

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No:913

Decision of the Professional Conduct Committee

DECISION

In the case of:	Mr Daniel Kalman
Registration Number:	2407
Committee:	Dr Pamela Ormerod (Chair) Ms Manjit Darby (Lay member) Ms Abby Mulholland (Osteopathic member)
Legal Assessor:	Mr Andrew Granville Stafford

This case has been considered by the Professional Conduct Committee at a private meeting without the necessity for a hearing, under the procedure set out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000.

Allegation:

The allegation is that Mr Daniel Kalman (the Registrant) has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. From 7 May 2023 to 8 November 2023, inclusive of both dates ("the Relevant Period"), the Registrant:
 - a. was registered and/or practised as an osteopath; and
 - b. failed to obtain and maintain insurance cover as required by Rule 3 of the General Osteopathic Council (Indemnity Arrangements) Rules Order 2015 ("the Order");
2. During the Relevant Period, the Registrant:

- a. knew that in holding himself out to the public as a registered osteopath, he was required to hold professional indemnity insurance; and/or
 - b. treated patients despite not having appropriate professional indemnity insurance, thereby acting to the potential detriment of such patients and placing them at risk.
 3. The Registrant's conduct as set out at paragraph 1(b) and/or paragraph 2(b):
 - a. was misleading; and/or
 - b. demonstrated a lack of integrity.
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Decision:

Background

1. The Committee was asked to consider whether it was appropriate to deal with these allegations under the procedure set out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000. The Rule 8 procedure permits the Committee to deal with a case by agreement without a hearing before the Professional Conduct Committee. The sanction proposed in this case was an admonishment. The background is as follows.
2. Registrants are required to maintain professional indemnity insurance ('PII'). GOsC's Registrations Department select Registrants at random for an insurance audit, to check that they have PII cover in place. The Registrations Department telephoned the Registrant on 9 November 2023 informing him he had been selected for an insurance audit. Previous requests sent by email had not been answered by the Registrant.
3. The Registrant explained during the call that his email address had changed and he had not updated it. He apologised for that and said that he would send his insurance details and new email address to the Registrations Department.
4. The Registrant subsequently called the Registrations Department, saying that his insurance had in fact lapsed. He explained that his insurers had also been trying to communicate with him using the old email address.

5. The Registrant applied for and obtained new insurance cover, which commenced on 9 November 2023. That meant, however, there was a gap between 7 May 2023 and 8 November 2023 when he did not have PII cover. It was not in dispute that the Registrant had been practising as an osteopath during this period.
6. The Committee was provided with a statement from the Managing Director of the Registrant's insurer. He confirmed that the Registrant was continuously covered with his firm from 8 May 2016 to 7 May 2023. However, renewal emails in April and May 2023 were sent to the Registrant's old email address, and cover lapsed.
7. The Registrant then applied for cover to be backdated, to include the missing 6 months from May 2023. He stated that he had not had any claims or incidents in that period. Indeed, he had been in practice for 45 years without any claims made against him. He explained that he had lost the use of his email address after changing internet provider, and gave details of extenuating personal circumstances that had affected him at the time. In light of the above, the insurer, having initially declined to do so, agreed to backdate his insurance to May 2023 and there are therefore no gaps in his cover.
8. The Registrant wrote to GOsC on 25 March 2024 in response to the allegations. He acknowledged his error in letting his insurance lapse and said that he was profoundly sorry for it. He pointed out that in more than 40 years in practice he had never been the subject of a complaint and had always previously maintained his insurance cover. He said:

'I can only say, feebly, in my defence, that there are some circumstances which might partially account for this lapse. I was born in 1947 and have not adapted well to the modern age of technology! I have a "geek" friend who sets up any computer or telephone devices which I use.

For many years I used a BT internet email address, and continued to use it for at least two years after I moved to Gifgaff. BT suddenly took notice of this and informed me that this address was no longer usable and abruptly switched it off, and I began using my present Outlook address.'
9. He also set out difficult personal circumstances that he had gone through at the time.
10. On 12 September 2024, the Registrant signed a Rule 8 statement, admitting the allegations in full and admitting that they constituted unacceptable

professional conduct. He confirmed that he had the opportunity to seek advice and that he accepted the sanction of admonishment. He accepted that this would form part of his fitness to practise record.

Legal advice

11. The Legal Assessor advised the Committee that, to deal with this matter under the Rule 8 procedure, it must be satisfied that the Registrant fully admits the allegation and also admits that the factual particulars amount to unacceptable professional conduct. The Committee must itself be satisfied that the facts admitted amount to unacceptable professional conduct. The Committee must also be satisfied that the Registrant accepts that admonishment is an appropriate sanction and that he does not wish the case to be dealt with at a hearing.
12. The Committee should have regard to GOsC's Practice Note on the Rule 8 procedure ('the Practice Note'). That gives guidance on the type of cases which are and are not suitable for this procedure. Taking into account this guidance and GOsC's Hearings and Sanctions Guidance, it must be satisfied that the proposed sanction of admonishment is appropriate and proportionate.

Finding on allegation

13. The Registrant signed a Rule 8 Statement on 12 September 2024 in which he admitted the allegations. He accepted that he was guilty of unacceptable professional conduct and he accepted the sanction of admonishment. He was content for the matter to be dealt with without a hearing.
14. In light of the Registrant's admissions in his Rule 8 statement, the Committee was satisfied that he accepted all the factual particulars in the allegation. The Committee bore in mind that maintaining PII cover is a statutory requirement. The Committee also noted that the GOsC's PII Guidance (2020) states that an osteopath's failure to have insurance is not an 'administrative' failure, it is serious and can potentially have wider consequences for the wider public interest including maintaining proper professional standards of conduct and maintaining public confidence in the profession. The Committee was therefore satisfied that the Registrant's failure to do so case amounted to unacceptable professional conduct.
15. It therefore found the allegations, including unacceptable professional conduct, proved in full.

Sanction

16. Having regard to the Registrant's admissions contained in the Rule 8 Statement, the Practice Note and the Hearings and Sanctions Guidance, the Committee was satisfied that a sanction of admonishment is appropriate and proportionate in this case.
17. The Committee had regard to paragraph 33 of the Practice Note. In determining whether admonishment is an appropriate sanction, the Committee should take into account the following:
 - a. whether there is evidence to suggest that the Registrant poses any danger to patients or the public;
 - b. whether the Registrant has shown insight into their failings;
 - c. whether the behaviour was an isolated incident;
 - d. whether there has been any repetition of the behaviour complained about;
 - e. whether the Registrant acted under duress;
 - f. whether the Registrant has genuinely expressed remorse;
 - g. whether there is evidence that the Registrant has taken rehabilitative/corrective steps; or
 - h. whether the Registrant has previous good history.
18. Save for the factor listed at 'e', which is clearly not relevant here, the Committee considered that all the above factors pointed towards an admonishment being the appropriate sanction.
19. The Committee noted, in particular, that the Registrant has a previously unblemished record from over 40 years in practice as an osteopath. It accepted that his failure to maintain insurance cover was due to an inadvertent error, and that there was no evidence of any deliberate wrongdoing in this case. Significantly, the Registrant had made considerable efforts to remedy the mistake. By obtaining retrospective insurance cover had ensured that no patient was exposed to any risk as a result of the failure to renew his cover on time. The Committee was satisfied that there was little, if any, risk of repetition and that an admonishment would adequately meet the public interest in this case.
20. The Committee therefore imposed a sanction of admonishment on the Registrant.

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.