

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 660/877

Professional Conduct Committee Hearing

DECISION

Case of: Dr Muhammad Aleem Mirza

Committee: Mr Andy Skelton (Chair)
Dr Pamela Ormerod
Ms Claire Cheetham

Legal Assessor: Mr Gary Leong

Representation for Council: Ms Vivienne Tanchel

Representation for Osteopath: Mr Shameem Mirza

Clerk to the Committee: Mr Farhan Kabir (9 January 2019)
Ms Jemima Francis (10 January 2019)

Dates of Hearing: 9 – 10 January 2019

Summary of Decision:

The Committee found the fact of the criminal convictions proved.

The Committee determined that the criminal offences were materially relevant to the Registrant's fitness to practise osteopathy.

The Committee ordered that the name of Dr Muhammed Aleem Mirza be removed from the Register.

Allegation:

The allegation is that you, Mr Muhammad Aleem Mirza, have been convicted in the United Kingdom of a criminal offence, contrary to Section 20(1)(c) of the Osteopaths Act 1993, in that:

1. *On 30 November 2017, you were convicted at Southwark Crown Court of:*
 - a. *Creating a false or misleading impression, contrary to section 397(3) of the Financial Services and Markets Act 2000;*
 - b. *Creating a false or misleading impression, contrary to section 90 of the Financial Services Act 2012;*
 - c. *Publishing false or misleading statements by a company director contrary to section 19(1) of Theft Act 1968.*
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Background:

1. On the 30th November 2017, Dr Mirza was convicted by a jury at Southwark Crown Court of the above-mentioned offences.
2. On Conviction, Dr. Mirza was sentenced to 15 months immediate custody and was disqualified as a Company Director for 8 years.

Preliminary Matters:

Conflict of Interest

3. 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 Committee would not be eligible to hear this case. The Committee determined that there was no such reason.

Determination on the facts

4. At the start of proceedings, the allegation was put to the Registrant and he accepted the fact of the Conviction. Furthermore, the Committee received a certificate of conviction from the Crown Court certifying that the Registrant was convicted of the above-mentioned offences.
5. Therefore, the Committee determined that the Allegation is proved.

Materiality of conviction to the Registrant’s fitness to practise osteopathy

6. The Committee next considered whether the criminal offences in question has any material relevance to the fitness of the Registrant to practise osteopathy.
7. Ms Tanchel submitted that the nature of the criminal offences was such at that they were material to the Registrant's fitness to practise osteopathy. She submitted that the offences involved such a level of dishonesty and/or lack of integrity that a member of the public, knowing that the Registrant had put his own interests over that of the interest of investors, would question whether the Registrant would put his own interests over that of his patients if faced with a similar conflict in a clinical setting. She submitted that the conviction had a relevance to osteopathy in that the Osteopathic Standards explicitly relate to issues raised in a case such as this, namely standard D17:

17: Uphold the reputation of the profession through your conduct:

(1) The public's trust and confidence in the profession, and the reputation of the profession generally, can be undermined by an osteopath's professional or personal conduct. You should have regard to your professional standing, even when you are not acting as an osteopath.

(2) Upholding the reputation of the profession may include:

2.1: Acting within the law at all times (criminal convictions may be evidence that an osteopath is unfit to practise).

2.8: Behaving honestly in your personal and professional dealings

8. Mr Mirza, on behalf of Dr Mirza submitted that the criminal offences in question did not have any material relevance to Dr Mirza's fitness to practise osteopathy. He submitted that the criminal offences were committed recklessly, and that dishonesty was not a requisite element of any of the offences. He submitted that the Registrant had been reckless in his involvement in the criminal enterprise as opposed to being dishonestly involved in it. Mr Mirza told the Committee that the Registrant was remorseful and had insight into his behaviour, such that the Committee could be satisfied that there would not be a repetition of his criminal offending.
9. The Committee accepted the advice of the Legal Assessor. He reminded the Committee of the purpose of determining materiality and drew the

Committee's attention to Section 22(3) of the Osteopaths Act 1993, which states:

"If the allegation is [that the Registrant has been convicted of a criminal offence in the United Kingdom], the Committee may take no further action if it considers that the criminal offence in question has no material relevance to the fitness of the osteopath concerned to practise osteopathy.

10. The Committee considered the criminal offences and noted the following remarks made by HHJ Loraine-Smith when passing sentence upon the Registrant.

"On the business side, things went from bad to worse, but on the fundraising side [a co-defendant] was raising enormous sums of money and you [Dr Mirza] knew that. Over the two periods we heard about 297 investors who invested over £1.4 million in your ambitions and in your company. You chose not to inform those investors of how things were really going, and you were personally responsible for a lot of the material that gave a wholly false impression about the success and the prospect of your company.

The jury, by their verdicts, were satisfied that you did so intending to persuade investors to invest in a venture which was in fact haemorrhaging money. When you were cross examined by Mr Brompton you said you did not understand what the duties of a director of a public company were, and you did not ask. You must have realised that your duty was to protect the interests of those investors who you knew were being wronged by brokers and you chose that you put your own ambitions and your own pride first. That is what is serious about the offences of which you have been convicted."

11. The Committee was satisfied that the criminal offences have material relevance to the fitness of the Registrant to practise osteopathy. The criminal offences call into question the Registrant's probity, integrity, and judgement; all of which are central to the practice of any osteopaths. Furthermore, the Committee was satisfied that a member of the public, with full knowledge of the criminal offences, and the fact that the Registrant was an osteopath, would question the standards of conduct and behaviour expected of all osteopaths. The Committee further recognised the potential damage to the reputation of the profession that conviction might cause.

Determination on Sanction

12. Ms Tanchel submitted that the Registrant's criminal conduct was not an isolated incident within a short period of time. She pointed out that there had been two fund raising occasions, and the criminal enterprise occurred from 2008 until 2013.
13. Ms Tanchel submitted that these matters were so serious that admonishment, and conditions of practice were not suitable as sanctions. She accepted that there was no risk to patient safety in this case. Ms Tanchel submitted that the criminal conduct of the Registrant was a serious departure from the standard of conduct and behaviour expected of an osteopath. It demonstrated a reckless or intentional disregard for the principles set out in the Osteopathic Practice Standards.
14. Ms Tanchel submitted that the criminal offences involved were perpetrated over an extended period of time and were motivated by greed. She pointed out that the criminal enterprise resulted in significant losses to investors who were misled. Ms Tanchel submitted that the loss of such significant amounts of money is likely to have had a serious impact on their lives.
15. Ms Tanchel further submitted that the evidence before the Committee demonstrated that the Registrant did not have any insight into his criminal offending. She submitted that he merely accepted the fact of the convictions but did not accept his guilt or culpability.
16. Mr Mirza submitted that the criminal offences were not so serious as to be incompatible with remaining on the register. He submitted that it was possible that conditions be drafted that would meet the risks in this case, for example the standard notification conditions, and a condition to cooperate with the Probation Service.
17. The Registrant gave evidence on oath. He told the Committee the background to his criminal behaviour. He told the Committee that he accepted that his criminal conviction had undermined the public's confidence in the profession, and damaged the reputation of osteopathy. He also accepted that he had been convicted of serious criminal offences, that the committee had found material relevance to the practise of osteopathy, and therefore, there must be a sanction in order to declare and uphold proper standards of conduct and behaviour expected of osteopaths.
18. The Registrant told the Committee he qualified as an osteopath in 1989, and how what he had learnt as an osteopath complemented both his training to be a doctor, and later his practice as a doctor.
19. The Registrant told the Committee of his reflection on these matters since he was charged with the criminal offences in March 2016. He accepted that he had not acted with due diligence as the director of that company, and

- that this led to the frauds perpetrated upon the investors. He told the Committee how he had engaged with the authorities and further developed his insight, when serving his prison sentence and thereafter.
20. The Registrant said that, as a result of the above, he had full insight into how he became involved in the criminal enterprise, and fully understood and accepted his conviction and sentence. He said that he had learnt from this difficult experience, and assured the Committee that he would not be so “naïve” in future, nor so reckless again. He said that the Committee could be satisfied he would act with absolute integrity in future.
 21. The Committee accepted the advice of the Legal Assessor. He reminded the Committee of their over-arching objective. He advised that, whilst the Committee was entitled to take into consideration the sentence that the Criminal Court imposed upon the Registrant, the sentence imposed is not necessarily a reliable indicator of the seriousness of the matter in the context of these regulatory proceedings. That was because the prime considerations that apply in regulatory proceedings are:
 - a) Protection of the Public;
 - b) Reputational harm to the profession;
 - c) Public confidence in the profession and the regulatory process; and
 - d) Relevant professional standards of behaviour and the seriousness of any departure from those standards.
 22. The Legal Assessor drew the Committee’s attention to the case of *CHRE v GDC and Fleischmann (2005) EWHC 87* and the general principle articulated therein, that where a practitioner had been convicted of a serious criminal offence, he should not be permitted to resume his practice until he has satisfactorily completed his sentence. The Legal Assessor advised the Committee that it was entitled to take into consideration the facts of the offence in question and determine whether or not it was a serious criminal offence. He advised that the regulatory seriousness of a criminal offence is not exclusively determined by the type of offence, but can also be determined by the circumstances of the offending behaviour. These are also factors that can have an impact the reputation of the profession.
 23. The Legal Assessor also drew the Committee’s attention to the case of *Bolton v Law Society [1994] 1 W.L.R. 512*, wherein it was stated that, notwithstanding the recognition that any sanction could have an adverse effect upon a Registrant and his family, “*the reputation of the profession is more important than the fortunes of any individual member.*”
 24. The Committee had close regard to the Council’s *Hearings and Sanctions Guidance* in reaching its decision on sanction. The Committee reminded

itself that the purpose of a sanction is not to punish. Rather, a sanction should only be imposed to the extent that it is required to protect the public, to maintain a proper degree of confidence in the profession and the regulatory process, and to declare and maintain proper standards among fellow professionals. To ensure this approach the Committee reminded itself to consider the available sanctions in ascending order of seriousness until one that satisfies the factors already identified is reached. The Committee confirms that it has followed this approach in the present case.

25. The Committee has had regard to the oral evidence of the Registrant, all the documentary evidence presented, and the submissions of both parties.
26. The Committee had been told of the outcome of proceedings at the Medical Practitioner's Tribunal Service, but did not receive their written determination nor details of their reasons. Upon the advice of the Legal Assessor, the Committee put out of its mind the outcome of the proceedings at the Medical Practitioner's Tribunal Service. The Committee was mindful that it was to exercise its own independent judgement, and not rely in any way upon the judgement of another tribunal. The Committee would only take into consideration the fact that the Registrant could no longer rely on income as a doctor, when considering the proportionality of a sanction.
27. The Committee considered the Registrant's oral evidence and appreciated he was making his best efforts to assist the Committee. However, the Committee was not satisfied that the Registrant had demonstrated sufficient insight into his conviction. In his oral evidence, he did accept some responsibility for the criminal behaviour, but on the whole, he attempted to divert the blame to his co-defendants. When the Registrant was asked if he accepted that he had the intent to deceive others, which was a requirement of the offence under s.19 of the Theft Act 1968, his answers indicated that he did not accept such intent. In the light of HHJ Loraine-Smith's sentencing remarks, quoted in paragraph 10 above, the Registrant's position is incongruous the learned Judge's sentencing remarks.
28. The Committee further noted that the Registrant's reflection concentrated on the impact which his actions and criminal conviction had upon him and his family. There was limited evidence of the Registrant reflecting upon the impact that his actions and the conviction could have had on the victims of his crime, or on the reputation of the profession. His lack of insight, specifically into the impact of the criminal offences on the profession, is demonstrated by the fact it was his initial position that the offences did not have any material relevance to his fitness to practise osteopathy.
29. The Committee determined that the nature and circumstances of the criminal offences in this case are serious, when viewed in the context of a registered professional:

- a) even taking the Registrant's case at its highest, his reckless conduct was prolonged and caused significant financial loss to numerous investors, some of whom were elderly and vulnerable;
 - b) the criminal convictions are for making false or misleading statements and impressions. The mischief of the offences is that shareholders may not have consented to parting with their money had they been given all the correct and appropriate information. The duty of candour, and informed consent, are fundamental to the practice of an osteopath;
 - c) it was a serious departure of the standard of behaviour expected of an osteopath. Osteopaths are not to engage in criminal enterprise, and are expected to keep the laws of the land;
 - d) the Registrant received a sentence of 15 months imprisonment, despite being of previous good character.
30. The Committee took into account the following as mitigating features of this case:
- a) the Registrant self-referred himself to the GOsC and fully engaged with the regulatory process;
 - b) the Registrant admitted the allegation at the start of these proceedings;
 - c) the Registrant has demonstrated remorse;
 - d) the Registrant's previously unblemished record as an osteopath.
31. The Committee also took into account the references from professional colleagues (mostly doctors) provided on behalf of the Registrant. Many of them speak highly of the Registrant's clinical practice in his role as a doctor. They describe the Registrant as an honest and trustworthy person and express shock at his conviction for these offences.
32. The competence of the Registrant as an osteopath is not in issue here. The Committee cannot go behind the criminal conviction, and have no doubt that the people who provided the references were shocked at the Registrant's conviction, as it did not accord with their view of the Registrant's character and trustworthiness.
33. Taking into account the nature and circumstances of the offences, the Committee determined that these were serious criminal offences. The Committee further determined that the Registrant's conviction for these criminal offences would have undermined public confidence in the

- profession. This is further aggravated by the fact that they relate to the setting up and function of healthcare centres involving osteopathic practice.
34. In considering the matter of sanction, the Committee started with the least restrictive moving upwards. The Committee was mindful that it must impose a sanction in this case as the criminal offences were of material relevance to the fitness of the Registrant to practise osteopathy.
 35. The Committee then considered whether an admonishment would be an appropriate sanction in this case. The Committee determined that circumstances of the criminal offence are such that an admonishment is not an appropriate sanction. The nature of the criminal offences and their impact upon the reputation of the profession was too serious. The Committee also determined that a member of the public with full knowledge of the information before this Committee, would be shocked and concerned if an admonishment was applied as a sanction.
 36. The Committee next considered the imposition of a Conditions of Practice Order. However, this is not a case that is suitable for the imposition of a Conditions of Practice Order. There are no concerns with the Registrant's practice or competency as an osteopath. There were no patient safety concerns in this case.
 37. Taking the circumstances of the criminal offences and the Sanctions Guidance into consideration, the Committee determined that the Registrant should not be permitted to resume his practice at the very least until he has satisfactorily completed his sentence. In any case, the serious nature of the criminal offence makes a Conditions of Practice Order inappropriate as a sanction. It would not be appropriate to impose conditions upon a Registrant to ensure that he or she acted lawfully - acting lawfully was a pre-requisite of any regulated professional.
 38. The Committee then considered whether a period of suspension would be a sufficient and proportionate response in order to maintain a proper degree of confidence in the profession and the regulatory process, and to declare and maintain proper standards among fellow professionals.
 39. The Committee had regard to the following paragraphs of the Council's Sanctions Guidance in relation to the sanction of imposing a Suspension Order:
 - “71. *A Suspension Order will prevent the osteopath from practising as an osteopath for the duration of the Order. This sanction is appropriate for more serious offences and when some or all of the following factors are apparent (this list is not exhaustive):*

- a. *There has been a serious breach of the Osteopathic Practice Standards but the conduct is not fundamentally incompatible with continued registration.*
- b. *Removal of the osteopath from the Register would not be in the public interest, but any sanction lower than a suspension would not be sufficient to protect members of the public and maintain confidence in the profession.*
- 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 is a risk to patient safety if the osteopath's registration were not suspended.*
- e. *The osteopath has demonstrated the potential for remediation or retraining.*
- f. *The osteopath has shown insufficient insight to merit the imposition of conditions or conditions would be unworkable.*

72. ...

73. *As a general principle, if the osteopath has been convicted of a serious criminal offence he should not be permitted to resume practice until he has satisfactorily completed his sentence."*

40. The Committee determined whether the Registrant's conduct was fundamentally incompatible with continued registration. It considered the serious nature of the criminal offences and the fact that Registrant received a 15-month custodial sentence for a first conviction, despite his previous good character. The Committee determined that a member of the public would take that into consideration, including the fact that there were victims who were elderly and vulnerable, that the offences took place over a protracted period of time and involved substantial sums of money, notwithstanding it was accepted that the Registrant did not receive the bulk of the funds obtained. His conduct very seriously breached the following paragraphs of the *Osteopathic Practice Standards*:

D15 Be honest and trustworthy in your financial dealings, whether personal or professional.

D17 Uphold the reputation of the profession through your conduct.

41. The Committee considered the public interest in allowing a skilled osteopath to return to practice at the completion of his criminal sentence. The Committee also balanced that consideration with the need to declare and uphold proper standards of conduct and behaviour, and to maintain public confidence in the profession.
42. Having carefully considered all of the above considerations, the Committee determined that the matter before it was so serious that a Suspension Order, even for the maximum duration, would not be sufficient to maintain and declare proper standards of conduct and behaviour, nor to maintain the reputation of the profession, nor to maintain public confidence in the profession and the regulatory process.
43. The Committee therefore went on to consider whether removal of the Registrant's name from the Council's Register was the appropriate and proportionate sanction in this case. The Committee considered the Council's Sanctions Guidance to be relevant:

"77. A Removal is the most severe sanction that can be applied and should be used where there is no other means of protecting the public and/or maintaining confidence in the osteopathic profession. This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with registration with the GOsC as an osteopath and involves any of the following (this list is not exhaustive):

- a. *A reckless or intentional disregard for the principles set out in the Osteopathic Practice Standards and for patient safety.*
- b. *A serious departure from the relevant professional standards outlined in the Osteopathic Practice Standards which is incompatible with continued registration.*
- c. *...*
- d. *...*
- e. *...*
- f. *...*
- g. *...*
- h. *Persistent lack of insight into seriousness of actions or consequences.*
- i. *..."*

44. The Committee reminded itself of the Legal Assessor's advice that the Principle of proportionality also involves more than a simple balancing exercise of weighing public interest considerations against those of the Registrant, and that the public interest also includes the retention of a registrant who is able to make a valuable contribution to the profession. The Committee also took into account the impact that such an order would have on the Registrant in terms of his finances and his reputation.
45. In this case however, the Committee concluded that the public interest outweighed the interests of the Registrant. Therefore, it decided that the criminal offences represented such a serious departure from the standard of behaviour expected from an osteopath that only the removal of his name from the Register would be sufficient to maintain and declare proper standards of conduct and behaviour, to maintain the reputation of the profession, and to maintain public confidence in the profession and the regulatory process.
46. In the light of the above, the Committee is satisfied that the appropriate and proportionate sanction to protect the public and otherwise in the public interest in these circumstances is to order the removal of the Registrant's name from the Register.

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.

All final decisions of the Professional Conduct Committee are considered by the Professional Standards Authority for Health and Social Care (PSA). Section 29 of the NHS Reform and Healthcare Professions Act 2002 (as amended) provides that the PSA may refer a decision of the Professional Conduct Committee to the High Court if it considers that the decision is not sufficient for the protection of the public.

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 we have applied today.