

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 1678/4953

Professional Conduct Committee Meeting

DECISION

Case of: Ms Annette Weir

Committee: Mr Alastair Cannon (Chair)
Mr David Probert (Osteopath)
Mr Nathalie Harvier (Lay)

Legal Assessor: Mr Gary Leong

Date of Meeting: Monday, 10 June 2024

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

ALLEGATION:

The allegation is that Osteopath 2 (the Registrant) has been guilty of unacceptable professional conduct, contrary to section 20(1)(a) of the Osteopaths Act 1993, in that:

1. *Patient A attended four appointments with the Registrant on the following dates:*
 - (a) 29 September 2022 ("Appointment 1")
 - (b) 03 October 2022 ("Appointment 2")
 - (c) 11 October 2022 ("Appointment 3")
 - (d) 31 October 2022 ("Appointment 4")

2. *During Appointment 2:*
 - (a) *the Registrant advised Patient A to keep moving;*
 - (b) *the Registrant told Patient A “you will be doing more harm than good if you stop exercising”, or words to that effect;*
 - (c) *the Registrant’s conduct at 2(a) and 2(b) above took place after Patient A told the Registrant that it is sometimes painful to move around;*
 - (d) *the Registrant did not consider and/or record a possible diagnosis of vertebral collapse;*
 - (e) *the Registrant did not refer Patient A for a diagnostic imaging in light of this possible diagnosis.*
3. *During Appointment 3, the Registrant:*
 - (a) *told Patient A “if you don’t exercise you will do more harm than good”, or words to that effect;*
 - (b) *asked Patient A to do an exercise which required her to cross her arms over her chest, lean forward as far as possible, and to hold in that position for a few seconds;*
 - (c) *advised Patient A to carry out the exercise referred to in 3(b) daily.*
4. *During Appointment 4, the Registrant:*
 - (a) *asked Patient A to do an exercise which required her to crouch and push her buttocks outwards;*
 - (b) *advised Patient A to carry out the exercise referred to in 4(a) daily.*
5. *During Appointment 3 and Appointment 4, the Registrant advised Patient A to continue doing the exercises set out in paragraphs 3(b) and 4(a) after Patient A told the Registrant that it was painful.*
6. *Patient A sent a text message to the Registrant on 04 November 2022, as set out in Schedule 1, to which the Registrant failed to respond within a reasonable and timely manner, despite knowing that Patient A was in pain.*
7. *In Patient A’s clinical records:*

- (a) *for Appointment 1, the Registrant failed to record:*
 - (i) *the examination;*
 - (ii) *a working diagnosis;*
 - (iii) *a treatment plan.*
 - (b) *for Appointment 2, the Registrant failed to record a treatment plan;*
 - (c) *for Appointment 3 and/or 4, the Registrant failed to record:*
 - (i) *the assessment*
 - (ii) *a treatment plan.*
8. *The Registrant's conduct as set out at paragraph 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 was inappropriate.*
9. *The Registrant's conduct as set out at paragraphs 2(a) and/or 2b and/or 3 and/or 4 and/or 5 was:*
- (a) *not clinically justified;*
 - (b) *not in Patient A's best interests.*

Schedule 1

- i. *"Hi Osteopath, I was almost pain free for three days. Sadly, the pain has returned. I have been doing the exercises as well as a cycle alternate day. Please let me know when it would be possible to have an appointment. No rush. I know it's your day off. Have a nice weekend. Take care. [Patient A]."*

The following facts are alleged:

Ms Weir failed to properly assess and document Patient A's condition at several appointments. Specifically:

- At the initial appointment, she failed to properly record the examination, working diagnosis, and treatment plan.
- At subsequent appointments, she failed to adequately record assessments and treatment plans.

- She did not properly consider the possibility of osteoporotic vertebral fractures given Patient A's history and symptoms.
- She prescribed exercises and advised continuing them even when Patient A reported pain, without fully ruling out fractures.

The expert's report indicates that Patient A sustained fractures of T10 and T12 vertebrae between the first and second appointments. However, there is no evidence these were directly as a result of Ms Weir's actions. Patient A experienced ongoing severe back pain that significantly impacted her daily activities and quality of life. Ms Weir did not respond in a timely manner to a text she had received from Patient A who was expressing concern about the pain that she was experiencing and her treatment.

Decision:

The Committee was satisfied that the procedure set out in the Council's Professional Conduct Committee Practice Note entitled *Consensual Disposal: Rule 8* has been followed. Although the Registrant's Rule 8 statement was signed and returned before the Notice of Intention was sent to the Registrant, the Committee was provided with additional documentation containing email correspondence between the Registrant and the Council that indicated the Registrant had been fully advised about the implications of making full admissions as to the facts and UPC under this procedure. The Registrant's legal representative confirmed that the Registrant was the one who wanted to go ahead with the Rule 8 procedure and confirmed that she understood and agreed to the implications of the Rule 8 process when she signed the Rule 8 statement.

The Registrant has admitted both the allegation and the facts in support of the allegation. Accordingly, the allegation is found proved.

The Committee took into account the following:

- The bundle of evidence which included an expert's witness report regarding the care provided by the Registrant to Patient A.
- The Council's Professional Conduct Committee Practice Note entitled *Consensual Disposal: Rule 8*
- The Hearings and Sanctions Guidance published by the Council.
- The Guidance for Registrant on the Council's procedure under Rule 8.

- The Registrant's admissions set out in the Rule 8 Statement, which has been signed and dated by the Registrant.
- Patient A's email that confirms her view about the Council using the procedure under Rule 8 to finalise her complaint against the Registrant.
- The observations made by the complainant, Patient A regarding the possible disposal of this matter via the Rule 8 process.

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

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

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

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

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

The allegations relate to the provision of treatment that was not clinically justified nor in Patient A's best interests and the failure to maintain adequate patient records that breached several of the Osteopathic Practice Standards designed to protect patients. The Committee also took into account the possible risks to Patient A resulting from the Registrant's actions or inactions.

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

The Committee considered the documents the Registrant placed before the Committee that included her reflective statement and character references.

The Committee looked to the Hearings and Sanctions Guidance published by the Council in regard to the appropriate sanction in cases such as this. The Committee took into account the following:

- the high level of insight demonstrated by the Registrant into her conduct;
- the Registrant's previous good character;
- the Registrant's personal circumstances prevailing at the time;
- the remedial action taken;
- no indication that she poses any risk to the public;
- that in the opinion of the expert appointed by the Council that the Registrant's failures and advice did not cause any actual harm to Patient A; and
- the personal references.

The Committee applied the principle of proportionality and is satisfied that the admonishment is the sanction that is both appropriate and proportionate. This determination was reached having given careful consideration to the relative seriousness of the conduct in question and the views of Patient A.

The Committee determined that the Rule 8 procedure was appropriate in this case and that an admonishment is sufficient to declare and uphold proper standards and to maintain public confidence in the profession and the regulatory process. In the light of the circumstances of this case, the Committee determined that the Public Interest did not require a public hearing and therefore disposal by way of Rule 8 disposal was appropriate.

Section 22(1) of the Osteopaths Act 1993 requires this Committee to publish a report that sets out the names of those osteopaths who have had allegations found against them. The Registrant's name will be included in this report together with details of the allegations we have found proved and the sanction that we have imposed today.