Fitness to Practise
General Osteopathic Council
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ebulletin

'The essence of safe osteopathic practice'

A recent case heard by the GOsC's Professional Conduct Committee highlights the potentially serious consequences of taking an unstructured approach to a consultation. While the case involved an adjunctive treatment, the findings provide guidance for all osteopathic practice.

What happened?

A patient's wife, Mrs A, accompanied him to an appointment as his chaperone. During treatment, the patient mentioned to the osteopath that his wife (who had never been one of the osteopath's patients) regularly saw and was due to see another osteopath at the same clinic about her shoulder.

After some limited conversation with Mrs A, the osteopath inserted two acupuncture needles into her right shoulder. She did so without taking any history, undertaking an examination, or conducting an evaluation sufficient to form a working diagnosis.

Furthermore, the osteopath did this without the benefit of Mrs A's notes (although she could have had access to them) and without ensuring that Mrs A fully understood what was being proposed.

Having inserted the two needles, the osteopath said, "You'll feel the benefit of that later," or words to that effect, before removing them five minutes later.

Later the same day, Mrs A phoned the osteopath to say she was feeling very unwell, light-headed and faint, and was struggling to breathe. The osteopath's advice was "Just roll your shoulder back, rub it and you'll be fine," or words to that effect.

Mrs A subsequently went to a hospital, where an x-ray revealed a right-sided pneumothorax.

At a hearing, the Professional Conduct Committee (PCC) held that the osteopath's failings 'clearly had a real potential for significant patient harm'. She was suspended from the Register for eight months, and required in that time to take action that would improve her quality of practice.

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What were the failings?

Inappropriate care and treatment

In its decision, the PCC said: 'The essence of safe osteopathic practice is to obtain a proper case history and then to undertake an appropriate examination so as to inform a working diagnosis, and to be able to formulate, if appropriate, a treatment plan, and to gain consent before undertaking any treatment. Failure to follow this structured approach presents a real risk of harm.'

Calling the osteopath's approach 'disorganised, even chaotic', it said she had performed a treatment 'precipitately and largely blind [and had] effectively treated two patients at the same time. These were dangerous things to do.' *Continued on page 2*

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What were the failings? *Continued from page 1*

The PCC concluded that the osteopath's 'limited and cursory evaluation' had been insufficient to formulate a working diagnosis. By acting in a 'careless and cursory' way, she had breached standards C7 ('Provide appropriate care and treatment') and B3 ('Recognise and work within the limits of your training and competence') of the *Osteopathic Practice Standards*.

Lack of informed consent

All health professionals have a legal and ethical requirement to obtain a patient's valid consent before commencing an examination or treatment. This is set out in the *Osteopathic Practice Standards*, standard A4.

The osteopath told the PCC that she believed Mrs A had given her consent for the treatment. Although the PCC did not think that the osteopath had acted entirely without warning, it held that she had not obtained valid consent. It noted that Mrs A had been concerned about her husband and had been very weary during the appointment; in all likelihood, it said, there had been 'some limited conversation' but 'no proper or adequate explanation about [the osteopath's] intended actions … that would be received and understood' by Mrs A.

The PCC concluded that the osteopath had failed to ensure that Mrs A fully understood the proposed treatment, or why it was proposed, and had not adequately explained the risks.

Failure to monitor treatment effects or act on adverse reactions

By continuing to treat her patient (Mrs A's husband) while the needles were in Mrs A's shoulder, the PCC held, the osteopath had not adequately monitored the needles' effects. It was also satisfied that she had failed, in the subsequent telephone conversation, to recognise Mrs A's reactions and take appropriate action. These were breaches of standard C2.

What should you do?

Any consultation with a patient must be conducted in a professional manner. This includes respecting the patient's privacy and confidentiality; it is never appropriate to treat more than one person at a time.

Always take a full medical history and conduct an appropriate examination, after obtaining the patient's consent to be examined. Discuss your proposed treatment plan with them, explaining your intended actions and the associated benefits and risks. Check carefully that they understand what you have discussed, so you can be certain that you have their valid consent.

The National Council for Osteopathic Research has produced advice (available at: bit.ly/ncor-shared-decision-making) on involving patients in decisions about their treatment, gaining their consent and communicating risks.

If you are unsure whether a patient is able to give consent themselves, or who else can give consent on their behalf, see our guidance and example scenarios on capacity to consent at: bit.ly/ozone-capacity-consent

When obtaining consent, guidance to standard A4 of the *Osteopathic Practice Standards* advises, you should 'consider whether [the patient has] been given the information they want or need, and how well they understand the details and implications of what is proposed'. It adds that this is 'more important than how their consent is expressed or recorded'.

Assessing whether you have the training, skills and competence to treat a patient is a matter for your professional judgement.

> The law on informed consent has changed following the Supreme Court judgment in the case *Montgomery v Lanarkshire Health Board*.
>
> The decision affects all health professionals providing treatment to patients. You must now ensure that your patients are aware of any 'material risks' involved with a proposed treatment, and are aware of reasonable alternatives.
>
> The new test is whether, in the circumstances, 'a reasonable person in the patient's position would be likely to attach significance to the risk, or the [health professional] is or should reasonably be aware that the particular patient would be likely to attach significance to it.'
>
> Previously the test had related to considering what a 'reasonable osteopath' might think. The onus is now on osteopaths to seek and understand the views of individual patients.

Claims in advertising

How you advertise your services is a matter of professional integrity, with implications for the public's perception of osteopathy and the vital bond of trust with your patients.

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Patients want to know how osteopaths can help them improve their health, and you want to reflect your experience in practice – but how you craft this into information about the treatments you offer is tightly regulated.

The *Osteopathic Practice Standards* set an expectation that you will 'give patients the information they need in a way they can understand' (standard A3), 'provide appropriate care and treatment' (C7), and 'act with integrity in your professional practice' (D14). Guidance to standard D14 says: 'You should make sure that your advertising is legal, decent, honest and truthful as defined by the Advertising Standards Authority (ASA) and conforms to the current guidance.'

That guidance is set out by the ASA's Committee of Advertising Practice (CAP) in the *UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing* (known as the 'CAP Code'). We expect all osteopaths to be familiar with the CAP Code, and to check regularly that their advertising material (including websites) complies with the CAP requirements.

Justifying claims with evidence

Rule 12.1 of the CAP Code says: 'Objective claims must be backed by evidence.'

CAP has produced a 'help note' (bit.ly/cap-help-note-medical-conditions) explaining how the CAP Code and guidance apply to the marketing of health products and services. And it has adapted this help note to provide a list, reproduced on the right, of medical conditions that osteopaths may claim to help. The Institute of Osteopathy is working with CAP with a view to revising this list, but at present the list on the right is the one you must adhere to.

You should be prepared to justify any treatment claims that you make in your advertising and marketing. It is your responsibility to ensure that the patient information you provide is of the highest quality and is evidence-based.

Be aware that you are also responsible for your entry on any website or directory that advertises your osteopathic services.

The quality of information about osteopathic care available on the web has implications for all osteopaths in terms of how the profession is perceived – check today that yours reflects high standards.

What conditions does the ASA say osteopaths can claim to help?

Generalised aches and pains

Joint pains including hip and knee pain from osteoarthritis as an adjunct to core OA treatments and exercise

Arthritic pain

General, acute and chronic backache, back pain (not arising from injury or accident)

Uncomplicated mechanical neck pain (as opposed to neck pain following injury i.e. whiplash)

Headache arising from the neck (cervicogenic)/migraine prevention

Frozen shoulder/shoulder and elbow pain/tennis elbow (lateral epicondylitis) arising from associated musculoskeletal conditions of the back and neck, but not isolated occurrences

Circulatory problems

Cramp

Digestion problems

Joint pains, lumbago

Sciatica

Muscle spasms

Neuralgia

Fibromyalgia

Inability to relax

Rheumatic pain

Minor sports injuries and tensions

You can find this list on CAP's AdviceOnline database at: bit.ly/cap-advice-osteopathy

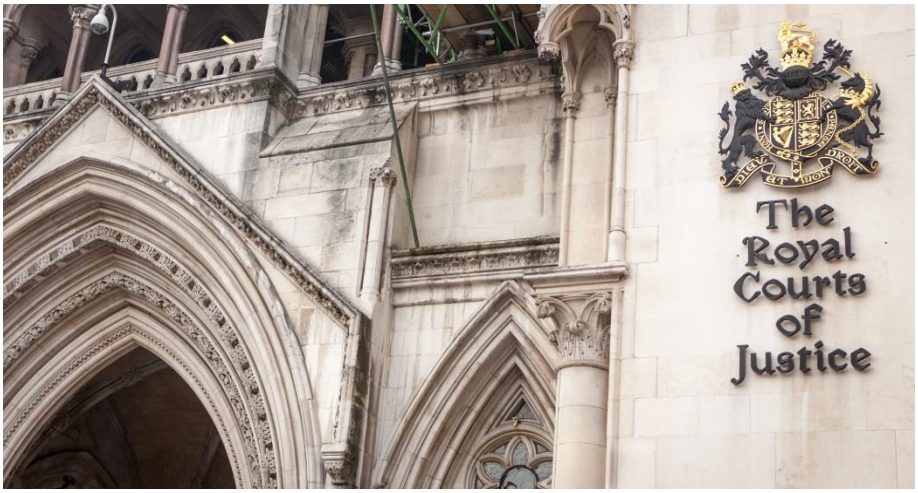
What is unacceptable professional conduct?

For an osteopath to be guilty of 'unacceptable professional conduct', their behaviour must be 'worthy of moral opprobrium'. The High Court has recently helped to clarify what this means.

Early last year, the GOsC's Professional Conduct Committee found that an osteopath had observed a patient undressing without her consent, thereby failing to respect her dignity and modesty; and had used abrupt and brusque language towards the patient, thereby failing to communicate with her effectively. The patient had terminated her course of treatment with the osteopath, and had made a complaint about him.

The Committee considered the case to be finely balanced, but decided that the osteopath's behaviour amounted to unacceptable professional conduct. It took account of the potential impact that this finding would have on him, and noted that his failings related to only one patient. Nonetheless, "considering the two areas of failure cumulatively and the outcome for the patient", it was satisfied that the failings were serious and worthy of moral opprobrium, and therefore constituted unacceptable professional conduct.

The Committee imposed an admonishment on the osteopath, who appealed against the decision. While his behaviour might have been insensitive and breached some of the *Osteopathic Practice Standards*, he argued, it had not been serious enough to be



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unacceptable professional conduct. Furthermore, as he had not intended to offend the patient, he said the Committee was in error in finding that there had been sufficient moral blameworthiness to warrant the imposition of an admonishment.

Moral opprobrium

In the High Court, however, Mr Justice Kerr held that the Committee *had* been entitled to reach a finding of unacceptable professional conduct. "Most people would consider the failings identified as conveying a degree – and I stress it need not be a high degree – of moral opprobrium," he said.

Mr Justice Kerr added that the level of seriousness required for an osteopath's conduct to be considered unacceptable should not be set too high. Admonishment is the least serious of the sanctions that can be imposed if an osteopath is found guilty of unacceptable professional conduct – so, he held, it would not be right if such a finding could only be made in cases where the failings were "of sufficient gravity that an admonishment would be too lenient".

The case is important in helping to define the degree of 'moral opprobrium' and 'blameworthy conduct' required for a finding of unacceptable professional conduct.

'The level of seriousness required for a finding of unacceptable professional conduct should not be set too high, the judge said'

General Osteopathic Council

This GOsC Fitness to Practise e-bulletin is produced by the GOsC's Regulation Department. For further information, email regulation@osteopathy.org.uk