



Criminal convictions and fitness to practise

Being convicted of a criminal offence will bring osteopaths before the GOsC's fitness to practise panels.

A small but regular part of the GOsC's fitness to practise work revolves around osteopaths who have been in trouble with the law. This is because the legislation which governs our work – the Osteopaths Act 1993 – makes it a duty to refer any allegation that an osteopath has been convicted of a criminal offence to our Investigating Committee.

As in all fitness to practise matters, the aim is to ensure patient safety and maintain confidence in the profession, so when an allegation is made about a conviction, the question for decision

is, "Does the offence in question have any material relevance to the fitness of the osteopath concerned to practise osteopathy?"

An allegation that an osteopath has been convicted is treated in a similar way to other allegations. It will be

considered first by the Investigating Committee and if they do not consider that the offence has material relevance to the osteopath's fitness to practise, they can find no case to answer and close it at that stage. If they do find a case to answer, they will refer it to the Professional Conduct Committee (PCC). If the PCC find that the conviction does have material relevance to the osteopath's fitness to practise, they can impose one of the four usual sanctions: admonishment, conditions of practice, suspension from the register, or removal. Alternatively, if the PCC consider that a conviction has no material relevance, they may take no further action.

While most osteopaths will be aware that both the current *Code of Practice* and new *Osteopathic Practice Standards (OPS)* require them to act within the law, some may not be aware that the standards require any osteopath convicted of an offence to notify us without delay of the conviction. You should note that the GOsC should also be notified if you are charged – and not just convicted – of certain offences, including those involving violence, indecency, dishonesty and alcohol or drug abuse.

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Three recent cases illustrate how the fitness to practise committees consider convictions.

Case 1

Fraud, deception and forgery

In one of the most serious conviction cases the GOsC has dealt with, the PCC ordered the removal from the Register of an individual convicted, on his own admission, of at least 40 counts of deception, fraud and forgery.

The osteopath had been practising without apparent incident for a number of years. But, at some point before 2004, he began providing treatment for horses and telling people that he intended to practise as a vet. He forged a degree certificate from a university in Australia and secured a certificate of membership from the Royal College of Veterinary Surgeons in order to pass himself off – falsely – as qualified to practise as a vet and entitled to treat a number of animals, but mainly horses. He charged for these services and was paid on the basis that the qualifications were genuine.

He also told some people that he was medically qualified (he wasn't) and under the guise of being a doctor, undertook physical examinations, blood tests and some examinations of an intimate nature. Again, he charged for these investigations, and undertook procedures and more intimate examinations that might never have been the subject of consent had patients known the true facts.

In addition, he twice sought to mislead the police after speeding offences came to light. On the first occasion, he falsely claimed that he was attending a veterinary emergency, and on the second occasion he sent a letter to the police as if from a consultant physician claiming that he had been exceeding the speed limit due to a medical emergency.

The PCC concluded that the individual's behaviour was fundamentally incompatible with being an osteopath and that there was no other means of protecting the public interest short of removal. In particular they noted:

- > A serious departure from relevant professional standards.
- > Serious and repeated abuse of position and trust and violation of the rights of patients.
- > A persistent and serious level of dishonesty which was covered up.
- > A persistent lack of insight into the seriousness of the osteopath's actions and their consequences.

Accordingly, the PCC concluded that removal was the only appropriate and proportionate sanction.

Case 2

Assault by beating

In this case, the PCC concluded that a conviction on two counts of assault by beating did have material relevance to the registrant's fitness to practise.

The registrant had become involved in a disagreement with a train manager about the need to produce a ticket more than once during a journey. The disagreement ended with the registrant assaulting both the manager and a disabled passenger who offered to attest to the train manager's professionalism in dealing with the incident. The PCC found that the two unprovoked acts of violence committed by the registrant – in particular as a member of a caring profession – were material to the registrant's fitness to practise.

The Committee noted that, although they had not been provided with any evidence that patients might be at risk of unprovoked violence committed by the registrant, there was an obligation on them to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

Having established that the convictions were materially relevant to fitness to practise, the PCC went on to consider what sanction would be appropriate, noting that the purpose of considering the convictions was not to punish the registrant for a second time and that they should choose the least severe sanction that dealt adequately with the identified issues.

In coming to their decision, the PCC observed that there was no risk to members of the public and noted:

- > Psychiatric evidence that the risk of any future violence was extremely low and the risk of serious violence non-existent.
- > The registrant had fully accepted the extent of the wrongdoing and was genuinely and unreservedly remorseful about the events which gave rise to the convictions.
- > The convictions arose out of an isolated incident and the offending behaviour was not premeditated.
- > The registrant had undertaken counselling to address the issues which had been identified regarding the offending behaviour.

Taking all these factors into account, the PCC concluded that the appropriate sanction was admonishment.

Driving offences

Convictions for driving offences also come before the fitness to practise committees, and this case illustrates how the Investigating Committee considers whether the conviction has material relevance to an osteopath's fitness to practise.

Here, the osteopath was convicted for driving without due care and attention. But, while the conviction had been disclosed on the registrant's renewal of registration form, he had not notified us within 28 days of the conviction, as required under the *Code of Practice*. The GOsC, in accordance with the legislation, referred the case to the Investigating Committee (IC).

In response to the allegation, the registrant told us that the conviction came about following a collision with another vehicle in poor weather conditions and low visibility. No drugs or alcohol were involved. He provided a copy of the record of the interview which took place at the scene of the accident and a copy of the statement of the police officer who interviewed him. The registrant admitted he was unaware of the need to inform the Council of the conviction within 28 days, but it was never his intention to deliberately deceive the Council about this conviction. He explained that he was aware that he would need to declare the conviction on his next renewal of registration form and he had believed that this was the appropriate time to declare it.

The IC concluded that the criminal offence of which the registrant had been convicted had no material relevance to his fitness to practise osteopathy, taking into account also the circumstances in which the offence was committed. But they also noted that he now appreciated that in accordance with Clause 14 of the *Code of Practice*, the GOsC

must be notified of criminal convictions as soon as reasonably practicable or within 28 days at the latest.

The IC found no case to answer and the case was closed with no further action taken.



Additional information:

From the *Code of Practice*:

- > **Clause 14:** If you are convicted of a criminal offence, you must notify the GOsC and give full details as soon as reasonably practicable or within 28 days of the conviction at the latest ...
- > **Clause 84:** Proper personal standards are essential. Significant lapses can lead to fitness to practise proceedings by the GOsC. For example, acts of dishonesty, indecency or violence, conviction in a court of law, drunkenness or drug abuse, may have serious consequences, even if not directly connected with your professional practice.
- > **Clause 87:** You must act within the law at all times.

From September 2012, the *Osteopathic Practice Standards* will apply, and standards D17 and D18 are relevant:

- > **D17:** 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).
 - 2.2 Not abusing alcohol or drugs.
 - 2.3 Not behaving in an aggressive or violent way in your personal or professional life.
 - 2.7 Not falsifying records or other documents.
- > **D18:** You must provide to the GOsC any important information about your conduct and competence.
 1. You should tell the GOsC, straight away, if you:
 - 1.1 Are charged, anywhere in the world, with an offence relating to:
 - 1.1.1 Violence.
 - 1.1.2 Sexual offences or indecency.
 - 1.1.3 Dishonesty.
 - 1.1.4 Alcohol or drug abuse.
 - 1.2 Are convicted of a criminal offence, anywhere in the world.
 - 1.3 Receive a conditional discharge for an offence.
 - 1.4 Accept a police caution.

Civil rights and wrongs

Most osteopaths are aware of the need to notify us if they are convicted of a criminal offence, but it is also important that in some cases the GOsC knows if you are involved in civil proceedings. Here we look at how civil claims or investigation by another professional body are handled and how the notification requirements will change when the *Osteopathic Practice Standards* come into force in September.

'Make the care of your patient your first concern' is the starting point for the *Code of Practice*, and it follows that the regulator must be aware – within 28 days at the latest – of any criminal convictions you may have as these might affect your patients.

While a similar 28-day deadline applies for letting the GOsC know about civil legal proceedings in which you may be involved, the Code requires you to inform us only if the proceedings issued against you relate to your practice of osteopathy.

Rest assured we do not need or want to know about all civil proceedings in which you might be involved – such as boundary disputes or matrimonial matters – only those things which relate to your osteopathic practice, but this will include any judgment against you for the recovery of a debt.

If you're subject to an investigation or adverse decision by another professional body (this may have particular relevance to those osteopaths who are dual-registered with other regulators), we need to know the details as soon as reasonably

practicable. Do not forget that this information must also be disclosed on your annual renewal forms.

There is one other matter of this kind that we need to know about, and that concerns insolvency. If you are or have been declared bankrupt or a bankruptcy petition has been filed against you, under the current Code you must let us know about it, again within 28 days of the relevant event.

When an osteopath calls to let us know they are in financial difficulties and contemplating bankruptcy, we can invariably reassure them that a bankruptcy won't affect their registration status, as we appreciate that stopping an osteopath from practising won't help their financial situation.

We will, however, talk through the risks that may arise from the financial problems – for example, letting premises get run down, pressuring patients into buying unnecessary products or signing them up for unnecessary treatments – so that we can help osteopaths to continue to ensure that patient care is appropriate and of good quality.

Osteopathic Practice Standards – what has changed?

The requirements about notification form part of the fourth theme of the *Osteopathic Practice Standards* (OPS): Professionalism. They come under Standard D18, which states: 'You must provide to the GOsC any important information about your conduct and competence' (which itself follows the standard requiring osteopaths to uphold the reputation of the profession through their conduct).

Osteopaths must uphold this standard, but we have also provided guidance on how to meet it, and so, from September 2012 when the OPS comes into force, we ask that you tell us, straightaway, if you are:

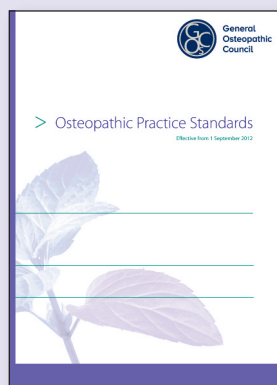
- > disciplined by any organisation responsible for regulating or licensing a healthcare professional; or
- > suspended or placed under a practice restriction by your employer or a similar organisation because of concerns about your conduct or competence.

We do not therefore any longer need an immediate notification about civil court proceedings or bankruptcy, but we do need to know straightaway (although not defined in the guidance, in practice this is likely to mean within 28 days) about regulatory decisions against you or if you are suspended or restricted in some

other way in your employment because of your conduct or competence. However, importantly, the renewal forms you complete every year do still require you to disclose whether you have been subject to civil proceedings or removed from a regulatory or professional register.

It's a feature of the *Osteopathic Practice Standards* that we have given more autonomy to osteopaths about how they

meet the standards, so bear in mind that there may be other important information about your conduct or competence which doesn't necessarily fall into the guidance referred to above, which you should still let us know about; that will be for you to judge, bearing in mind patient safety and the reputation of the profession.



A question of judgment



Question

I have a patient who I've been treating for the past year or so. I got a Christmas card from him and, to my great surprise, inside the card was a cheque, made payable to me, for £500. There was nothing in the card about why my patient had done this, just a short message, 'Thanks for all your help'. Am I allowed to keep the cheque, or must I give it back?



Answer

Thank you for your query. Neither the *Code of Practice* nor the *Osteopathic Practice Standards* (which come into force on 1 September 2012) specifically refer to gifts from patients, but – especially when the gift is of such a large value – it's important to consider whether the gesture has any wider implications for you or your patient.

It sounds like you did not in any way seek or encourage such a generous present, and your patient may just have been immensely grateful for your help. If he is very well off and of a generous nature, he may not see a cheque for £500 as being anything out of the ordinary – you may be able to judge that for yourself. Objectively speaking though, this is a large sum and you should consider what your patient's motives may have been in sending you this gift.

It is possible that your patient sees the gift as a means of securing some kind of preferential standard of treatment. The *Code of Practice* requires osteopaths to be honest and reliable in all financial and commercial activities and allowing yourself to be put in a position of obligation over and above the usual duties you have as an osteopath may be unwise. In a similar vein, if you have provided any kind of report for medical or legal purposes for this patient, he may see the gift as an expression of gratitude for that; again, it is likely to be unwise to accept this gift, especially if the report brought your patient some kind of financial benefit or if there is an expectation that you would provide a similar report in future.

Alternatively, his generosity may indicate a personal feeling towards you which would also be inappropriate and the Code is clear that it is osteopaths' professional duty to avoid any form of conduct that may be construed as a willingness to enter into a close personal relationship with a patient.

In any of these circumstances, acceptance of this gift would put you in a difficult position and you should think carefully about whether it is wise to keep it. If you do decide to return the cheque, be sensitive in the way you do this and explain why it's not appropriate for you to keep it; you will not want to be graceless towards what may just be an act of generosity, or distress a patient who may already be vulnerable.

Further information:

Code of Practice (valid until 31 August 2012):

- > **Clause 4:** It is your professional duty not only to avoid putting yourself [in a position of pursuing a close personal or sexual relationship with a patient] but also to avoid any form of conduct that may be construed as a willingness to enter such a relationship.
- > **Clause 8:** You should be aware that a patient seeking healthcare may be vulnerable and open to persuasive influences. You must not exploit such a situation. This would be a serious breach of trust. Examples of this might be ... borrowing money, or any benefit that brings you financial gain, from patients.
- > **Clause 9:** In all financial and commercial activities you must be honest and reliable.

Osteopathic Practice Standards (valid from 1 September 2012):

- > **D4** Make sure your beliefs and values do not prejudice your patient's care:
 - 1 The same quality of service should be provided to all patients.
 - 4 Good reasons for ... declining to continue [the care of patient] might arise.
 - 4.3 Where they appear to have become inappropriately dependent on you.
- > **D14** Act with integrity in your professional practice.
 - 1 Acting with integrity means acting with honesty and sincerity ... Some examples are:
 - 1.8 Borrowing money from patients, or accepting any other benefit that brings you financial gain.
- > **D15** Be honest and trustworthy in your financial dealings, whether personal or professional.
- > **D16** Do not abuse your professional standing.
 - 3.4 It is your responsibility not to act on feelings of sexual attraction to or from patients.



General
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Council

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