

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 662/8254

Professional Conduct Committee Review Hearing

DECISION

Case of:	Ms Kimonie Sturgeon
Committee:	Mr Richard Davies (Chair) Mr Philip Geering (Lay) Mr Kenneth McLean (Osteopath)
Legal Assessor:	Ms Margaret Obi
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Unrepresented
Clerk to the Committee:	Mr Farhan Kabir
Date of Hearing:	16 January 2019

Summary of Decision:

The Committee decided to make no further directions and to allow the 3-month Suspension Order to lapse on expiry.

Allegation (as found proved at the substantive hearing)

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

1. On or around 24 August 2016 you applied to the General Osteopathic Council ("GOsC") to be considered a non-practising member as of 15 August 2016.

2. You had professional indemnity insurance with the Institute of Osteopathy from 1 July 2012 until 24 August 2016.
3. During the period between 18 October 2017 and 9 January 2018, inclusive of those dates, you:
 - a. practised as an osteopath;
 - b. failed to obtain and maintain insurance cover as required by rule 5 of The General Osteopathic Council (Indemnity Arrangements) Rules Order 2015;
4. During period set out at 3. above your actions were:
 - a. Misleading in that by your conduct you were representing to the public that you had appropriate insurance in place;
 - b. dishonest in that you knew you were obliged to have insurance and you knew you were practising without it;
 - c. lacked integrity in that you should have known you were practising in breach of your professional obligations.
5. By your actions you acted to the potential detriment of patients treated by you during the relevant period in which you had no insurance cover and thereby placed such patients at risk.

Preliminary Matters

Application to Attend Via Video-Conference

1. The Registrant was unable to attend the hearing in person. In an email dated 11 January 2019, she stated that she would be making an application to attend via videoconference as [REDACTED].
[REDACTED]. However, she stated that she had been able to find [REDACTED] [REDACTED] if her participation in the hearing was by video-conference or alternatively by telephone if there are any technical difficulties in arranging a video-conference.

2. The Registrant attended by video-conference and orally confirmed her request to participate in the hearing via remote access. Mr Gillespie, on behalf of the GOsC did not object to the application.
3. The Committee was satisfied that it was in the interests of justice to permit the Registrant to participate by video-conference. In reaching this conclusion the Committee took into account the Registrant's practical difficulties which were unlikely to be resolved by adjourning the review hearing to another date. The Committee concluded that it is in the public interest and the Registrant's interest that the review hearing is considered expeditiously.

Background

4. The Registrant wrote to the GOsC on 24 August 2016, requesting to be registered as a non-practising member because [REDACTED]. She also contacted her indemnity insurance provider, the Institute of Osteopathy, and cancelled her insurance cover.
5. In February 2018 the Registrant contacted the GOsC to indicate that she had returned to work in October 2017. The Registrant stated that she had forgotten to take out indemnity insurance cover when she returned [REDACTED]. She provided documentation from the Institute of Osteopathy, indicating that her insurance cover started on 10 January 2018 and therefore there was a period of nearly 3 months where she had been working without the appropriate insurance cover.
6. The GOsC alleged that the Registrant's actions, in practicing as an osteopath without indemnity insurance during the period between 18 October 2017 and 9 January 2018, were misleading, dishonest and lacked integrity. A Professional Conduct Committee (PCC) hearing took place on 8 October 2018. Although the Registrant did not attend the hearing, she provided the

substantive hearing committee with a statement in which she accepted that she did not have indemnity insurance cover for approximately 3 months. She acknowledged that her failure to obtain insurance put patients at risk and she accepted that her conduct was misleading and lacked integrity. However, she denied that she had been dishonest.

7. The substantive hearing committee accepted the unchallenged evidence regarding the Registrant's dates of registration as a practicing osteopath and the dates of her insurance cover. The previous committee also accepted the Registrant's 'admissions' and found paragraphs 1, 2 and 3 proved. The substantive hearing committee went on to find the Registrant's actions to be misleading, dishonest and lacking in integrity and therefore the remaining paragraphs were also found proved. The committee determined during the fact-finding stage that:

'...reasonably informed members of the public would expect a registered osteopath, holding herself out to be practising as such, to have insurance to protect against the risk of loss arising from fault. The Committee further determined that to have practised without insurance, did indeed amount to a representation to the public that the registrant had appropriate insurance in place...

Whilst the registrant explained her failure to reinsure was a consequence of stress in response to various life events, the Committee noted that the registrant had returned to work for two months before taking steps to reinsure. She clearly was previously aware of the connection between practising and the requirement to have insurance as she had been assiduous in cancelling her insurance when she [REDACTED]. Significantly, in addition the Committee noted that almost a month or thereby (sic) had thereafter passed between the registrant putting in place insurance and her advising the GOsC

of her having practised without insurance. Her failure to promptly advise the GOsC of the situation caused the Committee to draw an adverse inference as to the registrant's explanation of simple oversight followed by expeditious remedial action. Her lack of immediate candour to the GOsC once aware of the lack of insurance causes the Committee to conclude that it is more likely than not that she knew that she had been practising without insurance. The Committee determined that a member of the public, fully informed and acting reasonably, would consider her conduct in practising in the knowledge of the absence of insurance was dishonest.

Further, in the light of the registrant's actions in terminating her insurance when [REDACTED], thus demonstrating an awareness of the connection between professional practice and the holding of insurance, the Committee determined that the registrant should have known that she was practising in breach of her professional obligations when she returned to practice; and by returning without insurance she lacked integrity.'

8. The substantive hearing committee concluded that the factual particulars found proved amounted to unacceptable professional conduct. In reaching this conclusion the committee noted that the Registrant's actions breached Standard D14 (acting with integrity) and Standard D17 (upholding the reputation of the profession) of the Osteopathic Practice Standards 2012. The committee stated:

'...those who propose attending a registered osteopath for treatment are entitled to anticipate that the osteopath has the required insurance arrangements in place at the time they are treated. A member of the public would be rightly concerned that a registered osteopath did not have the required insurance which was a condition of registration. The registrant herself accepted the public would expect that she be insured.'

9. The substantive hearing committee went on to determine sanction and concluded that the Registrant should be made subject to a Suspension Order. The committee concluded that a 3 month order *'would be proportionate in that it would afford the registrant an opportunity to reflect on her unacceptable professional conduct and mark for the profession and the public the seriousness of the registrant's conduct.'*

GOsC Submissions

10. Mr Gillespie, on behalf of the GOsC, outlined the background circumstances and the history of this case. He referred the Committee to the findings of the substantive hearing committee and the documentation provided by the Registrant. Although he acknowledged that the Registrant had not been provided with any guidance with regard to the form and content of her reflections, he suggested that the Registrant's reflective statement was inadequate. He drew the Committee's attention to the Registrant's description that she had *'inadvertently been guilty of unacceptable professional conduct'* and that her failure to obtain indemnity insurance was a *'careless oversight'*. He submitted that the Registrant's characterisation of her behaviour did not reflect the previous committee's findings that her conduct was dishonest. He further submitted that although the Registrant expressed 'regret' and stated that she fully understood the implications of her behaviour no further details were provided, there was no analysis of her thought process and no detailed reflection on the consequences for patients and the profession as a whole. Mr Gillespie also submitted that the character reference that had been provided on behalf of the Registrant was inadequate as the author – Mr Oxbrow, made reference to her 'characteristic honesty' and a 'genuine oversight' which indicated that he was not aware of the substantive committee hearings findings at the time he drafted the reference. Mr Gillespie submitted that Mr Oxbrow's view in light of the adverse findings is unknown.

11. Mr Gillespie invited the Committee to consider, subject to the Registrant's oral evidence, extending the Suspension Order to provide her with an opportunity to demonstrate greater insight.

Registrant's Evidence

12. The Registrant chose to give evidence. She confirmed that her conduct had been misleading and lacked integrity but denied dishonesty. She described the failure to obtain insurance as an '*oversight*' and assured the Committee that it would not be repeated. She stated that she '*had no excuse*' and explained that she had originally self-reported her '*error*' to the GOsC and the Institute of Osteopathy as she recognised the importance of being open and honest.

13. The Registrant, when questioned by Mr Gillespie, acknowledged that the substantive hearing committee had found her actions to be dishonest and she expressed '*shame and embarrassment*'. She confirmed that Mr Oxbrow was not aware of the previous committee's findings when he drafted her character reference as it had been prepared in advance of that hearing.

14. When questioned by the Committee the Registrant stated that she fully appreciates the significance of practicing without insurance and the risks to patient safety. She also described in more detail the strategies she has in place, as a '*back up*', to ensure that her failure to maintain indemnity insurance will not be repeated, which includes engaging the assistance of the Institute of Osteopathy to issue her with reminders at the end of August, prompting from friends and family, reinstating direct debit arrangements and setting a reminder on her electronic diary. Reliance on prompts from others was not her default position.

Committee's Approach

15. In undertaking this review, the Committee took into account the documentary evidence, including the Registrant's reflective statement and the character reference from her former tutor and colleague – Mr Tim Oxbrow. The Committee also took into account the oral submissions of Mr Gillespie and the Registrant's oral evidence.

16. The Committee accepted and applied the advice it received from the Legal Assessor as to the proper approach it should adopt. In particular that:

- The purpose of the review is to consider the previous committee's findings, which this Committee could not go behind; the extent to which the Registrant has engaged with the regulatory process; and the scope and level of her insight and the risk of repetition.
- In accordance with the case of *Yussef v GMC* [2018] an admission of guilt is not a pre-requisite for demonstrating sufficient insight. A registrant may for example, deny an allegation, but set out how the conduct which has been found proved could affect confidence in the Registrant as a professional, public confidence in the profession and the impact of the failure to adhere with proper standards of conduct and behaviour.
- The Committee should also take into account the need to declare and uphold proper standards of behaviour and maintain public confidence in the profession, and the principles of proportionality which require the Registrant's interests to be balanced against the interests of the public.

Decision

17. The Committee noted that the Registrant's reflective statement lacked depth and gave the appearance of being superficial in its attempt to demonstrate insight. The reflective statement did not indicate that the Registrant had properly focussed on the substantive hearing committee's findings, the high standards of integrity and honesty expected of all registered osteopaths and the impact of her behaviour, as found proved, on her professional standing, the wider profession, patients and the public as a whole. Having noted the deficiencies of the Registrant's reflective statement the Committee also acknowledged that she had not been provided with any guidance with the regard to the form and content of her reflections from the previous committee and was not legally represented.
18. The Committee was encouraged by the Registrant's decision to attend the review hearing by video-link and found her oral evidence to be illuminating. Although at times the Registrant found it difficult to express herself and appeared to narrowly focus on the practical implications of practising without insurance, when questioned further it was apparent that she fully appreciated the wider consequences of her actions. The Committee took the view that although the Registrant's denied that her actions had been dishonest, she fully acknowledged the importance of trust and honesty. The Registrant's oral evidence demonstrated candour and at no time did she resort to defensiveness, minimisation or self-justification.
19. The Committee noted that the Registrant, when practising as an osteopath usually paid her insurance by direct debit. She stated that it was only because she was ■■■■■■■■■■ that she had to take active steps to renew her insurance. She assured the Committee that she would not repeat her failure ever again and stated that the steps she had put in place were additional measures. The Committee was satisfied that the Registrant accepted full

responsibility for her actions and recognised that she had brought the profession into disrepute and had undermined trust and confidence in the profession. She apologised for the risks to which she had subjected her patients. She was also able to identify that patients, members of the public, the GOsC as her regulatory body and others would all have been affected by her conduct and behaviour. In these circumstances the Committee was satisfied that the Registrant had demonstrated sufficient insight and that as a consequence the risk of repetition was low.

20. The Committee concluded that the patient safety and wider public interest concerns identified by the previous Committee have been adequately addressed by the imposition of the 3-month Suspension Order and the Registrant's reflections. The Committee was satisfied that professional standards and public confidence in the profession and the regulatory process would not now be undermined by allowing the order to lapse on expiry.

21. Accordingly, the Committee makes no further order and determines that the 3-month Suspension Order imposed on 8 October 2018 should lapse on expiry.

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.