

Know your professional limits

A recent case has highlighted the importance of using your professional judgement to assess whether you have the training, skills and competence to carry out a procedure or technique before performing it on patients.

Standard B3 of the *Osteopathic Practice Standards* requires all osteopaths to recognise and work within the limits of their training and competence.

The GOsC Professional Conduct Committee recently considered a case in which a registrant had performed injection therapy and joint aspiration on two patients in circumstances where he was not yet fully qualified to perform the techniques.

The registrant had completed the theoretical and educational components of a course, and the Committee accepted that he had the appropriate anatomical knowledge. However, he had not yet commenced the programme of supervised injections that leads to the award of a qualification in injection therapy; this meant he had not received sufficient training or practical experience to be able to carry out the techniques safely and within the limits of his competence.

To compound matters, the registrant's indemnity arrangements did not cover musculoskeletal injection therapy until 'full completion of adequate and approved training'.

The Committee 'considered it obvious that a responsible practitioner would wish to assure himself of his competence by carrying out such a procedure under controlled conditions, on different patients, and in different circumstances, before arriving at the conclusion that he was competent to carry out the procedure'.

In deciding that he was able to carry out injection therapy before undertaking the course's practical aspects and obtaining the appropriate qualification, the Committee said, the registrant had failed to recognise and work within those limits – irrespective of whether there was an adverse outcome for the patients.



The Committee concluded that the registrant's decision to carry out the two procedures was a sufficiently serious departure from acceptable standards to be characterised as Unacceptable Professional Conduct.

It noted that carrying out treatment without proper qualifications, and without taking proper steps to ensure competence, is a serious matter. The registrant's conduct involved a significant risk of harm to the public, and was liable to damage the trust that the public is entitled to have in the profession.

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Get covered

All practising osteopaths are required by law to have professional indemnity arrangements in place that provide appropriate cover for potential claims. Failure to do so is a serious matter, even if no claims are made against an osteopath while they have inadequate cover in place.

Section 37(10) of the *Osteopaths Act 1993*, as amended by *Schedule 1, Part 4 of The Healthcare and Associated Professions (Indemnity Arrangements) Order 2014*, provides that a failure to have indemnity arrangements in place, or to comply with the rules made by the GOsC in relation to indemnity arrangements, may be treated as Unacceptable Professional Conduct.

The Professional Conduct Committee recently considered an allegation against a registrant who had failed to have indemnity arrangements in place for a period while practising, and who had been slow to rectify the position when the GOsC asked him to.

Absolute duty

In finding the registrant guilty of Unacceptable Professional Conduct, the Committee noted the 'absolute duty on osteopaths' to have indemnity arrangements in place for the prescribed risks, and for not less than the prescribed amounts.

The Committee also noted that the purpose of this absolute duty was 'to ensure that, in the event of a successful claim by a patient against an osteopath, the former receives proper compensation. If insurance is not in place, there is a risk that the osteopath's assets are insufficient to satisfy any claim and the patient is denied



effective redress. In the Committee's considered opinion, the absence of insurance plainly acts to the detriment of patients.'

It made no difference to the Committee that no claims had been made during the time that the registrant was practising without indemnity arrangements in place. 'The Registrant's contention that, in the absence of any claim, any detriment could only be described as "potential" ignores the nature and purpose of the absolute duty imposed [by the legislation],' it said.

The Committee further noted that the registrant's failure to have indemnity arrangements in place, and a further failure to take 'immediate and effective steps to ensure that retrospective cover was in place', was inconsistent with the public's reasonable expectations of a professional osteopath and the public's legitimate expectation that a professional will have the requisite insurance cover in place when practising as an osteopath'.

Practising without appropriate indemnity arrangements in place was, the Committee said, 'a matter of profound concern' to the public. A finding of Unacceptable Professional Conduct was to be expected in relation to a registrant who had 'put his head in the sand and failed to recognise and discharge the fundamental duty'.

Changes to indemnity insurance rules from this month

The *General Osteopathic Council (Indemnity Arrangements) Rules 2015* came into force on 1 May, replacing the *General Osteopathic Council (Professional Indemnity Insurance) Rules 1998*.

A major change introduced by the new rules is an increase in the required minimum level of professional indemnity insurance (PII) cover, from £2.5 million to £5 million.

However, you do not need to increase your cover to £5 million until the next time you renew your insurance or take out a new policy; if your current PII policy is dated 30 April 2015 or earlier and provides cover of at least £2.5 million, you are not in breach of the rules.

The 2015 rules also clarify the requirements for run-off cover, by specifying that you must have cover in respect of any claim that may arise at *any* time, even if you have since ceased to practise and/or changed your insurer.

Dishonesty results in removal from Register

The Professional Conduct Committee recently removed a registrant from the Register of osteopaths for serious dishonesty that was both persistent and covered up over a period of three-and-a-half years.



The registrant's behaviour included completing patient reports in the names of other healthcare practitioners; treating patients himself when they had been specifically referred for physiotherapy; and falsely representing to insurance companies that a qualified physiotherapist had treated those patients, in order to receive payments to which he was not entitled.

The registrant also encouraged an associate in his practice to arrange treatments that were not clinically justified, and failed to pay money owed by him to other associates – even going so far as to stop the payment of cheques.

No remorse

In imposing the sanction of removal, the Committee noted that the registrant had shown no remorse or insight into the seriousness of his actions.

It said his failures amounted to a fundamental disregard for the principles set out in the *Osteopathic Practice Standards* (and, prior to 2012,

the *Code of Practice*), and had undermined the reputation of the profession.

The Committee found that the registrant had seriously abused his position of trust towards both the claims-handling companies and the patients in his care. It considered this

to be 'a very serious level of dishonesty which was both persistent and covered up', and said there would be public disquiet if he were to remain on the Register.

It concluded that his behaviour was fundamentally incompatible with his continued registration with the GOsC.

What do the standards say?

Standard D14 of the *Osteopathic Practice Standards* requires all osteopaths to act with integrity in their professional practice.

The guidance accompanying this standard states:

'1. Acting with integrity means acting with honesty and sincerity. A lack of integrity in your practice can adversely affect patient care. Some examples are:

- 1.1 Putting your own interest above your duty to your patient.
- 1.2 Subjecting a patient to an investigation or treatment that is unnecessary or not in their best interests
- 1.3 Deliberately withholding a necessary investigation, treatment or referral.
- 1.4 Prolonging treatment unnecessarily.
- 1.5 Accepting referral fees.
- 1.6 Putting pressure on a patient to obtain other professional advice or to purchase a product.
- 1.7 Recommending a professional service or product solely for financial gain.
- 1.8 Borrowing money from patients, or accepting any other benefit that brings you financial gain.'

Threshold criteria

New guidance lists behaviours that will not normally be considered to amount to Unacceptable Professional Conduct

When the GOsC receives a complaint about an osteopath, it is first considered by a 'screener' – a member of our Investigating Committee – who determines whether the *Osteopaths Act 1993* gives us power to deal with the complaint. If it does, the Investigating Committee will consider whether the osteopath has a 'case to answer'.

In February 2015, the GOsC Council agreed new guidance on 'threshold criteria for Unacceptable Professional Conduct', which will help screeners and other members of the Investigating Committee when they consider complaints.

The guidance will also help both complainants and registrants to understand the sorts of matters that will generally be considered under our fitness to practise procedures. It emphasises that these procedures are designed to protect the public, and are not intended to serve as a general complaints or civil dispute resolution process.

Proportionate

Investigating allegations properly is a resource-intensive process. The

public interest requires that such resources should be used effectively to protect the public, and should not be diverted towards investigating matters that do not raise cause for concern. We think this is a proportionate response to the volume of complaints we receive and is consistent with the principle of 'right-touch regulation' promoted by the Professional Standards Authority, which oversees the GOsC.

The development of the threshold criteria has been informed by the relevant case law, the views of the Joint Law Commissions (expressed in a [2014 report](#) on the regulation of healthcare professionals), other regulators' practice, advice from leading Counsel, and the practical experience of screeners and the Investigating Committee.

The criteria have been considered in detail by our Osteopathic Practice Committee and by Council. Additionally, we held a three-month public consultation from October to December last year, convened a focus group comprising patients and members of the public, and engaged with stakeholders including the Professional Standards Authority and the Institute of Osteopathy.

Transparent

The response to the public consultation was the largest to a GOsC fitness to practise consultation in recent times. More than four-fifths (82%) of the respondents agreed that the GOsC should produce threshold criteria; three-quarters (74%) considered that the criteria would make our decision-making more open and transparent. The guidance document was thought to be clear by 70% of the respondents, and 64% considered that it contained the right level of detail. More than two-thirds (68%) agreed with the proposed criteria.

You can find the guidance on the [GOsC website](#). The threshold criteria will be reviewed after their first year of operation.

