

**GENERAL OSTEOPATHIC COUNCIL**  
**PROFESSIONAL CONDUCT COMMITTEE**

**Case No: 902/10481**

**Professional Conduct Committee Meeting**

**DECISION**

**Case of:** Mr Marek Kolarik

**Committee:** Ms Sue Ware (Chair)  
Mr Kenneth McLean (Osteopath)  
Ms Manjit Darby (Lay)

**Legal Assessor:** Mr Gary Leong

**Date of Meeting:** Monday, 28 October 2024

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This case has been considered by the Professional Conduct Committee without 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 Marek Kolarik (the Registrant) has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:*

1. *From 03 July 2023 up to and including 13 July 2023 (the Relevant Period), the Registrant:*
  - (a) *was registered and practised as an osteopath;*

- (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 knew that in holding himself out to the public as a registered osteopath, he was required to hold professional indemnity insurance.*
- 3. *Between 04 July 2023 up to and including 12 July 2023, the Registrant treated patients despite not having appropriate professional indemnity insurance, thereby acting to the potential detriment of such patients and placing them at risk.*
- 4. *The Registrant's conduct as set out at paragraph 1b, and/or 3 above:*
  - (a) was misleading; and/or*
  - (b) lacked integrity.*

**The following facts are alleged:**

Registrant applied to the Institute of Osteopathy ('IO') for professional indemnity insurance ('PII') cover on 13 July 2023. Until 17 June 2023, he had been working for Clinic 1 and had been covered by the clinic's policy. He had not worked as an Osteopath between 18 June 2023 and 2 July 2023. He had relocated and started a new job as an employed Osteopath on 3 July 2023, in which he was required to obtain his own PII cover but did not contact the IO in order to do so until 13 July 2023.

The IO advised the Registrant to contact the GOSC to inform them that he was not working between the 18th June and the 2nd July and to apply for a backdated non-practising status for that period of time. He was also advised to inform the GOSC that he did not have professional liability insurance cover in place for the period 3rd July 2023 - 12th July 2023, when he was treating patients. The IO insurers accepted the Registrant had made a genuine error and granted him cover, backdated to 18 June 2023.

On 19 March 2024, the Investigating Committee considered the evidence and referred the case to this Committee.

As part of the Rule 8 procedure, the Registrant admits that he did not have professional indemnity cover from 3 to 13 July 2023 and has signed a statement dated 18 October 2024 to that effect.

**Decision:**

The Committee was satisfied that the procedure set out in the GOSC's Professional Conduct Committee Practice Note entitled *Consensual Disposal: Rule 8* has been followed. It had sight of the Notice of Intention sent to the Registrant and signed by the Chair of the Professional Conduct Committee dated 8 October 2024 and the Rule 8 Statement signed by the Registrant dated 18 October 2024. Furthermore, the Committee was provided with the email correspondence between the Registrant and the GOSC that indicated the Registrant had been fully advised about the implications of making full admissions as to the facts and Unacceptable Professional Conduct under this procedure. When he signed his Rule 8 Statement, the Registrant confirmed that he had obtained legal advice and that he wished to proceed with the Rule 8 procedure with full understanding of, and agreement with, the implications of the Rule 8 process.

The Registrant has admitted both the facts and that the facts amount to Unacceptable Professional Conduct. Accordingly, the allegation is found proved.

The Committee took into account the following:

- The bundle of evidence;
- The GOSC's Professional Conduct Committee Practice Note entitled *Consensual Disposal: Rule 8*;
- The Hearings and Sanctions Guidance published by the GOSC;
- The Guidance for Registrant on the GOSC's procedure under Rule 8; and
- The Registrant's admissions set out in the Rule 8 Statement.

The Committee reminded itself that its primary function is the protection of the public and of the public interest. In that regard, the public interest includes the protecting of members of the public, the maintenance of public confidence in the profession, and the declaring and upholding of appropriate standards of conduct and behaviour amongst osteopathic professionals.

The Committee considered the facts in this case, and the admissions made by the Registrant.

The Committee took into account the Unacceptable Professional Conduct guidance and applied the guidance of Mr Justice Irwin in *Spencer v The General Osteopathic Council [2012] EWHC 3147 (Admin)*, that a finding of UPC implies moral blameworthiness and a degree of opprobrium. Further, Mr Justice Kerr in *Shaw v The General Osteopathic Council [2015] EWHC 2721 (Admin)* provided additional guidance, stating that:

*“...most people would consider the failings identified in the decision as conveying a degree – and I stress it need not be a high degree – of moral opprobrium”*

Notwithstanding that the Registrant has accepted that his conduct did amount to Unacceptable Professional Conduct, that was a matter for the Committee exercising its professional judgement.

The allegations relate to a short period of time when the Registrant practised as an Osteopath without insurance. However, it is a statutory requirement for a practising Osteopath to have the appropriate insurance and is a serious matter. As set out in the GOSC’s guidance on insurance for Osteopaths:

*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 accepted that the matter occurred because of an oversight on the part of the Registrant. The Committee also took into account that the IO accepted the Registrant had made a genuine error and granted him cover, backdated to 18 June 2023. As such the Registrant received insurance cover *ex post facto*.

The Committee further acknowledged that the Registrant had engaged with his regulator when the oversight came to light and had cooperated fully during the subsequent investigations by his regulator.

Notwithstanding the Committee accepts that this case arose out of a mistaken belief on the part of the Registrant that his new employer provided professional indemnity insurance cover for him, the Committee would reiterate that it is the

responsibility of each registrant to ensure that they have appropriate insurance cover and that they comply with the requirements of registration.

The Committee is satisfied that these matters do amount to Unacceptable Professional Conduct and that, on the evidence before the Committee, the Registrant's admissions are appropriate.

The Committee looked to the Hearings and Sanctions Guidance published by the GOSC in regard to the appropriate sanction in cases such as this. The Committee took into the following factors in addition to the seriousness of the requirement for professional indemnity insurance:

- the short period of 11 days when the Registrant was not insured to practise;
- when the Registrant realised that his new employer did not provide cover for their Osteopaths, unlike his previous employers, he took immediate action to rectify the situation;
- no evidence that any actual harm was cause to any patient;
- this was an isolated incident with no intent to practise without insurance;
- the high level of insight and remorse demonstrated by the Registrant into his conduct;
- the Registrant's good character and that there are no previous disciplinary actions taken against him by the GOSC ;
- the Registrant's personal circumstances prevailing at the time;
- there is no indication that the Registrant poses any risk to the public;

The Committee applied the principle of proportionality and is satisfied that the admonishment is the sanction that is both appropriate and proportionate.

The Committee determined that the Rule 8 procedure was appropriate in this case and that an admonishment is sufficient to declare and uphold proper standards and to maintain public confidence in the profession and the regulatory process.

Section 22(1) 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 allegation found proved and the sanction imposed today.