GENERAL OSTEOPATHIC COUNCIL

PROFESSIONAL CONDUCT COMMITTEE

Case No: 591/851

Professional Conduct Committee Hearing

DECISION

Case of:	Mr Mark Mathews
Committee:	Mr Philip Geering (Chair) Ms Rama Krishnan (Lay member) Mr Barry Kleinberg (Registrant member)
Legal Assessor:	Mr Gary Leong
Representation for Council:	Ms Nimi Bruce
Representation for Osteopath:	Mr David Freedman (6-10 November 2017)
Clerk to the Committee:	Ms Jemima Francis
Date of Hearing:	6 - 10 November 2017 15 and 16 January 2018

Summary of Decision:

Particulars found proved: 1(a), 1(b), 1(c), 1(d), 2(a), 2(b), 2(c), 2(d), 2(e) 3(a), 3(b), 3(c), 3(d), 4(a), 4(b), 4(d) 4(e), 4(g), 4(h), 4(i), 4(j), 4(k), 5(a), 5(c), 5(e), 5(f), 5(g), 5(h), 6, 7 and 8.

Particulars found not proved: 4(c), 4(f), 5(b), 5(d)

The Committee determined that the Registrant's name should be removed from the Register.

Allegation as amended:

It is alleged that you, Mark Mathews, are guilty of Unacceptable Professional Conduct, contrary to Section 20(1) of the Osteopaths Act 1993 in that:

1. *You saw and/or provided treatment to Patient A on:*
   - *(a) 7 July 2016*
   - *(b) 13 July 2016*
   - *(c) 20 July 2016*
   - *(d) 29 July 2016*
2. *At the appointment on 7 July 2016, you did not:*
   - *(a) take an adequate case history from Patient A;*
   - *(b) conduct an adequate examination of Patient A;*
   - *(c) formulate an adequate and/or clinically justified treatment plan;*
   - *(d) adequately explain the examination and/or treatment you intended to carry out:*
   - *(e) obtain valid consent from Patient A prior to the examination and/or treatment.*
3. *At the appointment on 13 July 2016, you:*
   - *(a) did not carry out an adequate examination of Patient A;*
   - *(b) did not formulate an adequate and/or clinically justified treatment plan;*
   - *(c) did not provide any treatment to Patient A's lower back;*
   - *(d) did not obtain valid consent from Patient A;*
4. *At the appointment on 20 July 2016, you:*
   - *(a) did not carry out an adequate examination;*

(b) provided Inferential-Electro Therapy treatment to Patient A but did not explain that this treatment modality was not included in NICE guidelines on effective treatment;

(c) did not adequately explain the treatment to Patient A;

(d) did not explain, adequately or at all, the risks of the treatment to Patient A;

(e) prescribed some minerals for Patient A to take each day;

(f) did not explain, adequately or at all, why it was necessary for Patient A to take the minerals;

(g) did not explain, adequately or at all, whether the minerals would interact with Patient A's regular medication;

(h) did not inform Patient A of the cost of the minerals prior to prescribing them;

(i) shouted and/or raised your voice when Patient A questioned the cost of the minerals;

(j) put pressure on Patient A to purchase the minerals which was inappropriate.

(k) did not obtain valid consent from Patient A.

5. *At the appointment on 29 July 2016, you:*

(a) did not carry out an adequate examination of Patient A;

(b) did not monitor, adequately or at all, the effect of the minerals that Patient A had been taking;

(c) provided Inferential-Electro Therapy treatment to Patient A but did not explain that this treatment modality was not included in NICE guidelines on effective treatment;

(d) did not adequately explain the treatment to Patient A;

(e) did not explain, adequately or at all, the risks of the treatment to Patient A.

(f) left Patient A unattended whilst the Electro-Therapy treatment was being administered;

(g) did not return promptly to Patient A to turn off the Inferential-Electro therapy machine when the 'buzzer'/timer had sounded;

(h) did not respond to Patient A's calls for assistance.

6. The Inferential-Electro Therapy treatment that you provided to Patient A on 29 July 2016 resulted in Patient A sustaining skin damage on his back.

7. Between the appointments on 7 July 2016 and 29 July 2016, you did not communicate appropriately with Patient A, in that you:

(a) spoke to Patient A in a lecturing and/or domineering manner;

(b) made inappropriate comments about other healthcare professionals to Patient A.

8. By reason of the facts alleged at paragraphs 2, 3, 4, 5, 6 and 7 above, you failed to provide appropriate care and treatment to Patient A.

Background:

1. The Registrant has been practising as an Osteopath for 39 years and had not had any previous complaint made against him as a Registrant. Patient A had suffered from recurring problems with his back since his school days. Historically, Patient A had a problem with his back, typically around the sacroiliac joints, which tended to lock up and restrict his movements. Following a flight to Australia he had a recurrence of his back problem. Patient A's previous Osteopath had retired and he looked for a new Osteopath.

2. Patient A had four appointments with the Registrant. Those four appointments form the particulars of the allegation before the Committee. The allegation and its particulars speak for themselves.

Preliminary matters:

Conflict of interest

3. The Registrant Committee member indicated that he and Mr Freedman were known to each other as they have a religious association but that they did not have any other substantive relationship, personal or professional.

4. The Committee accepted the advice of the Legal Assessor.

5. The Committee was aware that the first issue to be decided was whether the Registrant Committee member himself felt that his independence was compromised. If so, the legal advice was that he must recuse himself.

6. If the Registrant Committee Member felt that his independence was not compromised, nevertheless the Committee must consider whether the fair-minded observer, having considered the facts and circumstances of the case, would conclude that there was a real possibility that the tribunal was biased.

7. The Committee noted that the Registrant, nor Ms Bruce, objected to the Registrant Committee member continuing to hear this case. The Committee member was satisfied that his independence was not compromised and that he was able to do justice to this case.

8. The Committee also considered that the fair-minded observer, having considered the facts and circumstances of this case, would not conclude that there was a real possibility that this Committee was biased were the Committee member to continue.

9. Therefore the Committee determined that there was no need for the Committee member to recuse himself from this case.

Amendment of Allegation

10. At the conclusion of Patient A's evidence, Ms Bruce applied to amend dates given in the Allegation. She submitted that the amendments sought were consistent with the evidence that Patient A had given and that the mistake as to the dates when events occurred was an innocent mistake.

She submitted that no injustice would be caused as the Registrant had accepted some of those Particulars.

11. Mr Freedman, on behalf of the Registrant, did not object to the amendments sought.

12. The Committee accepted the advice of the Legal Assessor, who advised it of its powers under Rule 24 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000.

13. The Committee considered the amendments sought and took into account that there was no objection from Mr Freedman to the amendments. It further noted that Mr Freedman had asked the witness questions which flagged up the incorrect dates. The Committee determined that the amendments served to clarify the allegation and would not cause injustice. The Committee therefore allowed the amendments to be made. The amended Allegation is as set out above. The initial admissions made by the Registrant were reconfirmed in light of the amended Allegation.

14. The original un-amended allegation is as follows:

Original un-amended allegation

It is alleged that you, Mark Mathews, are guilty of Unacceptable Professional Conduct, contrary to Section 20(1) of the Osteopaths Act 1993 in that:

1. You saw and/or provided treatment to Patient A on:

(a) 7 July 2016

(b) 13 July 2016

(c) 20 July 2016

(d) 29 July 2016

2. At the appointment on 7 July 2016, you did not:

(a) take an adequate case history from Patient A;

(b) conduct an adequate examination of Patient A;

(c) formulate an adequate and/or clinically justified treatment plan;

(d) adequately explain the examination and/or treatment you intended to carry out:

(e) obtain valid consent from Patient A prior to the examination and/or treatment.

3. At the appointment on 13 July 2016, you:

(a) did not carry out an adequate examination of Patient A;

(b) did not formulate an adequate and/or clinically justified treatment plan;

(c) did not provide any treatment to Patient A's lower back;

(d) prescribed some minerals for Patient A to take each day;

(e) did not explain, adequately or at all, why it was necessary for Patient A to take the minerals;

(f) did not explain, adequately or at all, whether the minerals would interact with Patient A's regular medication;

(g) did not inform Patient A of the cost of the minerals prior to prescribing them;

(h) did not obtain valid consent from Patient A;

(i) shouted and/or raised your voice when Patient A questioned the cost of the minerals;

(j) put pressure on Patient A to purchase the minerals which was inappropriate.

4. At the appointment on 20 July 2016, you:

(a) did not monitor, adequately or at all, the effect of the minerals that Patient A had been taking;

(b) did not carry out an adequate examination;

(c) provided Inferential-Electro Therapy treatment to Patient A but did not explain that this treatment

modality was not included in NICE guidelines on effective treatment;

(d) did not adequately explain the treatment to Patient A;

(e) did not explain, adequately or at all, the risks of the treatment to Patient A;

(f) did not obtain valid consent from Patient A.

5. *At the appointment on 29 July 2016, you:*

(a) did not carry out an adequate examination of Patient A;

(b) did not monitor, adequately or at all, the effect of the minerals that Patient A had been taking;

(c) provided Inferential-Electro Therapy treatment to Patient A but did not explain that this treatment modality was not include in NICE guidelines on effective treatment;

(d) did not adequately explain the treatment to Patient A;

(e) did not explain, adequately or at all, the risks of the treatment to Patient A.

(f) left Patient A unattended whilst the Electro-Therapy treatment was being administered;

(g) did not return promptly to Patient A to turn off the Inferential-Electro therapy machine when the 'buzzer'/timer had sounded;

(h) did not respond to Patient A's calls for assistance.

6. *The Inferential-Electro Therapy treatment that you provided to Patient A on 29 July 2016 resulted in Patient A sustaining skin damage on his back.*

7. *Between the appointments on 7 July 2016 and 29 July 2016, you did not communicate appropriately with Patient A, in that you:*

(a) spoke to Patient A in a lecturing and/or domineering manner;

(b) made inappropriate comments about other healthcare professionals to Patient A.

8. By reason of the facts alleged at paragraphs 2, 3, 4, 5, 6 and 7 above, you failed to provide appropriate care and treatment to Patient A.

Application to proceed in the absence of the Registrant's absence on 16, 17, and 18 January 2018

15. On 16 January 2018, neither the Registrant nor his legal representative attended. The Committee began the resumption of proceedings by considering whether to proceed in the absence of the Registrant, pursuant to Rule 20 of the Rules. In doing so, it considered the submissions of Ms Bruce on behalf of the Council.

16. The Committee had sight of the service documents. The notice of the hearing was sent to the Registrant at his address as it appeared in the Register on 15 December 2017. The notice contained the date, time and venue of when the hearing was due to resume.

17. The Committee accepted the advice of the Legal Assessor and is satisfied that notice of the hearing has been served in accordance with Rule 9 of the Professional Conduct Committee (Procedure) Rules 2000.

18. Ms Bruce submitted that the GOsC had taken all reasonable steps to serve the notice on the Registrant and that the Registrant is aware of today's proceedings. Ms Bruce drew the Committee's attention to the correspondence received from the Registrant, in particular:

a) the email from Mr Mathews dated 2 January 2018 wherein he stated, *"I have no intention of having any on going relationship with the GOsC. As it happened, in any case, my daughter's* [sic] *Graduation ceremony for her post graduate degree is on the 16th of January which I will be attending.";* and

b) the letter from Mr Mathews received by the Council on 10 January 2017. In that letter, and in reference to the resumption of the hearing, Mr Mathews stated, "... *as far as I am concerned, I have resigned from being a registered osteopath. As such, I have no*

intention of appearing before any of your people on the 15, 16 and 18 of January."

19. Ms Bruce submitted that the Registrant's absence from the hearing was voluntary and that he had waived his right to attend and/or to be represented. She further submitted it was right and proper that the matter proceed in the absence of the Registrant as it was clear, from the correspondence from the Registrant, that an adjournment would serve no useful purpose and there was a public interest in the matters being dealt with expeditiously.

20. The Committee accepted the advice of the Legal Assessor. He drew the Committee's attention to the case of *GMC v Adeogba and Visvardis [2016] EWCA Civ 162.* The Committee was satisfied that all reasonable efforts had been made to serve the notice of hearing on the Registrant and that the Committee had the discretion to proceed in the absence of the Registrant. The Committee reminded itself that the discretion was to be exercised with care and caution.

21. It was clear from the principles derived from case law that the Committee was required to perform a balancing exercise to ensure that fairness and justice was maintained when deciding whether or not to proceed in a Registrant's absence.

22. The Committee was satisfied that the Registrant was aware of the hearing.

23. In deciding whether to exercise its discretion to proceed in the absence of the Registrant, the Committee took into consideration the Council's practice note entitled, *Proceeding in the absence of the registrant*. The Committee weighed its responsibilities for public protection and the expeditious disposal of the case against the Registrant's right to a fair hearing.

24. In reaching its decision the Committee took into account the following:

- The Registrant has not made an application to adjourn today's hearing;
- There is no indication that he wishes to attend today's hearing, nor any future hearing, were the Committee to adjourn today's hearing.

The Registrant had made it clear in his correspondence that he did not wish to engage with this process any further;

- The Registrant had made an application to resign from the GOsC's Register, which has been placed in abeyance pending the outcome of these proceedings.

25. The Committee was satisfied that the Registrant had voluntarily absented himself from the hearing and had waived his right to be represented. It determined that it was unlikely that an adjournment would result in the Registrant's attendance at a later date. Having weighed the public interest in the expeditious disposal of this case against the Registrant's own interest, the Committee decided to proceed in the Registrant's absence.

Determination on the facts:

26. The Committee has carefully considered all the evidence in this case. It has noted the submissions of Ms Bruce on behalf of the GOsC and Mr Freedman on behalf of the Registrant. It has accepted the advice of the Legal Assessor.

27. On behalf of the Council, the Committee heard oral evidence from Patient A and an expert witness, Mr Jonathan Hearsey. It received a bundle of documents from the GOsC. On behalf of the Registrant, the Committee heard oral evidence from the Registrant. It also received a bundle of documents from the Registrant.

28. The Committee reminded itself that the burden of proving the facts is on the Council alone and that the standard of proof is the ordinary civil standard, namely the balance of probabilities.

29. At the start of proceedings, the Registrant made admissions to some of the particulars. After the Allegation was amended, the admissions that Registrant made at the start of proceedings translate to the following particulars of the amended Allegation: 1(a), 1(b), 1(c), 1(d), 4(b), 4(e), 4(h), 5(c), 5(e), 5(f), 5(g), 5(h), and 6. The Committee noted that there were inconsistences with regard to the date of the charges and the documentary evidence. However, those matters did not affect the charges in any substantive manner. Therefore, in accordance with rule 27 of the General Osteopathic Council (Professional Conduct Committee)

(Procedure) Rules 2000, the Committee finds those particulars proved by way of the Registrant's admission.

30. In relation to Particular 1, the Committee noted that there were inconsistencies in the evidence of the records relating to the dates of the treatment sessions. However, there was no dispute that there were in fact four sessions during July 2016. Therefore these inconsistencies were not substantive in nature.

31. In relation to the Registrant's admission to Particular 6, the Committee noted the Registrant's evidence that it was his standard procedure to leave the patient during the Interferential Electro Therapy ("IET") treatment so that he could treat another patient and that there was no clinical need for him to remain in the room. This was because the IET machine was on a timer and the timer would switch off the electricity. However, the timer did not control the pump for the suction pads which would remain in place. The Registrant told the Committee that an additional buzzer was placed with his receptionist at a shorter time interval so that when it went off, she could go and get the Registrant.

32. The Registrant stated that on this occasion, the receptionist was not at the desk when the buzzer went off, and he was not called. The Registrant said that he was with another patient and accepted that he had forgotten about Patient A.

33. The Registrant's admission to Particular 6 was on the basis that he accepted responsibility as director and proprietor of the clinic. Even when it was strongly put to him in cross-examination that he had a responsibility as a clinician, he maintained his position and did not accept responsibility as a clinician. It was only after further questioning by the Committee that the Registrant accepted some responsibility as the Osteopath responsible for Patient A.

34. The Committee then went on to consider the remaining factual particulars.

35. The Committee heard oral evidence from Patient A and the Registrant. It found them both articulate.

36. The Registrant told the Committee about the sessions with Patient A on the sessions in question. He also told the Committee of the techniques

that he used in his practice when assessing and treating his patients, including Patient A. It is clear from his evidence that he incorporates Applied Kinesiology (AK), Interferential Electro Therapy (IET) and Homeopathy into his Osteopathic practice.

37. The Committee found Patient A to be a man of considerable experience of using Osteopaths and osteopathic treatment, and it was evident that he was open to diverse approaches to Osteopathy – having experienced cranial osteopathy and water bed treatment. He gave his evidence in a measured and fair manner – when he could not remember he said so and on a number of occasions gave evidence "*out of fairness to the Registrant".* There was no evidence of him having any ulterior motive in the making his complaint.

38. Patient A told the Committee that he had a chronic problem with his lower back from the time when he was at school, which was some 50 years ago. He stated that as a result he had been to see many Osteopaths at a frequency of about four times per year, in part to maintain good health and in part in response to when he had particular issues with his back.

39. The Committee found the Registrant very passionate and enthusiastic for Osteopathy and in particular for Applied Kinesiology. The Committee does not believe that he set out expressly to mislead the Committee, but there were instances when he was giving evidence that gave the Committee concern about the reliability of some of his evidence. For example, there was a conflict in the oral evidence between the Registrant and Patient A regarding magnets: the Registrant gave evidence that he had shown the magnets to Patient A, whilst Patient A when shown the magnets in the hearing, was clear he had never seen them before. Patient A gave evidence that his understanding was that the Registrant had been using stones. The Committee concluded that the Registrant may well believe in his mind that he had showed Patient A the magnets. However, whatever the Registrant believed, the Committee was satisfied that Patient A's evidence of not having been shown the magnets was the more reliable. The Committee was shown the magnets that were disc shaped and bright blue and red in colour. It is very unlikely that Patient A would forget them or mistake them for stones had he been shown them.

40. In the Committee's assessment, the Registrant presented with a particularly high degree of self-confidence and a strong belief that when it

come to treating patients he knew best. The Committee concluded that his communication style and approach could prevent him from having effective dialogue with his patients, including with Patient A. The Committee had no doubt that the Registrant intended to do his best for his patients but only on the basis of his methods and on his understanding of the cause of the patient's ailment and disregarding the patient's perspective. The Registrant himself spoke to the Committee about how he would by-pass the *"patient's mouth"* and listen to the "*innate wisdom of the body".*

Particular 2(a)

2. At the appointment on 7 July 2016, you did not:

(a) take an adequate case history from Patient A;

41. Patient A told the Committee that on this appointment there was very little discussion about his previous history. He said that when he arrived for his first appointment, he was given a New Patient Questionnaire (NPQ) to fill in, which he did. Patient A told the Committee that the Registrant's discussion of his previous medical history was very brief, taking about 60 seconds. He told the Committee that it appeared to him that the Registrant did not appear to consider his previous issues relevant to his treatment, although the Registrant did ask some questions about his previous medical history using the NPQ. Patient A said that he did tell the Registrant about an on-going major health condition but the Registrant did not appear to consider that significant.

42. Patient A told the Committee that the Registrant appeared to have a standard patter that he delivered in a continuous monologue. This is corroborated by the Registrant, when he told the Committee that he had a standard delivery of the type of care he provided his patients, his focus on the treatment of *"causes rather symptoms".* He demonstrated his standard patter to the Committee.

43. The expert witness told the Committee that Patient A's on-going medical condition was a very significant factor that should have been taken into consideration by any Osteopath before administering any treatment. The expert witness told the Committee that the on-going condition presented various risks to administering osteopathic treatment and as such, there

should have been an in-depth questioning of Patient A regarding that condition when taking a case history from Patient A.

44. The Registrant told the Committee that he did attempt to take a case history from Patient A. He said that he used the NPQ, that had been filled in by Patient A prior to the appointment, as the starting point of his questions to Patient A about his prior medical history. He told the Committee that he spent approximately 10-15 minutes going through the questionnaire with Patient A. When asked to elaborate further, he said that this consisted of him talking to Patient A about his approach to treatment.

45. The Registrant went on to tell the Committee that he did ask Patient A about his previous medical history but that Patient A was not forthcoming about his previous medical condition as he was "*obsessed*" and "*fixated"* about the pain in his back, insisting that there was nothing else wrong with him. The Registrant said his priority was to find the cause and a way of dealing with it, but that the patient's priority was the relief of pain. The Registrant stated that he went on to examine Patient A using Applied Kinesiology, rather than going "*round and round talking about back pain"* because Patient A was not responding to the questions he was asking about his case history, and because it was a "*better use of my time"*.

46. The Registrant drew the Committee's attention to the brief notation contained in the patient notes as evidence that he had made notes of the patient's medical history. The Registrant accepted that Patient A fell into a risk group because of his age and previous medical history, though the oral evidence of the Registrant demonstrated that whilst he was aware of Patient A's on-going major health condition, he did not consider it a significant factor in his treatment of Patient A. This corroborates the evidence of Patient A.

47. In considering the adequacy of the case history taken by the Registrant, the Committee determined that there were two elements to the taking of case history:

    a) **The taking of general medical history.** The Committee noted that the patient notes contained information beyond that contained on the NPQ. This indicated that there must have been some dialogue between the Registrant and Patient A. However, the

Committee determined that it was highly unlikely that Patient A was not willing to provide information had he been asked questions directly relating to his significant on-going health condition. Patient A was more than forthcoming in evidence to the Committee about his medical history. He made it very clear that his medical history was a priority for him about which he did not take risks, had adjusted his lifestyle as a result, and was content to be open about it.

b) **The taking of the history of the presenting complaint.** The Committee heard no evidence that the Registrant asked Patient A the sort of detailed questions that would be reasonably expected of a competent Osteopath when dealing with lower back pain. The expert witness gave evidence that the Registrant should have asked questions relating to:

i) the history of the symptoms;

ii) the nature and precise location of the pain. Whilst there is some evidence on the patient notes regarding prolonged sitting being an aggravating feature of the pain, there is no note, for example, about what might have been found to mitigate the pain;

iii) any other symptoms on the body;

iv) the swollen feet of Patient A;

v) questions relating to stenosis. He did not test for stenosis despite the age of Patient A.

48. The Committee concluded that whilst there may have been some limited discussion regarding Patient A's general medical condition, as illustrated by the brief notes on the patient's record, it was an inadequate examination as was the discussion regarding the presenting complaint.

49. In the light of the evidence before the Committee, it determined that Particular 2(a) is proved on the balance of probabilities.

Particular 2(b)

2. At the appointment on 7 July 2016, you did not:

(b) conduct an adequate examination of Patient A;

50. Patient A said that he could not fully recall his first meeting with the Registrant. However, he did recall that the Registrant took one arm and pushed it. He said the first appointment mainly consisted of the Registrant using what he understood to be stones, and putting these on his chest. Patient A said he did not understand what relevance that was to his lower back. Patient A did accept that the Registrant set out his broad approach to Patient A's treatment.

51. The expert witness told the Committee that a standard osteopathic examination of a patient would include tests such as nerve integrity testing and reflex testing. He told the Committee of the tests that should have been carried out in the case of Patient A taking into account his presenting problem of lower back pain, and his on-going medical condition. He stated that "*applied kinesiology shares a number of theoretical aspects with osteopathic practice, but when practicing* [sic] *as an osteopath primarily, the osteopathic practice standards must be adhered to and adjacent therapies must be used as an adjunct and not as a primary mode of clinical assessment and practice without explicit consent.*"

52. The Registrant told the Committee that he used a variety of techniques to examine Patient A but said that he found Applied Kinesiology ("AK") a useful way of conducting an examination of Patient A. He explained the various AK techniques he used to examine Patient A and took the Committee though the patient notes, illustrating each part of the examination to the Committee.

53. The Registrant told the Committee that Patient A's main concerns were with the pain he was experiencing.

54. When questioned, the Registrant accepted that he did not conduct any tests relating to the Registrant's pain, or his on-going medical condition despite the presenting indicators. He said he did not do nerve integrity testing nor reflex testing. He stated that such tests were more appropriate in a hospital setting but not appropriate for him as AK provided him with

more information and "*better use of my time".* He stated that it would have taken an undue amount of time to carry out the tests that the expert witness stated should have been carried out in relation to Patient A.

55. The Committee determined that there was no evidence that the Registrant took Patient A's blood pressure or pulse. There is evidence that there was some examination as there are notes relating to the Patient A's skin tone, and possibly some palpation.

56. However, the Committee determined that the Registrant failed to carry out an osteopathic examination of Patient A, and that one should have been carried out. It also determined that there was sufficient time to carry out such an examination as the first appointment was a double session.

57. The Committee determined that the Registrant was focused on AK, which he used as an adjunct to osteopathic treatment. The Committee determined that AK should not have been given primacy by the Registrant in the way that he did when carrying out his examination of Patient A. It was necessarily important to have carried out tests relating to the lower back pain, which was the reason Patient A was seeing the Registrant. Further, it was especially important to have carried out tests in relation to Patient A's on-going health condition before commencing treatment. Even if AK was a "*natural extension"* of osteopathy as the Registrant believes, then he failed to carry out the basic osteopathic examination by only carrying out the AK examination.

58. The Committee finds this Particular 2(b) proved.

<u>Particular 2(c)</u>

> *2. At the appointment on 7 July 2016, you did not:*
>
> *(c) formulate an adequate and/or clinically justified treatment plan;*

59. Patient A told the Committee that there was no treatment plan and that the Registrant immediately started the treatment whilst examining him.

60. The expert witness told the Committee that there cannot be an adequate clinically justified treatment plan without an adequate examination. He

told the Committee that he could not find evidence of any treatment plan in the Registrant's notes of Patient A.

61. The Registrant told the Committee that the pack that is given to new patients contained the treatment plan. He accepted that the treatment plan contained therein was a general plan and was not specific to any patient in particular. He also accepted that the pack was given to Patient A at the end of the appointment on 7 July 2016. The Registrant told the Committee that his approach was an integrated approach - as and when during his examination he finds a problem he immediately treats it. He told the Committee that *"the body says what it needs, and the body sets up the plan."* He told the Committee that he regarded treatment plans as "*no more than guess work."*

62. The Committee determined that without an adequate case history or examination, there cannot be an adequate or clinically justified plan. On that basis alone, this particular is proved.

63. However, the Committee further determined that, by the Registrant's own evidence, he did not formulate a treatment plan that was adequate nor clinically justified. He stated that his approach was that there is no plan other than to treat a problem immediately upon encountering it.

64. The Committee considered that one purpose of a treatment plan that is adequate and clinically justified is to ensure patient safety. Another purpose is to enable the patient to understand what treatment is being provided and for what purpose, and what the risks are, so as to be able to provide informed consent

65. The Committee find Particular 2(c) proved on the balance of probabilities.

<u>Particular 2(d)</u>

At the appointment on 7 July 2016, you did not:

(d) adequately explain the examination and/or treatment you intended to carry out:

66. Patient A told the Committee that the Registrant's explanation took the form of a long continuous monologue with little to no opportunity for him to ask questions or interject. He told the Committee that there was no real

dialogue and that the Registrant was telling him what to do and when he asked a question the Registrant just spoke over him. Patient A said that there was no discussion about the elements. He said he gave up asking question as the Registrant talked incessantly. Patient A told the Committee that he had been to see Osteopaths for over 50 years at a rate of about three to four times a year and had never been treated in a similar manner.

67. The Registrant's evidence did not contradict Patient A's. The Registrant is clearly enthusiastic about his practice and his methods. It was clear to the Committee however, that he would provide explanations that were overly complicated and overly detailed. When asked if he thought Patient A understood his long and detailed explanation, the Registrant stated that he thought that Patient A "*would have got the general atmosphere of what I do...*"

68. The Committee determined that the Registrant's explanation of his examination and treatment was in a form of a monologue that was continuous, lecturing and with little opportunity, or desire, to take questions. It was noted that even during his evidence, when the Registrant was asked questions, he would speak over the person asking the question, including his own legal representative.

69. The Committee is aware that any form of communication is a two-way process. Even the process of effective explanation requires the comprehension of the explanation by the person to whom the explanation is being given. It was clear that in the case of the Registrant and Patient A, there was a constant flow of information from the Registrant that would have been difficult for Patient A to understand, and that the Registrant was not concerned with the comprehension of Patient A. Even in his explanation to the Committee, the Registrant used technical terms and phrases, such as "*hypotonic", "normotonic" "new normal phase one, two and three", "muscles switching on and off"* – terms and phrases that would be meaningless to anyone other than a practitioner of AK without further elaboration. There was no evidence that the Registrant went beyond speaking those terms and phrases to make sure Patient A understood what that being said. It was incumbent upon the Registrant to do so.

70. The Committee finds particular 2(d) proved on the balance of probabilities.

Particular 2(e)

> *At the appointment on 7 July 2016, you did not:*
>
> *(e) obtain valid consent from Patient A prior to the examination and/or treatment.*

71. Patient A told the Committee that over the years he estimated he has had over 200 sessions with osteopaths.

72. The expert witness accepted the fact that Patient A complied with the instruction given by the Registrant could be taken as implied consent.

73. The Registrant told the Committee that what he was concerned with was the "*innate intelligence of the body.*" He said,

> *"I did not see a lot of point in getting into any academic discussion with about things he clearly would not have understood, which would have taken a lot of time and would not have made him any better, so I wanted to get to the facts as quickly, efficiently and effectively as I could."*

He further stated:

> *"I am collecting data* [through AK examination] *to help him and I did not expect or would not expect … to go into a lot of technical discussion or detail which I would not expect him to have the knowledge to understand, or perspective to make sense of. I have given that overview at the beginning, he has had it in writing and also he had signed to agree to it."*

74. The Osteopathic Practice Standards ("OPS") at section A.4.2, states that consent requires the understanding by the patient of the nature, purpose and risks of the examination. The OPS at A.4.6 states that patients can give consent, written or orally, or may give consent impliedly by getting undressed in preparation for an examination.

75. The Committee considered that for consent to be valid, it must be an informed decision taken by the patient to the examination and/or treatment. Therefore, the patient will need to have been provided with adequate information, in a comprehensible and comprehended manner, in order to make an informed decision. That comprehension must relate to the nature, purpose and risk of the propose examination and treatment.

76. The Committee did not consider that the NPQ with the 'consent signature' at the back of the form to constitute valid consent. That is because when Patient A filled in the NPQ, he did not know what treatment he would be receiving and therefore could not be consenting to it. Furthermore, the information pack containing the information relating to the type of treatment he received that day was only given to him after the session and is, in any event, a generic document not specific to Patient A.

77. The Committee has determined that the Registrant did not provide an adequate explanation of his examination or his treatment to Patient A such that Patient A was able to comprehend what was being said to him. It was clear that Patient A did not understand what the Registrant was telling him. Furthermore, from the demonstration by the Registrant of the explanation provided, it was clear that risks were not part of that explanation. In the circumstances, the Committee was satisfied that it would not be appropriate to infer from Patient A's compliance with the instructions of the Registrant as implied consent. Furthermore, the evidence of the Registrant was that he treated any problem encountered when it was encountered and he did not in those circumstances obtain consent from Patient A when doing so.

78. On the evidence before the Committee, it is satisfied that valid consent had not been obtained prior to the examination, nor prior to the treatment. Notwithstanding this, the Registrant was using Applied Kinesiology as his examination tool, it was being provided in the osteopathic setting and consent was still required before using such adjunct methods.

79. Therefore the Committee finds Particular 2(e) proved on the balance of probabilities.

Particular 3(a)

3. At the appointment on 13 July 2016, you:

(a) did not carry out an adequate examination of Patient A;

80. Patient A told the Committee that he had only agreed to continue having a further session with the Registrant after 7 July 2016 on the basis that the Registrant would work on Patient A's lower back rather than continuing to calculate what mineral deficiencies his body might suffer from. He stated that the Registrant accepted that basis but stressed that the mineral deficiencies could cause Patient A's lower back pain.

81. Patient A stated that at the start of the session on 13 July 2016, he expected the appointment to involve more physical treatment on his lower back. Patient A said that when he asked that question, the Registrant "*went straight into a lecture about how we need to find the cause of the problem."* Patient A said that the Registrant did conduct an examination that consisted of looking at how he moved his arm and leg and putting him in different positions. However, he could not recall the full details given that the appointment took place over 15 months ago. There was minimal explanation from the Registrant.

82. Patient A stated that the Registrant told him that the ultrasound treatment provided the previous week was "*to make him happy*". Patient A agreed that the Registrant did carry out some examination on him on 13 July 2016. However, the description he gave is that of AK, similar to the previous occasion.

83. The Registrant gave evidence of the examination carried out on Patient A on this occasion and he stated that he used AK as on the previous session, and did not carry out an adequate osteopathic examination.

84. The Committee determined that on this occasion, the Registrant did not carry out an adequate examination of Patient A. There is evidence that the Registrant carried out an AK examination – for example, the Registrant instructing A to put his fingers into his ears, and to put his thumb into his mouth, touching the upper part of his mouth. Again, the Registrant was focused on AK which is adjunct to osteopathic treatment

and should not have been given primacy by the Registrant when carrying out his examination of Patient A, when an osteopathic examination was required. It was necessarily important to have carried out tests relating to the lower back pain, which was the reason Patient A was seeing the Registrant again. Further, it was equally important to have carried out tests in relation to Patient A's on-going health condition on this occasion before commencing treatment.

85. The Committee therefore finds Particular 3(a) proved.

Particular 3(b)

3. At the appointment on 13 July 2016, you:

(b) did not formulate an adequate and/or clinically justified treatment plan;

86. There was no evidence of a treatment plan. The Registrant reiterated to the Committee his approach of having a "*conversation with the body"* and of having no specific plan other than to treat a problem immediately upon encountering it when conducting a variety of mini tests on the body.

87. The Committee finds Particular 3(b) proved.

Particular 3(c)

3. At the appointment on 13 July 2016, you:

(c) did not provide any treatment to Patient A's lower back;

88. Patient A told the Committee that he had only agreed to continue having a further session with the Registrant after 7 July 2016 on the basis that the Registrant would work on Patient A's lower back rather than continuing to calculate what mineral deficiencies his body might suffer from. He stated that the Registrant accepted that basis but stressed that the mineral deficiencies could cause Patient A's lower back pain.

89. Patient A told the Committee that on this occasion, the Registrant did not provide any treatment to his lower back. The Registrant did not dispute that. The Registrant's position was that he was treating the causes of the lower back pain as he encountered them when examining the patient, but

Patient A was "*obsessed*" with the pain he was feeling in his lower back. There is evidence in the patient notes of treatment to the upper neck but not to the lower back.

90. There was no evidence that the Registrant provided any treatment to Patient A's lower back.

91. The Committee finds Particular 3(c) proved on the balance of probabilities.

Particular 3(d)

3. At the appointment on 13 July 2016, you:

(d) did not obtain valid consent from Patient A;

92. In the Registrant's letter to the GOsC and in his oral evidence to the Committee, the Registrant consistently stated that he gave "*instructions"* to Patient A to do things. This is consistent with his directive style displayed to the Committee by him.

93. The Registrant stated in evidence that he "*did not see any point about getting into an academic discussion. I wanted to get to the facts ASAP."* The Registrant further stated, "*I am collecting data to help him, so I did not expect to go into detail that he would not understand … I had given that overview in the beginning* [of the first session]. *He has it in writing and also he had signed to agree to it* [NPQ]*"* In addition the Registrant said that Patient A's *"body indicated that it could benefit from it and I am treating his body, which also is part of him. I am not talking to him intellectually, I am responding to the tests of the functional neurology that told me"*.

94. The Registrant's evidence was that at not time did Patient A "*complain or refuse to cooperate with the test. At the same time it seemed that his only concern was his lower back pain. He seemed to think that this was something that simply happened on its own. … People who are in pain often tend to become over-focussed on the symptoms."*

95. Patient A told the Committee that he had not been shown the activator and therefore he did not consent to its use on him.

96. Whilst there was some evidence that Patient A may have agreed to some of the treatment (e.g. the manipulation of his elbow), it was clear he could not have given consent to other treatment because he did not remember giving consent. An example is the Registrant's use of the activator – a device so striking in appearance that had it been shown to Patient A at the time, as it had been to the Committee and Patient A during the hearing, it would have given Patient A cause to question its purpose and its use. It is not a device easily missed nor forgotten.

97. A further treatment provided on that occasion was homeopathic treatment. This was in the form of drops placed on Patient A's tongue. Patient A stated that because of the medication he was taking for his on-going medical condition, he would never have consented to homeopathic treatment. He stated that the Registrant did not explain that he was providing homeopathic treatment. Patient A stated that he thought the drops were part of the testing process.

98. The Registrant stated that he remembered explaining that the tests were homeopathic and that Patient A did not object.

99. This aspect of the Registrant's understanding of the concept of consent was of concern to the Committee. It was put to the Registrant that if there was no objection from the patient, then he would take that as consent. The Registrant replied, "*yes, if they do what I say, and he agreed to take the drops*". It was also put to him that even if a patient did not agree, he would nevertheless carry on with the treatment if he thought it best. To this the Registrant replied, "*in so far as he responded and cooperated with what I did, I regard that as consent."*

100. Taking the above into consideration, together with what the Committee considered to be, the domineering attitude of the Registrant, described by Patient A, and as experienced during the hearing, and his approach to treating whilst examining, the Committee determined that valid consent had not been obtained from Patient A.

101. Therefore Particular 3(d) is proved on the balance of probabilities.

<u>Particular 4(a)</u>

4. At the appointment on 20 July 2016, you:

(a) did not carry out an adequate examination;

102. Patient A stated that on this occasion, upon arrival for the appointment, he went into the Registrant's room where they sat down and the Registrant asked him how he was. This took about 60 seconds. Then they went into an adjoining room where the IET machine had been set up. Patient A stated that before the IET was carried out, the Registrant examined him by using AK as he did the week before.

103. The medical notes show an examination of Patient A's elbow, but the notes also reveal that such examination as was carried out on Patient A on that day was using AK and NLP, as opposed to an adequate osteopathic examination. The Registrant's own evidence is that he did not carry out the examination using osteopathy but rather the adjunct AK.

104. The Committee determined that the Registrant was again focused on AK which is adjunct to osteopathic treatment and should not have been given primacy by the Registrant when carrying out his examination of Patient A. He failed to carry out tests in relation to Patient A's on-going health condition before commencing treatment. Tests relating to the lower back pain were still required, which was the reason Patient A was seeing the Registrant yet again.

105. The Committee finds Particular 4(a) proved on the balance of probabilities.

<u>Particular 4(c)</u>

4. At the appointment on 20 July 2016, you:

(c) did not adequately explain the treatment to Patient A;

106. It was agreed by all parties that this Particular is in relation to Interferential Electro Therapy and the machine that was used.

107. Patient A was very open in his evidence and stated that he recalled the Registrant giving him a very brief explanation of what the machine was for, but he could not recall any details other than the word 'cupping' was used.

108. The Registrant's evidence is that he would have explained the IET treatment and how the machine worked.

109. Given that Patient A accepted that some degree of explanation was given, consistent with the Registrant's own evidence that an explanation was given, the Committee concluded that this particular is not proved.

110. Therefore, the Committee finds Particular 4(c) not proved.

Particular 4(d)

> *4. At the appointment on 20 July 2016, you:*
>
> *(d) did not explain, adequately or at all, the risks of the treatment to Patient A;*

111. Patient A stated that there was no discussion as to the risks associated with IET therapy, although there was a general discussion about the fact that some osteopaths did not accept this as valid treatment.

112. The Registrant told the Committee he did not document the risks of IET in the patient notes because he believed that the risk associated with IET was negligible. He stated that he did not have a conversation with Patient A about the risks of IET because he did not think it was necessary. He accepted that he did tell Patient A that IET was not included on the NICE guidelines. However, during his evidence he recognised the risk of reddening of the skin and that he did not mention that risk to Patient A.

113. The Committee finds Particular 4(d) proved on the balance of probabilities.

Particular 4(f)

> *4. At the appointment on 20 July 2016, you:*
>
> *(f) did not explain, adequately or at all, why it was necessary for Patient A to take the minerals;*

114. Patient A's evidence is that the Registrant may have provided a minimal explanation of what he was doing but that it was clear that the Registrant was analysing Patient A's body for shortcomings. Patient A stated that he understood that the body has minerals and that it needed minerals. He

also understood that they needed to be in balance and that supplements can be utilised to correct any imbalance.

115. The Registrant's case is that he did give an explanation to Patient A.

116. In light of the above evidence, the Committee concludes that there must have been some explanation by the Registrant to Patient A about the minerals. However, it is unable to determine that the explanation was inadequate from the information provided.

117. Therefore the Committee finds Particular 4(f) not proved.

Particular 4(g)

> *4. At the appointment on 20 July 2016, you:*
>
> *(g) did not explain, adequately or at all, whether the minerals would interact with Patient A's regular medication;*

118. Patient A listed his medication on the NPQ. He told the Committee that he had orally informed the Registrant that he was on medication for his on-going medical condition but he was dismissed out of hand by the Registrant who stated, "*I know what I am doing.*"

119. The expert witness told the Committee that the on-going condition presented various risks to administering osteopathic treatment. Furthermore, the particular medication that Patient A was on, presented a real risk of adverse effects when interacting with any therapy involving consumption of minerals.

120. The Registrant told the Committee that he was aware of the drugs that Patient A has been medically prescribed. He told the Committee that he prescribed the minerals based on his examination of Patient A's body and the reactions that Patient A's body gave to the AK techniques he applied to Patient A. When specifically asked if he had taken account of the medication that Patient A has been taking when prescribing the minerals to him, the Registrant told the Committee that he took into account his view that the minerals he prescribed were food supplements, and in very low dosage, making them safe to consumed by Patient A.

121. The Committee accepted Patient A's evidence, particularly as the Registrant's own oral evidence was that he saw no risks in prescribing minerals to a patient on medication, particularly [redacted].

122. From the evidence of the Registrant, it was clear that he was aware of the drugs that Patient A had been taking for his medical condition but did not take them into account when prescribing the minerals. He stated that this was because he prescribed minerals in the form of food supplements and at very low dosage. He accepted that he did not do any research at the time to check whether there could be any interaction between the minerals and the medication that Patient A was on – he had simply assumed that there would not be. Therefore it was clear that the Registrant did not, and could not have, explained whether the minerals would interact with Patient A's regular medication.

123. Accordingly, the Committee finds 4(g) proved on the balance of probabilities.

Particular 4(i)

> *4. At the appointment on 20 July 2016, you:*
>
> *(i) shouted and/or raised your voice when Patient A questioned the cost of the minerals;*

124. The evidence from Patient A and the Registrant was that words were spoken at the reception desk by the Registrant to Patient A. Furthermore the Registrant repeatedly told the Committee that he said "*you will have wasted my time*" to Patient A, as Patient A had alleged.

125. The Registrant stated that when he said those words, he had stepped out of a clinical role and was dealing with a social situation. It was his view that Patient A *"had crossed the line"*. He believed that he was justified because Patient A wanted the minerals without having to pay for them. This contrasts with Patient A's evidence that he was simply questioning the high costs of the minerals.

126. The Registrant stated that he spoke firmly and was being *"very assertive"* but was not shouting. Patient A said that the Registrant was speaking loudly and shouting.

127. The Committee has seen the Registrant giving oral evidence. In doing so the Registrant has on several occasions raised his voice and spoken in a manner that is beyond being merely assertive.

128. Furthermore, there was no dispute about the language the Registrant used, which the Committee determined to be inappropriate and indicative of the way in which the Registrant was speaking during the incident.

129. The Committee determined that the Registrant had raised his voice on this occasion, went beyond being assertive and it was more probable that he was shouting. It determined that from Patient A's perspective, when faced with a professional speaking in such a way, in circumstances when other people are present, Patient A could well have perceived it as shouting.

130. The Committee finds Particular 4(i) proved on the balance of probabilities.

Particular 4(j)

4. At the appointment on 20 July 2016, you:

(j) put pressure on Patient A to purchase the minerals which was inappropriate.

131. Patient A told the Committee that when he left the Registrant's consulting room after the session he went to the reception to book a future single appointment and to pay for the double appointment that he just had. He told the Committee that he had expected to pay £90 for the appointment and was surprised when he was presented with an invoice for £183.85, comprising £90 for the consultation and £93.85 for one month's 'nutrition'.

132. Patient A told the Committee that he questioned the charge for the minerals as he considered the cost to be high. Patient A said that as the receptionist was responding the Registrant came to the reception area and started to shout at him saying "*this is what you need but if you don't want to get better it is up to you."* Patient A told the Committee that the Registrant's behaviour was unacceptable but he avoided a confrontation because of his medical condition and also because there were other patients in the area who were looking shocked and embarrassed. Patient A said he did not want to create scene, and therefore he had reluctantly paid the bill of £183.85 (£93.95 of which was for one months' supply of the minerals). Patient A told the Committee that the Registrant did not

inform him of the costs of the minerals during the session, and the Registrant confirmed that he did not do so because he did not concern himself with the prices of the minerals, which was a matter for his receptionist to deal with.

133. The Registrant told the Committee that he did not shout or raise his voice when Patient A questioned the costs of the minerals. He told the Committee that he felt that Patient A had "*over-stepped the mark*". The Registrant considered that that he had not shouted or raised his voice but that he had been firm with Patient A. He told the Committee that he had acted reasonably as Patient A was unreasonable in thinking that he should not have to pay for the mineral supplements.

134. It was clear from the Registrant's own evidence that he had become annoyed when Patient A questioned the cost. The Registrant told the Committee that *"Patient A should have been able to afford the costs and that it was unreasonable of Patient A to consider not having to pay for nutrients."*

135. From the evidence of the Registrant, it would appear that he thought that Patient A had a choice whether or not to pay for the minerals. However, the language used by the Registrant, which included saying "*you will have wasted my time if you don't take them"*, coupled with the Registrant's tone, volume and style of speaking meant that he was confronting Patient A and was not really giving Patient A a choice in the matter. Furthermore, Patient A's on-going medical condition, and the fact that there was an audience in the room would, in the Committee's determination, have made it a very awkward situation for Patient A. All of the above meant that pressure was brought to bear upon Patient A.

136. The Committee accepted Patient A's evidence that he did feel under pressure to take and pay for the minerals. The Registrant should have realised that by his behaviour and in what he said, as the professional to his client, he was indeed putting inappropriate pressure on the patient to pay for the minerals.

137. The Committee finds Particular 4(j) proved on the balance of probabilities.

Particular 4(k)

4. At the appointment on 20 July 2016, you:

(k) did not obtain valid consent from Patient A.

138. In relation to the minerals prescribed, Patient A told the Committee that because of the medication he was taking, he was at pains to ask if any of the minerals could interact negatively. He said that this was very quickly dismissed by the Registrant as if he had not needed to ask such a question.

139. The expert witness told the Committee that he was familiar with the on-going medical condition of Patient A, the medication for that condition and the risk that osteopathic treatment could have adverse effects for a patient in that situation. He told the Committee that the medication that the Patient A was taking could be contraindicated to the minerals being prescribed by the Registrant for Patient A.

140. When it was put to the Registrant that it was incumbent on him to have a discussion with Patient A about the risks and possible effects of the interaction between Patient A's medication and the minerals the Registrant was prescribing, he stated that it was difficult to have a discussion with someone who thought he knew better. The Registrant accepted that he did not have such a discussion with Patient A but that, in line with what he had told the Committee about the "*innate intelligence of the body",* he had *"a discussion with Patient A's body"*.

141. The Committee determined that without that oral discussion with Patient A, there could not be valid consent obtained from the mind and mouth of Patient A. The Registrant's *"discussion with Patient A's body"* did not involve the seeking and granting of consent, nor could it.

142. In relation to the IET machine, the Registrant told the Committee that he did not consider there to be any risks associated with the use of the IET machine on Patient A and therefore he did not have a discussion about risks with Patient A. The Committee determined that without that discussion as to the risks involved, even if minimal, there could not have been valid consent given to the use of the IET machine.

143. When it was further put to the Registrant that clinical practitioners would normally record that consent had been obtained from a patient, he stated that it was "*not his practice to do*" so nor was it the "*best use of his time*". He told the Committee that Patient A's consent was implied by his compliance with the Registrant's instructions.

144. The Committee finds Particular 4(k) proved on the balance of probabilities.

Particular 5(a)

> *5. At the appointment on 29 July 2016, you:*
>
> *(a) did not carry out an adequate examination of Patient A;*

145. Patient A told the Committee that on this day he had attended purely to have the IET. He said that on arrival he went straight into the adjoining room where the machine was and that no examination was carried out by the Registrant. He told the Committee that he clearly recalled the events of that day and that, as a fact, no examination took place.

146. The Registrant told the Committee that on that day, he did conduct an examination of Patient A. He said that it was his practice to examine patients before each session to ensure that the treatment he had previously provided had "*held".* He took the Committee to his notes of that session which demonstrated that he had made a note that the previous treatment had "*held".*

147. The patient notes for that day record that there was some examination but it appeared to be predominantly an AK examination.

148. The Committee determined that whilst the osteopathic examination for this session of IET need only to be minimal, the only reliable evidence being in the notes and confirmed by the Registrant's oral evidence, was predominantly an AK examination only.

149. Therefore, the Committee finds Particular 5(a) proved.

Particular 5(b)

> *5. At the appointment on 29 July 2016, you:*

(b) did not monitor, adequately or at all, the effect of the minerals that Patient A had been taking;

150. The issue with this particular is how the Registrant was expected to monitor the effect of the minerals that Patient A had been taking. The expert witness is silent on this issue. The Registrant's evidence is that he did ask Patient A about whether the minerals were having any effect on him.

151. Patient A refers to the third appointment on 20 July 2016 as the appointment at which he had been taking minerals for a week, and he was not asked about the minerals. However, the invoice for the mineral demonstrates that the minerals were only given on 20 July 2016. Patient A's evidence about the appointment of 29 July 2016 was that he was not examined at all on that occasion. However, there is an inconsistency in Patient A's evidence in that he said that the appointment was the week after he had been given the minerals, the Registrant did enquire about the minerals and their effect. If the evidence of the invoice is accepted, that appointment would have been on 29 July 2016.

152. In light of the above, and in light of the lack of information and evidence as to what the Registrant should have done to monitor the effect of the minerals, and given the inconsistencies in the evidence, the Committee finds that Particular 5(b) is not proved.

153. Therefore, the Committee finds Particular 5(b) is not proved.

Particular 5(c)

5. At the appointment on 29 July 2016, you:

(c) provided Inferential-Electro Therapy treatment to Patient A but did not explain that this treatment modality was not included in NICE guidelines on effective treatment;

154. Patient A told the Committee that the Registrant did not explain that IET was not included in the NICE guidelines on effective treatment. In his oral evidence, the Registrant accepted that he did not tell Patient A that IET was not included in the NICE guidelines.

155. Accordingly the Committee finds Particular 5(c) proved.

Particular 5(d)

> *5. At the appointment on 29 July 2016, you:*
>
> *(d) did not adequately explain the treatment to Patient A;*

156. Again, it was agreed by all parties that this Particular is in relation to Interferential Electro Therapy.

157. The evidence was that Patient A knew what IET was from the previous session. His evidence was that he had come in on 29 July 2016 specifically for IET and nothing else.

158. There is evidence that there was some conversation and examination by the Registrant of Patient A on this occasion. As the purpose of Patient A coming in on this occasion was specifically for IET, it is unlikely that the conversation would not have touched on the IET treatment. As it was the second time, it would not have been necessary to explain the entire treatment to Patient A again in as much detail. In the Committee's view, as long as an explanation was given sufficient to ensure Patient A was aware it was IET treatment he was going receive.

159. In the circumstances, the Committee cannot be satisfied that the Registrant did not give an adequate explanation.

160. Therefore, the Committee finds Particular 5(d) is not proved.

Particular 7(a)

> *7. Between the appointments on 7 July 2016 and 29 July 2016, you did not communicate appropriately with Patient A, in that you:*
>
> *(a) spoke to Patient A in lecturing and/or domineering manner;*

161. With regard to the manner in which the Registrant spoke to Patient A, Patient A described the manner in which the Registrant spoke to him as a monologue from start to end without seeking any response from Patient A. He described it as a "*continuous lecture almost."* Patient A's evidence to

the Committee was that the Registrant did not change this manner throughout each session. Patient A stated the he had never felt so uncomfortable with any other practitioner.

162. The Registrant denied being domineering and lecturing in an adverse sense. He told the Committee how he explained his philosophy and his practice to all his new patients. He said that is what he did with Patient A. He described it as giving detailed information that allowed Patient A to gain an overview. The Registrant demonstrated how he did give that overview. He stated that if Patient A found it to be a lecture that was his perception but it was not the view of the Registrant that he spoke to him in a lecturing manner. The Registrant stated that Patient A "*could describe it as a lecture but that did not detract from the benefit of giving him the information in that manner*". The Registrant thought it was most unusual that someone would take exception to the manner in which he delivered information. The Registrant stated that he did not think there was any reason to adapt his model of communication to each patient because he "*had used it for hundreds of patients without complaint from them"*.

163. Having heard the evidence of Patient A and the Registrant, the Committee is satisfied that the Registrant spoke to Patient A in a lecturing and domineering manner. Those were the traits clearly demonstrated by the Registrant when he gave his evidence. There was no doubt that the Registrant is passionate about his practice. However, by his oral evidence, the Registrant demonstrated that he could speak in a monologue, using a set script delivered in a lecturing manner. He does not engage in active communication - he talks at people as opposed to talking with people. There were many instances when giving evidence where this was evident, and he did so not only to Ms Bruce but also with Mr Freedman and the Committee.

164. The Registrant stated that it was not easy to have a discussion with the patient as "*he was obsessed with his lower back pain. I by-passed his mouth and had a discussion with his body.*"

165. In the light of the above evidence, the Committee finds particular 7(a) proved on the balance of probabilities.

Particular 7(b)

> *7. Between the appointments on 7 July 2016 and 29 July 2016, you did not communicate appropriately with Patient A, in that you:*
>
> *(b) made inappropriate comments about other healthcare professionals to Patient A.*

166. With regards to whether the Registrant made inappropriate comments about other healthcare professionals, Patient A told the Committee that the Registrant said that his method was the only method and spoke about other healthcare practitioners in a derogatory manner. Although Patient A could not specify what the Registrant said, Patient A told the Committee that the Registrant denigrated virtually all other forms of treatment and their practitioners, including GPs. Patient A was clear that it was in that context that the Registrant referred to a relative who had been a GP and transferred to become a homeopathic doctor.

167. In his oral evidence, the Registrant confirmed that such a conversation took place regarding his relative. When giving evidence, the Registrant also spoke about other healthcare professions in a denigrating manner, acknowledging that other healthcare professionals have a role when broken bones needed attending to, or when surgery is required, but that other practices focussed on treating disease, whereas his approach focused on promoting health.

168. In the light of the above, the Committee determined that it was more likely than not that the Registrant spoke in a similar manner about other healthcare professions when he was with Patient A.

169. Therefore, the Committee finds Particular 7(b) proved on the balance of probabilities.

Particular 8

> *8. By reason of the facts alleged at paragraphs 2, 3, 4, 5, 6 and 7 above, you failed to provide appropriate care and treatment to Patient A.*

170. The Committee notes that particular 7 is not specifically about care and treatment of Patient A, but when particulars 2, 3, 4, 5, 6, and 7 are taken collectively, the Committee finds that the Registrant's failure in all those aspects meant that he failed to provide appropriate care and treatment to Patient A.

171. The Committee finds Particular 8 proved on the balance of probabilities.

Determination on Unacceptable Professional Conduct:

172. The Committee next considered whether the facts it had found proved amounted to conduct falling short of the standard required of a registered osteopath – namely, whether they amount to unacceptable professional conduct ("UPC"). The Committee took into consideration the submission made by Ms Bruce that UPC was made out in this case. The Committee accepted the advice of the Legal Assessor.

173. The Committee bore in mind that there is no standard of proof to be applied at this stage and that the consideration as to whether the threshold for unacceptable professional conduct has been reached is a matter of judgment. The Committee took into account the guidance of Mr Justice Irwin in *Spencer v The General Osteopathic GOsC [2012] EWHC 3147 Admin)* in which it was stated that a finding of UPC implies "*moral blameworthiness and a degree of opprobrium*.

174. Mr Justice Kerr in *Shaw v The General Osteopathic GOsC [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"*

175. The Committee also noted Mr Justice Irwin's comment in the *Spencer* case that:

> *"As it is, the Act stipulates that if unacceptable professional conduct is made out, there has to be at least a formal admonition and publicity which is bound to affect the Registrant's professional reputation. Those are considerable sanctions. In my view, they support the*

> *natural meaning of the language contained in the statute and point to a threshold for a finding of "unacceptable professional conduct" which there is no reason to distinguish from "misconduct" in the medical and dental legislation."*

176. On that basis, the Committee also took into account the observations of Collins J in *Nandi v GMC [2004] EWHC 2317 (Admin)*

> *"The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners. It is of course possible for negligent conduct to amount to serious professional misconduct, but the negligence must be to a high degree."*

177. The Committee reminded itself that although it should have regard to the Osteopathic Practice Standards ("OPS"), which lay down the standards of conduct and practice expected of a registered Osteopath, not every omission or instance of poor practice necessarily constitutes UPC. A departure from the OPS is a starting point and is relevant; but it is not determinative of UPC and does not create a presumption of UPC.

178. In assessing the Registrant's conduct, the Committee reminded itself that the Registrant was practising as an Osteopath and therefore was required to comply with the standards set down by the profession. The Committee firstly considered the individual particulars found proved and then the Registrant's conduct in the round. It also took into account the circumstances surrounding the conduct in order to put it into context. The Committee was aware that UPC has to be considered within context.

179. The facts found proved cover fundamental areas of osteopathic practice, namely history taking, examination, treatment plan, obtaining of consent, communication and overall professionalism. The Committee considered the following sections of the OPS to have been breached:

> *A1 You must have well-developed interpersonal communication skills and the ability to adapt communication strategies to suit the specific needs of a patient.*

A2 Listen to patients and respect their concern and preferences.

A3 Give patients the information they need in a way that they can understand.

A4 You must receive valid consent before examination and treatment.

A5 Work in partnership with patients to find the best treatment for them.

C4 Be polite and considerate with patients.

C7 Provide appropriate care and treatment.

D9 Keep comments about colleagues or other healthcare professionals honest, accurate and valid.

D17 Uphold the reputation of the profession through your conduct.

180. Public interest in the effective regulation of the profession requires that the fundamental tenets of that profession are adhered to, in order to uphold the reputation of the profession and the public confidence in the regulatory process. The Committee was satisfied that the Registrant's acts and omissions were not justified, in the circumstances of this case.

181. The Committee noted that the Registrant was passionate about osteopathy and his practice. It had no doubt that the Registrant was determined to do his best for his patients. However, in relation to Patient A, the Registrant allowed his own clinical beliefs to override what should otherwise be the patient-practitioner partnership that is essential for good osteopathic practice. Indeed in his oral evidence, the Registrant did not recognise the concept of a patient-practitioner partnership. He failed to communicate effectively with Patient A both in terms of how he managed Patient A's treatment and care, but also in the manner in which he spoke to Patient A. In giving his evidence to the Committee, the Registrant demonstrated a domineering, and lecturing manner. He often spoke in a monologue and at times did not answer the questions put to him. This was consistent with the description by Patient A as to how the Registrant

spoke to him. The Registrant's style of communicating and speaking is not, in the judgement of this Committee, conducive to an effective two-way dialogue that is crucial for a successful patient-practitioner partnership.

182. The Registrant's failings flow from his failure to establish an effective partnership with his Patient A. Informed consent is a fundamental principle and goes to the heart of the patient-practitioner partnership. The Committee was satisfied that the Registrant's failure to inform Patient A of the known risks in this case and his failure to obtain Patient A's consent were serious omissions. The Committee noted that consent is an on-going process. The Registrant should also have taken an adequate history, carried out adequate osteopathic examinations, and produced a treatment plan for Patient A instead of relying primarily upon AK. The Registrant's failure to do so had the potential to cause significant harm in the light of Patient A's on-going serious medical condition, which was given inadequate attention by the Registrant.

183. Regarding the incident in the reception area on 20 July 2016, the Committee is of the view that the Registrant acted unprofessionally. To speak to Patient A in the way he did, using a tone and volume that the Registrant described as "*very assertive*" and which Patient A regarded as shouting, to accuse Patient A of "*wasting my time*", and to do so within the public area of the clinic in front of other people, was completely inappropriate.

184. The Committee determined that the departures from OPS by the Registrant's conduct were persistent and serious and that the Registrant's conduct fell far below the standards expected of a registered Osteopath. The Committee noted that these failings occurred in relation to one patient over four sessions in July 2016. However the Registrant's failings are such that they would convey a degree of moral opprobrium to the ordinary well-informed citizen. The Registrant's manner in which he dealt with Patient A would also be considered abhorrent by other members of the profession, if they had full knowledge of the facts of this case.

185. Therefore, the Committee determined that these failings taken together were sufficiently serious to pass the threshold for UPC.

Determination on Sanction:

186. The Committee took account of the submissions made by Ms Bruce on behalf of the Council. It also took into account the further documentation sent by the Registrant since the hearing adjourned on 10 November 2017. Ms Bruce submitted that, in view of the Committee's findings, the only appropriate sanction is removal from the Register.

187. The Committee accepted the advice of the Legal Assessor regarding the relevant law.

188. Section 22(2) of the Act requires the Committee to impose a sanction in this case, given that it found the Registrant guilty of UPC. The Committee was aware that the purpose of any sanction is not to be punitive, though it may have a punitive effect.

189. The Committee also bore in mind that a person who belongs to the Osteopathic profession, and takes the benefits of being in the profession, must also take the consequences if he does not comply with the requirements of the profession, or if he brings the profession into disrepute.

190. The Committee's primary function, at this stage, is to protect the public whilst reaching a proportionate sanction. In doing so, it takes into account the wider public interest, including the maintenance of public confidence and professional standards. The Committee also took into account the interests of the Registrant.

191. The Committee also took into account the Indicative Sanctions Guidance issued by the GOsC. The starting point for the Committee was that the Unacceptable Professional Conduct in question was serious and constituted a significant departure from the standards expected of a registered Osteopath. Such improper conduct may cause significant harm to patients: undermine patient trust and public confidence in the profession.

192. The Committee noted that the Registrant has been practising as an Osteopath for a significant number of years without any complaint against him. The Committee also took into account the documents submitted by the Registrant since the earlier hearing, including a recent testimonial

which expressed appreciation for the treatment that the Registrant had given to a patient.

193. The Committee noted the "Letter of Resignation" from the Registrant to the GOsC dated 11 December 2017 in which he expressed that he is "*extremely sorry that the events surrounding Patient A's complaint occurred..",* and that he had apologised to Patient A earlier on in the proceedings. He also stated that he had made changes to his practice in terms of *"taking case histories, keeping clearer notes, and seeking to create a better understanding between myself and patients that I see to make sure that such serious mistakes and misunderstandings should never happen again"*.

194. However, the Committee had to balance this with the Registrant's oral evidence to the Committee and several recent written statements, which make clear his dis-satisfaction with the GOsC, the regulatory process and the practice of osteopathy, as he now perceives it to be. The Committee was also concerned about statements he made about continuing to practice as he has always done. In fact he stated (speaking of himself in the third person):

> *"Under the circumstances, Mark is no longer able to call himself and osteopath. He will continue to work as he always has …* "

195. As such, there a strong likelihood of repetition of his conduct in not adhering to the OPS.

196. The Committee determined that the Registrant had failed to demonstrate any meaningful insight into his behaviour. It also determined that the Registrant's conduct towards Patient A demonstrated a deep-seated attitudinal problem in relation to the manner in which the Registrant perceives the patient-practitioner partnership, and the existence of such a partnership.

197. The Committee also determined that there are deep-seated attitudinal problems in relation to the Registrant's manner of communication to his patients, his attitude towards them, and his attitude to his own professional obligations and the OPS. Notwithstanding the apology proffered and the changes he may have made to his practice, the

Committee was satisfied that the absence of meaningful insight was a strong indicator that he is unlikely to change his practice significantly and the risk of repetition is therefore high.

198. The oral evidence of the Registrant also demonstrated a lack of awareness about the OPS. He did not appear to understand the need to adhere to such standards as an Osteopath, even if he was providing adjunct therapy as part of his osteopathic treatment.

199. There was no evidence before the Committee that the Registrant had meaningful insight into his misconduct. Indeed, the evidence of the Registrant was that there was no real problem in his manner of communication or in his attitude towards his patients.

200. His decision, to disengage from this process and the GOsC, means that he has not taken the opportunity to convince the Committee that he had sufficient insight and that he would realistically undertake remedial action to improve his conduct, attitude and practice.

201. The documentation submitted by the Registrant since November 2017 underlines the Registrant's unchanged perception about the issues in his practice and his lack of insight into his failings and his misconduct. The documentation includes several articles written by him in relation to these proceedings and his conduct in question. These documents demonstrate that he has clearly not progressed to any significant level of insight. In the articles he has described these proceedings as an "*attack*" on him, rather than regarding them as an opportunity to reflect and learn when things have gone wrong.

202. The Committee first considered imposing an admonishment as a sanction. However it concluded that, in view of the nature and seriousness of the Registrant's conduct and behaviour, an admonishment would be wholly inappropriate. It would be insufficient to protect the public, maintain public confidence and uphold the reputation of the profession.

203. The Committee then considered imposing conditions upon the Registrant's practice, but concluded that these matters are too serious for conditions to be the appropriate sanction. The Committee also determined that it would not be possible to formulate workable or practicable conditions that would adequately address the issues identified or uphold the public

interest. There was also the difficulty of formulating appropriate workable or measurable conditions relevant to the Registrant's lack of meaningful insight, his absence from these proceedings, and his firmly stated intention not to engage with the regulatory body.

204. The Committee then considered whether suspending the Registrant's registration would be an appropriate sanction in this case. The Committee was satisfied that there have been serious breaches of the fundamental tenets of the profession. Further, the Registrant demonstrated deep-seated attitudinal issues that directly relate to the patient-practitioner partnership. The Registrant continues to present a risk to patients, notwithstanding his stated good intentions. A Suspension Order might be appropriate when there is potential for remediation at some point in the future. In this case the Committee determines that there is no potential for full remediation and therefore a Suspension Order would not be appropriate.

205. Considering all the circumstances of this case, the Committee was satisfied that the only means of protecting the public, maintaining professional standards and public confidence in the profession, in this instance, is by way of removal from the Register.

206. The Registrant's conduct and behaviour, his deep-seated attitudinal deficiencies, lack of insight, lack of remorse, the absence of adequate remediation, and his disengagement from the regulator was such that the Committee determined his acts and omissions are fundamentally incompatible with continued registration.

207. The Committee was mindful of the personal and financial impact this order may have upon the Registrant, however, it was satisfied that this is the appropriate and proportionate sanction. The Committee had noted that the Registrant had requested his name be removed from the GOsC's Register and that he no longer wishes to practise as an Osteopath. The Committee was satisfied that the need to protect the public, maintain confidence in the profession and uphold the regulatory process outweighed the impact upon the Registrant.

208. The Committee determined that the Registrant's name should therefore be removed from the Register.

Interim Suspension Order:

209. The Committee heard representations from Ms Bruce, on behalf of the GOsC, in respect of the imposition of an Interim Suspension Order to cover the appeal period. She submitted that such an order is necessary to protect the public.

210. The Committee accepted the advice of the Legal Assessor and had regard to the GOsC's Guidance entitled 'Interim Suspension Orders'.

211. The Committee determined that it was necessary to impose an Interim Suspension Order, due to the serious departures from the high standards expected of registered practitioners and the risk of repetition, which would present an unwarranted risk of serious harm to the public.

212. Accordingly, the Committee makes an Interim Suspension Order in this case. The period of this interim order will be for the appeal period of 28 days or, if an appeal is made, until such appeal is heard or otherwise determined.

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.