

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 625/712

Professional Conduct Committee Hearing

DECISION

Case of:	Mr Bipinchandra Lakhani
Committee:	Mr Alastair Cannon (Chair) Mr Colin Childs (Lay) Mr Tom Bedford (Osteopath)
Legal Assessor:	Mr Peter Steel
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Ms Alexis Hearnden
Clerk to the Committee:	Ms Jemima Francis
Date of Hearing:	11 to 14 June 2018

Summary of Decision:

At the outset of the hearing the Registrant admitted allegation 1. The Chair announced that this particular had been admitted and found proved.

Having heard from the parties and considered the evidence in the case, the Committee found as follows:

Allegations 1, 4, 5, 6 (a), (b) and (c), 7, 8 (b) and 8 (c) found proved.
Allegations 2, 3 (a), (b) and (c) and 8(a) found not proved.

In the light of the findings on facts, the Committee found Unacceptable Professional Conduct proved and imposed a Suspension Order for a period of 6 months on the Registrant's registration.

Allegation and Facts:

The allegation is that Mr Lakhani has been guilty of Unacceptable Professional Conduct, contrary to Section 20(1)(a) of the Osteopaths Act 1993 in that:

1. Patient A attended appointments with Mr Lakhani, on 31 October 2016 ('the first appointment'), 11 November 2016 ('the second appointment') and 8 December 2016 ('the third appointment').
 2. During the second appointment, Mr Lakhani put his fingers inside of Patient A's shorts and/or knickers and touched her pubis / groin area.
 3. Before touching Patient A as described in paragraph 2 above, Mr Lakhani failed to:-
 - a) explain to Patient A that he was going to touch an intimate area;
 - b) explain to Patient A why he needed to touch an intimate area;
 - c) obtain valid consent from Patient A to touch an intimate area;
 4. During the second appointment, Mr Lakhani did not offer a chaperone to Patient A.
 5. During the third appointment, Mr Lakhani put his fingers inside of Patient A's shorts and/or knickers and rested his fingers / hand on her pubis / groin area.
 6. Before touching Patient A as described in paragraph 5 above, Mr Lakhani failed to:-
 - a) explain to Patient A that he was going to touch an intimate area;
 - b) explain to Patient A why he needed to touch an intimate area;
 - c) obtain valid consent from Patient A to touch an intimate area;
 7. During the third appointment, Mr Lakhani did not offer a chaperone to Patient A.
 8. Mr Lakhani's behaviour as described at paragraphs 2 – 7 above was:-
 - a) sexually motivated and/or;
 - b) transgressed professional boundaries and/or;
 - c) inappropriate.
-

Decision:

Preliminary Matters

1. Ms Hearnden on behalf of the Registrant told the Committee that the copy of the charge sent to her gave the date of the first appointment as 12 September 2016. It was however agreed between the parties that the date of the first appointment was in fact 31 October 2016. The Committee noted that the date of the first appointment in the allegations was in fact 31 October 2016, but if it were necessary to amend the allegation, it would allow the amendment on the basis that it was agreed.
2. Both parties had obtained expert reports, from Mr Jonathan Hearsey on behalf of the Council; and from Mr Simon Chesney on behalf of the Registrant. A joint statement of the experts' opinions on the issues had been tabled on the morning of the first day of the hearing. The conclusion of the experts was effectively that the case turned on a disputed account of the facts which was for the Committee to resolve. In the light of this, the Committee indicated that it did not have any questions for the experts and was content for the reports to be read.

Background

3. Patient A attended three appointments with the Registrant on 31 October 2016, 11 November 2016 and 8 December 2016.
4. There had been some confusion at the initial stages of the complaint on the part of both Patient A and the Registrant as to the date of the first appointment. It was agreed by the parties that Patient A had first been due to see the Registrant on 12 September 2016. However this appointment had had to be cancelled as the Registrant was unwell at the time.
5. Patient A therefore first saw the Registrant on 31 October 2016. No complaint was made about the first appointment. Patient A was seeking treatment for a herniated disc and a trapped nerve in the lower part of the right side of her back which was causing her pain. Prior to the first appointment she was advised to bring some shorts with her. She therefore brought a pair of men's swimming shorts which had netting on the inside. She changed into these shorts, over her underwear, prior to undergoing treatment on each occasion she saw the Registrant.
6. The Registrant took a medical history and made an overall assessment. He then treated her by manipulating her legs, back and hip area. The appointment took an hour and a half.
7. Patient A attended a second appointment with the Registrant on 11 November 2016. The Registrant did not make a note of that appointment

- (though he later sent a note purporting to be a record of Patient A's first appointment to the Council which was dated 11 November 2016, though it transpired he had produced this note in about June 2017 having received notice of Patient A's complaint). At this appointment, Patient A described to the Registrant discomfort and provided detail of a previous skiing accident and injury to her right leg.
8. The Registrant again treated Patient A by manipulation at the second appointment. Patient A alleged that during the treatment, the Registrant put his hand inside the leg of her shorts underneath the netting so that he was touching her skin with the tops of his fingers touching her groin and on top of her pubis. She said he pressed down on her pubis and his hand was inside the netting for 5 – 10 seconds. On her account he then removed his hand and then concluded the appointment.
 9. Patient A said that the Registrant had not explained what he was going to do or obtained her consent to what he did. She felt uncomfortable about what had happened but having done some internet research concluded that it was part of the treatment of the sciatic nerve.
 10. Patient A attended the third appointment on 8 December 2016. The Registrant did not make any clinical note of this appointment either. The Registrant treated Patient A while she was lying on the treatment table. She was again wearing the swimming shorts. She said that the Registrant again put his fingers inside her shorts. On her account his fingers were on her groin area on this occasion for approximately thirty seconds. She was about to move her knee so as to make him remove his hand when the telephone rang. She recounted that the Registrant then got up and told her that the session was over. As with the previous appointment, she said there had been no discussion or explanation of the touching of the groin area, nor had she consented to it.

Decision on the facts

11. At the outset of the hearing, Ms Hearnden indicated on behalf of the Registrant that he admitted allegation 1. The Committee therefore found this allegation proved.
12. The Committee heard evidence from Patient A. The Registrant also gave oral evidence. The Committee accepted the advice of the legal assessor.
13. Having received the oral evidence as set out above and having carefully considered all the written evidence in the case, including an agreed

statement prepared by the experts and closing submissions on the facts prepared by each party, the Committee found as follows:

2. During the second appointment, Mr Lakhani put his fingers inside of Patient A's shorts and/or knickers and touched her pubis / groin area.

14. **Not proved.** The Committee considered that Patient A was a straightforward and credible witness. She was considered and fair during her evidence, readily conceding where she could not remember details. There was some indication in her language of uncertainty about other details; on more than one occasion she said she "*would have*" done something or been in a certain treatment position. When challenged on this, she corrected her account to "*I did...*" or "*I was...*".
15. It also appeared that her account of the incident at the second appointment had changed between her initial written complaint to the Council on 6 June 2017 and her subsequent statement to the Council and oral evidence before the Committee. In her initial complaint she said the Registrant at the second appointment "*moved his fingers to my groin area*". In the same document, she wrote of the incident at the third appointment: "***This time*** (emphasis added) *his fingers went into my shorts and rested on my groin area.*"
16. However in her statement given to the Council and her evidence to the Committee, Patient A described the Registrant's fingers during the second appointment as being inside her knickers so that he was touching her skin on top of her pubis. Further, the accounts of her reaction to the events of the second appointment differed – in the initial complaint she reported that: "*I wasn't comfortable with this*" whereas she told the Committee in the hearing that the second appointment had left her feeling "*violated*". There was therefore a degree of inconsistency between the accounts. When considering Patient A's evidence as a whole, the Committee preferred the account that she had provided in her initial complaint which was closest in time to the events complained of.
17. At the same time, the Committee acknowledged that the credibility of the Registrant was significantly in issue in this case. He accepted during the course of cross-examination by Mr Gillespie that when he first received Patient A's complaint from the Council in about June 2017, he had created with the assistance of his receptionist a post-dated and inaccurate note that purported to record the details of Patient A's first appointment. He had sent the fabricated note to the Council knowing it was false. The Registrant had relied on this false document to question Patient A's

credibility. As Mr Gillespie suggested in his cross-examination, these were not the actions of a truthful man.

18. The Committee did not consider that the Registrant's willingness to lie to the Council about his records or lack of them was in itself proof that this allegation was made out. The Registrant flatly denied that he had touched Patient A anywhere in the area of her groin; it was accepted by both parties that there was no clinical justification for doing so.
19. While the Committee did not in any way doubt that Patient A was an honest witness, it remained troubled by the discrepancy between the account of the incident contained in her initial complaint (which appeared to suggest that the touching on this occasion was in the groin area but outside her shorts) and the subsequent account described above.
20. For this reason and bearing in mind the cogency of the evidence required to support such a serious allegation, the Committee was not satisfied to the required standard that the allegation as drafted was made out and therefore found it not proved.

3. Before touching Patient A as described in paragraph 2 above, Mr Lakhani failed to:-

- a) explain to Patient A that he was going to touch an intimate area;
- b) explain to Patient A why he needed to touch an intimate area;
- c) obtain valid consent from Patient A to touch an intimate area;

21. **Not proved.** The Committee considered that the allegations under this head were contingent on the findings under head 2. Having not found head 2 proved, it followed that it could not therefore find head 3 proved.

4. During the second appointment, Mr Lakhani did not offer a chaperone to Patient A.

22. **Proved.** It was accepted by the Registrant during the course of his case that as a matter of fact he had not offered a chaperone to Patient A at any point during the course of treatment. The Committee therefore found this allegation proved.

5. During the third appointment, Mr Lakhani put his fingers inside of Patient A's shorts and/or knickers and rested his fingers / hand on her pubis / groin area

23. **Found proved as:** *During the third appointment, Mr Lakhani put his fingers inside of Patient A's shorts and rested his fingers/hand on her*

- groin area*. As indicated above the Committee considered Patient A to be a credible and cogent witness. There was nothing in the evidence presented to the Committee that suggested she had any reason to invent or imagine the incidents she had described.
24. To a limited extent, the Registrant's own evidence supported her account. Firstly, he reported that she had complained of right knee pain, related to a previous skiing injury. This would have suggested the need for the Registrant to treat or examine Patient A in the area of her right thigh.
25. Further, Patient A described some knowledge of the Registrant's personal circumstances and of a telephone call at the end of the third appointment resulting in a strange voicemail message for the Registrant. The Registrant denied he had had any conversation with Patient A about his personal circumstances or that there had been a telephone call as she described. Nevertheless, the details he provided in his evidence to the Committee of his personal circumstances seemed to chime with Patient A's evidence on the point and it was difficult otherwise to explain how she had acquired the information.
26. By contrast to Patient A, the Registrant's own conduct in deliberately providing false information to the Council prior to this hearing significantly undermined his credibility as a witness. He again denied that he had touched Patient A in or about the groin area as alleged.
27. On the whole, the Committee preferred Patient A's evidence about the third appointment and on that basis was satisfied on the balance of probabilities that the Registrant had put his hand/fingers inside her shorts and rested them on her groin area (which were the details of the incident she provided in her initial complaint).
28. There remained some uncertainty for the Committee about the question of whether the Registrant's hand or fingers were inside Patient A's knickers even after hearing her evidence. This detail was not mentioned in the original complaint. For that reason, the Committee were not satisfied to the requisite standards that the touching took place inside Patient A's knickers as alleged.

6. Before touching Patient A as described in paragraph 5 above, Mr Lakhani failed to:-

- a) explain to Patient A that he was going to touch an intimate area;
- b) explain to Patient A why he needed to touch an intimate area;
- c) obtain valid consent from Patient A to touch an intimate area;

29. **Proved.** As set out above, the Registrant denied touching Patient A in her groin area at all. In consequence there was no need on his account to explain what he was doing and why or to obtain consent from her to the touching. Having found allegation 5 proved, it likewise followed that the Registrant had failed to explain what he was doing, had failed to provide any reason why he was doing it or obtain Patient A's consent. She was clear in her evidence that she had not received any explanation of the Registrant's actions nor had she consented to them. The Committee were satisfied on the balance of probabilities that this allegation was proved in all three elements.

7. During the third appointment, Mr Lakhani did not offer a chaperone to Patient A.

30. It was accepted by the Registrant as a matter of fact that he had not offered a chaperone to Patient A at any point during the third appointment. The Committee therefore found this allegation proved.

8. Mr Lakhani's behaviour as described at paragraphs 2 – 7 above was:-

- a) sexually motivated and/or;
- b) transgressed professional boundaries and/or;
- c) inappropriate.

31. **8 a) Not Proved. 8 b) and c) Proved.** In the light of its findings on allegations 5, 6 and 7 and having considered the Osteopathic Practice Standards, the CHRE Clear Sexual Boundaries Guidance for Healthcare Professionals and the related Guidance for Fitness to Practise Committees, the Committee readily concluded that the Registrant had clearly transgressed the professional boundaries and that his behaviour was manifestly inappropriate. It therefore found these allegations proved on the balance of probabilities.

32. The Committee did not hear any direct evidence that the Registrant was sexually motivated in his actions. There was no evidence for instance that he had used sexualised language in front of Patient A or had exhibited any signs of arousal. The Committee accepted the legal advice it had received to the effect that it could infer sexual motivation from all the circumstances, though that also required weighing into the balance the significant amount of testimonial evidence supplied on behalf of the Registrant. That evidence, much of which was from female patients, supported the Registrant on the question of whether he had any propensity to sexually motivated acts in the context of his practice. While it was accepted by both parties that there was no clinical justification for

the Registrant to have put his hand anywhere on Patient A's groin area, the Committee did not feel the evidence of sexual motivation was sufficiently cogent to allow it to find this allegation proved to the required standard.

Decision on Unacceptable Professional Conduct

33. Mr Gillespie on behalf of the Council referred the Committee to the relevant law, in particular the guidance on the meaning of Unacceptable Professional Conduct given by Irwin J in *Spencer v General Osteopathic Council* [2012] EWHC 3147 (Admin) and section 19 of the Osteopaths Act 1993 which set out the required approach to failures to comply with the Osteopathic Practice Standards (OPS) in proceedings under the Act.
34. He submitted that the facts found proved by the Committee encapsulated a number of specific breaches of the OPS, namely: A3 (Give patients the information they need in a way that they can understand), A4 (You must receive valid consent before examination and treatment), C6 (Respect your patients' dignity and modesty), C7 (Provide appropriate care and treatment) C8 (Ensure that your patient records are full, accurate and completed promptly), D14 (Act with integrity in your professional practice -i.e. behaving as one should as a professional), D16 (Do not abuse your professional standing), D17 (Uphold the reputation of the profession through your conduct).
35. Mr Gillespie said that the facts found proved in the case demonstrated a number of serious breaches of OPS. In his submission, the Committee ought to take into account the number and gravity of the breaches of the OPS. He submitted that whatever the Registrant's motivation had been, Patient A had experienced a degree of harm. There was also an issue of the wider confidence and trust that the public must have in the profession. In summary the findings in the case encompassed a clinically unjustified physical examination, numerous breaches of the OPS and a transgression of professional boundaries. There was therefore no doubt that the Registrant's behaviour would evoke a degree of opprobrium in the reasonable informed member of the public and therefore constituted Unacceptable Professional Conduct.
36. Ms Hearnden on behalf of the Registrant accepted that the findings of the Committee in respect of allegations 5, 6, 7 and 8 demonstrated conduct that fell far short of the standard required of a registered osteopath and could therefore amount to Unacceptable Professional Conduct. However she asserted that neither allegation 1 or 4, which had also been found proved, could support a finding of Unacceptable Professional Conduct.

37. The Committee accepted the advice of the Legal Assessor. The Committee bore in mind that there is no standard of proof and that a determination as to whether the threshold for Unacceptable Professional Conduct has been reached is a matter of judgment. The Committee had regard to Section 20 of the Osteopathic Act 1993, which defines Unacceptable Professional Conduct as conduct which "falls short of the standard required of a registered osteopath". It considered guidance from the Council and the matters set out by Irwin J in *Spencer v GOsC* [2012] EWHC 3147 that Unacceptable Professional Conduct is conduct which implies some degree of "moral blameworthiness".
38. As had been outlined in submissions to it (and indeed had been accepted by Ms Hearnden on behalf of the Registrant), the Committee's findings demonstrated behaviour which fell far short of the required standard of a registered osteopath. The behaviour included breaches of the OPS and failures to comply with the CHRE Guidance on Clear Sexual Boundaries which were intended to protect the public. The Committee accepted that Patient A had suffered significant distress as a result of the Registrant's actions. The Committee considered that the facts of the case would certainly convey a degree of opprobrium and moral blameworthiness to the ordinary, intelligent citizen. It therefore found that the facts and particulars found proved amounted to Unacceptable Professional Conduct by the Registrant.

Decision on sanction

39. The Committee listened carefully to the submissions of Mr Gillespie on behalf of the Council and of Ms Hearnden on behalf of the Registrant. The Committee accepted the advice of the Legal Assessor. It took account of all the testimonials provided on behalf of the Registrant and considered the Council's Hearings and Sanctions Guidance. It considered carefully the mitigating and aggravating factors of this case. In conducting the balancing exercise which it was required to do in deciding on sanction, the Committee bore in mind the challenges the Registrant's disability created for his practice.
40. Having found the Registrant guilty of Unacceptable Professional Conduct, the Committee has to decide what sanction to impose. The Committee commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction.
41. The Committee considered that the following mitigating factors were present: firstly the facts found proved related to a single incident in the

context of the Registrant's long and previously blameless career. Secondly, the Committee took into account the many excellent testimonials provided for the Registrant, which speak to his caring nature and demeanour as well as to the efficacy of his treatment. Lastly, there had been no suggestion of any further problems with the Registrant's practice in the period since this complaint came to light.

42. The Committee found the following aggravating factors present. Firstly, Patient A had been caused real distress, which had impacted on her relationship with her partner. The Committee noted the lack of any expression of remorse by the Registrant for the effect these events had had on her.
43. Further, the fact that the Registrant had fabricated a consultation note (and had used that note to attempt to discredit Patient A's complaint in circumstances where, as he told the Committee, he suspected she was right about the relevant details) was a very serious aggravating factor in the Committee's view.
44. The Committee considered first of all whether an Admonishment was appropriate. The Committee had determined that the Registrant's conduct fell far short of the standard to be expected of a registered osteopath. The breaches of the OPS and the boundary transgression found proved were obviously not minor in nature. The Committee concluded therefore that an Admonishment would not meet the seriousness of the situation.
45. The Committee therefore went on to consider whether a Conditions of Practice Order would be appropriate in this case. The Committee concluded that conditions of practice would not be appropriate or proportionate to address the seriousness of the case. In particular, the Committee were concerned that the Registrant had not demonstrated sufficient insight to merit the imposition of conditions. In addition, rather than showing himself to be open and honest with Patient A in response to her complaint, he had in fact attempted to discredit her and mislead the Council.
46. The Committee then considered whether a Suspension Order would meet the justice of the situation. It concluded that it would. The proven breaches of the OPS and relevant guidance were serious. However, taking into account the isolated nature of the incident and the numerous positive testimonials on behalf of the Registrant, the Committee did not consider

that those breaches were fundamentally incompatible with continued registration.

47. The Committee further considered that a period of suspension was appropriate to send a message to the Registrant, the profession and members of the public that the behaviour demonstrated by this case was unacceptable for any registered osteopath. The Committee took the view that no sanction lower than suspension was sufficient to maintain confidence in the profession.
48. Having considered all the relevant factors, including the potential detriment to the Registrant's numerous current patients, the Committee determined that the Registrant's registration with the Council should be suspended for a period of 6 months.
49. The Committee will review the case at a review hearing to be arranged before the expiry of the period of suspension. In the interim period the Committee directs that the Registrant undertake training on the duty of candour requirement for healthcare professional and considers what that duty means for his own practice. Prior to the review hearing, he should prepare a reflective report for the Committee detailing the insights and learning he has gained from this training.
50. Having heard submissions from both parties the Committee did not consider it necessary for the protection of the public to impose an interim suspension order. Firstly, Ms Hearnden confirmed that the Registrant would continue his undertaking to see female patients only in the presence of a chaperone during the period before the Suspension Order came into effect. Secondly, there was no evidence before the Committee of any breach of that undertaking prior to this hearing nor had any further complaint against the Registrant come to light.

Under Section 31 of the Osteopaths Act 1993 there is a right of appeal against the Committee's decision.

The Registrant will be notified of the Committee's decision in writing in due course.

All final decisions of the Professional Conduct Committee are considered by the Professional Standards Authority for Health and Social Care (PSA). Section 29 of the NHS Reform and Healthcare Professions Act 2002 (as amended) provides

that the PSA may refer a decision of the Professional Conduct Committee to the High Court if it considers that the decision is not sufficient for the protection of the public.

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 we have applied today.