effect.'

The registrant denies this allegation in its totality.

The Committee found that she was naked for this treatment. The Committee accepted the detailed evidence given by Patient A.

Accordingly paragraph 19 is proved in its entirety.

Paragraph 20

'You failed to obtain valid consent from Patient A before touching her vagina or clitoris.'

The registrant states that that he did not obtain consent because he did not touch her vagina and clitoris.

The Committee accepted the evidence from Patient A that the registrant had touched her as described and it found that neither implicit nor explicit consent was obtained for those acts.

Accordingly paragraph 20 is proved.

Paragraph 21 as amended

'From about July 2013 to February 2015, you corresponded with Patient A by email and made inappropriate comments in the emails specified in Schedule A.'

The schedule accurately particularises the contents of the emails. The Committee considered the content of those emails and their context. The Committee were satisfied that the comments in those emails were inappropriate.

Accordingly paragraph 21 is proved in its entirety.

Paragraph 22

'Your actions as specified at paragraphs 5, and 7 to 21 above:

- a) were sexually motivated;
- b) transgressed sexual and/or professional boundaries;
- c) were an abuse of your professional position.'

In determining whether the registrant's actions were sexually motivated the Committee considered the context of the facts found proved as a whole and then considered each individual paragraph and sub-paragraph. The Committee decided that the actions as set out in paragraphs and sub-paragraphs 5a, 5b, 5c, 5d, 5e, 5f, 7, 8a, 8b, 9a, 9b, 10, 11, 12, 13, 14, 15a, 15b, 15c, 16, 17a, 17b, 17c, 18a, 18b, 19a, 19b, 19c, 20 and 21 were sexually motivated.

In considering sexual motivation the Committee used the definition of sexualised behaviour in "Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals" published by the Council for Healthcare Regulatory Excellence January 2008, which defines such behaviour as "acts, words or behaviour designed or intended to arouse or gratify sexual impulses or desires." The Committee found these actions were sexually motivated because on the balance of probabilities they were designed to arouse or satisfy the registrant's sexual impulses. The Committee considered these actions were part of a course of conduct which developed over a period of time, encouraging Patient A to feel safe with the registrant, which led to him being able to touch her intimately without protest. The Committee received evidence that the relationship between Patient A and the registrant became increasingly informal, including the use of the kiss symbol in their emails.

The Committee determined that that the registrant effectively groomed Patient A, a vulnerable patient, for his sexual gratification.

The Committee considered paragraph 22b and concluded that there was a clear progression towards more and more serious transgressions of sexual and/or professional boundaries. This sub-paragraph was proved in relation to paragraphs and sub-paragraphs 5a, 5b, 5c, 5d, 5e, 5f, 7, 8a, 8b, 9a, 9b, 10, 11, 12, 13, 14, 15a, 15b, 15c, 16, 17a, 17b, 17c, 18a, 18b, 19a, 19b, 19c, 19d, 20 and 21 for the same reasons as set out above.

The Committee considered sub-paragraph 22c. It noted the relationship between the registrant and Patient A. The registrant had been a lecturer/mentor and Patient A had been his student. He was an osteopath and she was a patient. The registrant was older than Patient A. There was a financial imbalance between the parties and Patient A was grateful for the registrant not charging her for the treatment after the initial sessions. This sub-paragraph was proved in relation to paragraphs and sub-paragraphs 5a, 5b, 5c, 5d, 5e, 5f, 7, 8a, 8b, 9a, 9b, 10, 11, 12, 13, 14, 15a, 15b, 15c, 16, 17a, 17b, 17c, 18a, 18b, 19a, 19b, 19c, 19d, 20 and 21 for the same reasons as set out above.

The Committee did not find sub-paragraph 5g was sexually motivated, transgressed sexual and/or professional boundaries or was an abuse of the registrant's professional position.

The Committee did not find sub-paragraph 19d was sexually motivated, as there was insufficient evidence to prove it was to gratify his sexual impulses but it did both transgress sexual and/or professional boundaries and was an abuse of his professional position.

Unacceptable Professional Conduct

The Committee next determined whether the facts it had found proved amounted to unacceptable professional conduct. The Committee accepted the advice of the legal assessor.

The Committee had specific regard to the helpful guidance provided in *Spencer v General Osteopathic Council* (2012) EWHC 3147 (Admin) and in *The Queen on the application of Shaw v General Osteopathic Council* (2015) EWHC 2721 (Admin) on the meaning of unacceptable professional conduct.

The Committee considered whether the proven facts amounted to breaches of the GOsC Code of Practice May 2005 ("the Code") and the Osteopathic Practice Standards effective from September 2012 ("the Standards") in place at the time.

It bore in mind that breaches of the Code were not determinative of the issue. Nonetheless, in this case the Committee concluded that the registrant's actions breached fundamental tenets of the profession of osteopathy as evidenced by breaches of the Code and the Standards. In particular,

The Code states;

"As an osteopath, you must:

Make the care of your patient your first concern, by ... respecting patients' dignity, individuality and privacy...never abusing your professional position."

At paragraph 3 the Code says;

"You must not abuse your professional position by pursuing a close personal or sexual relationship with a patient ... This is bound to harm the trust that is crucial between an osteopath and a patient, and may impair your clinical judgement and practise."

The Standards state:

"C3.2 Trust is an essential part of the osteopath-patient relationship. Your observance of the ethical standards laid down in this document will reinforce this trust.

D16.1 Abuse of your professional standing can take many forms. The most serious is likely to be the failure to establish and maintain appropriate boundaries, whether sexual or otherwise.

D16.2 The failure to establish and maintain sexual boundaries may, in particular, have a profoundly damaging effect on patients, could lead to your removal from the GOsC Register and is likely to bring the profession into disrepute."

The Committee also found the registrant had breached the following Standards set out in paragraphs A2-4 (listening to patients; sharing information with patients; consent), C1-3 (formulation of diagnosis and treatment plan; care for patients), C6-8 (respect and dignity; appropriate care; record-keeping), D14 (integrity) and D17 (upholding the reputation of the profession).

The guidance published by the Council for Healthcare Regulatory Excellence "Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals" January 2008 states;

“Healthcare professionals must not display sexualised behaviour towards patients or their carers. This is because the healthcare professional/patient relationship depends on confidence and trust. A healthcare professional who displays sexualised behaviour towards a patient or carer breaches that trust, acts unprofessionally, and may, additionally, be committing a criminal act. The abuse of patients is also highly damaging in terms of confidence in healthcare professionals generally and leads to a diminution in trust between patients, their families and healthcare professionals.”

The Committee found that the registrant’s conduct seriously and fundamentally breached the Code and Standards. The registrant had effectively groomed Patient A, a vulnerable patient, for his own sexual gratification. The registrant had embarked on a course of conduct, which was sexually motivated encouraging Patient A to feel safe with him. He abused his professional position in order to be able to touch her intimately without protest. He had abused his position of trust and seriously transgressed sexual and/or professional boundaries.

The Committee was satisfied that the registrant’s conduct taken cumulatively fell seriously short of the standard expected of a registered osteopath. The Committee was satisfied that his conduct was deplorable and that a significant degree of ‘opprobrium’ would be ‘likely to be conveyed to the ordinary intelligent citizen’ (in the words of Mr Justice Irwin in *Spencer v General Osteopathic Council*).

The Committee had no hesitation in concluding that the proved facts in this case amount to unacceptable professional conduct.

Sanction

In accordance with section 22 of the Act and rule 35 the Committee next considered the issue of sanction. It accepted the advice of the legal assessor.

The Committee reminded itself that the purpose of imposing a sanction is not to be punitive, although it may have a punitive effect. The purpose is to protect patients and the wider public interest, which includes the protection of members of the public, maintaining public confidence in the profession and declaring and upholding proper standards of conduct.

The following aggravating features were identified:

- the registrant’s actions were deliberate,
- the behaviour was persistent and over a protracted period,

- the patient was vulnerable,
- the registrant has demonstrated limited remorse,
- the registrant has not demonstrated any insight.

Although the registrant was not present or represented, the Committee took into account the following mitigating factors:

- he has been on the register for 4 years,
- there have been no previous adverse findings,
- his previous good character.

The Committee has had regard to the GOsC's Indicative Sanctions Guidance ("ISG"). It has applied the principles of proportionality and weighed the interests of the public with those of the osteopath.

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

Admonishment: the Committee concluded that this sanction was insufficient given the seriousness of the unacceptable professional conduct found proved and the registrant did not meet the factors identified in paragraph 35 of the ISG.

Conditions of Practice Order: The Committee considered that the factors set out in paragraph 37 of the ISG were not met. Further the Committee was not satisfied that conditions could address the attitudinal problems identified in this case. The seriousness of this case also precluded the imposition of this sanction.

Suspension: There was no evidence before the Committee of any potential for remediation or retraining and there was a real risk of repetition. The seriousness of the misconduct was such that this sanction would not be sufficient to protect the public interest.

Removal: The Committee was satisfied that there was no other means of protecting the public and maintaining confidence in the osteopathic profession in this case. The registrant's conduct was fundamentally incompatible with being an osteopath. The Committee found that:

- The registrant's conduct involved a reckless disregard for the principles set out in the Standards and for patient safety.
- There was a serious departure from the relevant professional standards.
- The registrant poses a continuing risk of harm to other patients.
- This was a serious abuse of his position of trust in relation to a vulnerable patient.
- This was a finding of serious sexual misconduct.

- The registrant has shown a persistent lack of insight into the seriousness of his actions and the consequences for the patient and the wider public interest.

The Committee found that an example of the registrant's persistent lack of insight was his gratuitous derogatory comments about Patient A that were irrelevant to the issues under consideration.

The Committee is satisfied that, in the public interest, the only proportionate and sufficient sanction is removal.

Interim Suspension Order

The Committee has determined that it is necessary in order to protect the public to impose an Interim Suspension Order. The reasons are that such an order is necessary to protect patients from the risk of harm of the registrant using the title of osteopath and carrying out treatment for his own sexual gratification. The Committee found there was a real likelihood of the alleged conduct being repeated. The conduct found proved was serious sexual misconduct and the harm likely to result should the alleged conduct be repeated would be severe. The Committee was satisfied that the order was proportionate to the risk and it took into account the impact of such an order on the registrant.

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.