GENERAL OSTEOPATHIC COUNCIL

PROFESSIONAL CONDUCT COMMITTEE

Case No: [684/2575]

PCC Hearing

DECISION

Case of:	Mr Tari MacDonald
Committee:	Mrs Nora Nanayakkara (Chair) Ms Rama Krishnan Mr Tom Bedford
Legal Assessor:	Mr Andrew Webster QC (3rd – 7th June) Mr Peter Steel (27th – 30th August)
Representation for Council:	Mr Chris Gillespie
Representation for Osteopath:	Ms Farrah Mauladad
Clerk to the Committee:	Miss Nyero Abboh
Date of Hearing:	3rd – 7th June 2019 27th – 30th August 2019

Decision:-
Paragraphs 1, 3, 5 admitted and found proved. Paragraphs 2, 4, 6 and 7 found proved. Unacceptable Professional Conduct found proved. Sanction of suspension for a period of 18 months with a resumed hearing. No application for interim suspension order.

Allegation (as amended):

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

1. On 27 November 2017 Patient A attended an appointment with the Registrant ("First Appointment");
2. At the First Appointment, the Registrant engaged in sexual activity with Patient A;
3. On 5 December 2017 Patient A attended an appointment with the Registrant ("Second Appointment");
4. At the Second Appointment the Registrant engaged in sexual activity with Patient A;
5. After the Second Appointment the Registrant kissed Patient A on the cheek outside the practice;
6. Over the period of time between August 2016 and December 2017, the Registrant failed to keep/maintain adequate patient records for Patient A;
7. The Registrant's actions as described at paragraphs 2, and/or 4, and/or 5 were:
    a. a transgression of professional and sexual boundaries; and/or
    b. an abuse of his professional position; and/or
    c. not in Patient A's best interests.

Decision:

Preliminary Matters

1. Mr Gillespie on behalf of the Council applied to amend paragraph 7 of the allegation, which as originally drafted read as follows:

    "*The Registrant's actions as described at paragraphs 2, 4, and 5 were:*
    a. a transgression of professional and sexual boundaries;
    b. an abuse of his professional position;
    c. not in Patient A's best interests.

2. Mr Gillespie asked that between the numbers "*2*" and "*4*" in the stem of the paragraph the words "*and/or"* could be inserted and that the word "*and*" between the numbers "*4*" and "*5*" could become "*and/or*". Similarly, he asked that the words "*and/or*" could be inserted after the words "*sexual boundaries*"; and after the words "*professional position*" .

3. The application was not opposed by Ms Mauladad on behalf of the Registrant. Having received advice from the legal assessor, the Committee granted the application, which it concluded could be made without injustice.

4. Mr Gillespie then applied for the Committee to rule as admissible recordings of conversations on 15 June and 19 July 2018 between the Registrant and one of the witnesses, Witness B, which the latter had recorded covertly, as well as transcripts of those recordings.

5. Mr Gillespie submitted that Rule 57 if the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 gave the Committee a wide discretion to admit "*any other material"* provided it was satisfied that the interests of justice would not thereby be prejudiced. The Council's position was that the recordings and transcripts were relevant and admissible. It was not unfair to the Registrant to admit the recordings into evidence, notwithstanding any criticisms that might be made of the way in which the recordings were conducted or the fact that Witness B said that she had accidentally deleted the start of one of the recordings, so that it was not complete. It was plainly fair and relevant to admit this evidence, as it set out the Registrant's own words.

6. Ms Mauladad submitted that the recordings and transcripts should be excluded. The recordings were of meetings on 15 June and 19 July 2018, a considerable length of time after the two appointments at the heart of the allegation. She asserted that the transcripts did not contain any admission of a sexual relationship, nor any admission of transgressing professional boundaries, nor any admission of inappropriate behaviour. Ms Mauladad therefore queried the relevance claimed for the recording. Witness B did not mention the recording in her initial complaint. She submitted that the 15 June recording had clearly been edited; the timing of the recording and of the meeting which was its subject did not tally. As a result, the recording was so grossly unfair that it should not be admitted. The interests of justice would be met by excluding this evidence, as the two witnesses to the events in question, Witness B and Witness C, were present and able to give live evidence as to the allegations.

7. Having accepted the advice of the legal assessor, the Committee determined that it should admit the recordings and transcripts into evidence. The Committee was satisfied that the recordings were relevant and that it was fair to admit them into evidence. The interests of justice would not be undermined by the Committee doing so, subject to its consideration in due course of the weight to be attached to that evidence.

8. Lastly, Mr Gillespie objected to a comment in paragraph 8 of the witness statement of Trudy Williams, a character witness on behalf of the Registrant. In his submission, in that paragraph the witness appeared to provide an expert view of the likelihood of the Registrant having committed the acts alleged against him, on the basis of her former experience as a police officer.

9. Ms Mauladad disputed that Ms Williams' statement amounted to expert evidence. She submitted that the witness' comments were admissible because they provided context to her evidence, which was about the Registrant's propensity to have done what was alleged against him and about his credibility.

10. Again, having accepted the advice of the legal assessor, the Committee concluded that it would admit paragraph 8 of Ms Williams' statement into evidence, having had regard to its relevance and the question of fairness to all parties. The Committee indicated that it would decide what weight to accord to the statement in due course.

Admissions

11. At the outset of the hearing, Ms Mauladad indicated that the Registrant admitted allegations 1, 3, 5 and 6 (though the latter paragraph was admitted only from December 2016 when the Registrant said he took over Patient A's treatment). The Committee therefore found allegations 1, 3 and 5 proved.

Background

12. The Registrant has been a registered osteopath since 9 May 1998. The Registrant practises as an osteopath at the Silver Health Clinic ("the Clinic"), East Grinstead, West Sussex. The Clinic is owned by the Registrant's parents.

13. On 18 July 2018 the Council received a complaint from one of his colleagues, Witness B, who reported him for engaging in sexual activity with a patient, Patient A.

14. The circumstances in which this was said to have occurred were as follows. Witness C was working at the time as a counsellor at the Clinic. On 27 November 2017, Witness C claimed to have heard a woman make a noise at approximately 2.45pm when she was in her room, which made her initially think that someone had been injured. She said she left her room to investigate. She realised that the noise was coming from the

Registrant's room. As she came close to the door, she could hear a woman panting. The panting and gasping kept increasing and was continuous without stopping for several minutes. It ended with an audible crescendo. She thought this was consistent with a woman reaching orgasm.

15. Witness C was unsure what to do and took advice from her professional supervisors (who did not work at the Clinic) on 1 December 2017. She then reported the matter to the Practice Manager, Witness B, on 4 December 2017. They identified that Patient A had been booked in to see the Registrant at the relevant time and that she was due to have an appointment the next day.

16. On 5 December 2017 at around 14:00 both Witness C and Witness B heard panting and gasping from the Registrant's room. Witness B said that they both went to within approximately 8 feet of the Registrant's room and heard what sounded like sexual activity.

17. After hearing this Witness B went to sit at the reception desk. Later, the Registrant and Patient A came out of his room. After a brief conversation the Registrant and Patient A left the building and went into the car park. Witness B saw the Registrant kiss Patient A on the cheek. Witness B said that she then confronted the Registrant in his room when he came back in. The Registrant denied that anything untoward had happened and referred to the Clinic's "Open Door" policy.

18. The Registrant did not dispute that he had appointments with Patient A at the relevant times. She had originally been his mother's patient and became his patient in December 2016 (though he later accepted in his evidence that he began treating Patient A in August 2016). However, the Registrant consistently denied that there had been any sexual relationship. He said that the noises that Witness B and Witness C had heard must have been the sounds of Patient A sobbing as a result of emotional issues she was experiencing.

19. Some days after the last incident, Witness C said that the Registrant asked to speak to her. He said that Witness B had told him about what both women had thought they had heard. On her account, Witness C said that it was difficult to mistake what she had heard, which was the sound of a sexual climax. She also said that the Registrant approached her the following day to say that he was seeking help and that "*This will never happen again*". The Registrant had a different account of the exchanges. He said that he had remarked to Witness C in passing in the corridor that

the noises that she had heard were not what she thought, but could not recall any other discussion with her.

20. According to Witness B, at around the same time, the Registrant spoke to her as well. She asserted that he in fact admitted having an affair with Patient A. Witness B said that on or about 12 December she asked the Registrant what he was going to do. The Registrant simply said that it would not happen again. Again, the Registrant denied that he ever made any such admission and had no recollection of speaking to Witness B on 12 December 2017, although he did agree that there had been some discussion with her about the incident. It was not in dispute that Patient A thereafter ceased being a patient of the Clinic. The Registrant subsequently provided the Council with a statement dated 28 August 2018 from Patient A in which she said that there had been no sexual relationship between her and the Registrant. She stated that in 2016 and 2017, she had marital problems that culminated in a trial separation from her husband.

21. On 17 July 2018, Witness B reported the matters which formed the subject of the allegation to the Council.

The Hearing

The witnesses

22. The Committee heard live evidence from the following witnesses on behalf of the Council:

    Ms Witness B; and
    Ms Witness C.

23. The Registrant gave evidence on his own behalf and called the following witnesses to give evidence in support of his case:

    Mr Jonathan Clarke;
    Ms Chanel Davies;
    Ms Christine Macey;
    Mr Paul Swift;
    Ms Trudy Williams; and
    Mr Ian MacDonald

    The Registrant also relied on written statements from Patient A, who did not attend the hearing.

24. The Committee carefully considered the papers in the case, in particular the written statements of the witnesses, the transcript of the conversation on 15 June 2018 and the other material relating to the complaint.

25. The Committee formed the following impressions of the witnesses. Firstly, Witness C was evidently a sensitive person, who found elements of her questioning shocking and challenging. The Committee bore in mind that she had not completed her evidence, apparently as a result of her distress at the experience of giving evidence. Nonetheless, in the course of her testimony she gave a clear and convincing account of hearing noises from the Registrant's treatment room on two occasions, which she described as consistent with a woman engaging in sexual activity. Despite some inconsistencies in her evidence, for instance about the timings of events, the Committee found her to be an honest and credible witness.

26. As regards Witness B, it was evident to the Committee that her motivation in complaining about the Registrant was more complicated. As the content of the conversation with the Registrant on 15 June 2018 suggested, her resentfulness over financial matters at the Clinic were as much of a preoccupation for her as the incident with Patient A.

27. However, regardless of her motivation for complaining and the effect this had on her credibility, the Committee accepted her evidence about the key issues in dispute. In particular, her account about the events on 5 December 2017 and what she heard remained consistent throughout her extensive cross-examination.

28. As regards the Registrant, the Committee also had concerns about his credibility. He did not always answer the questions put to him or give a direct answer, for instance when asked by Mr Gillespie whether he had regarded Witness B as his business partner or not. His evidence about what had transpired in conversations between himself and Witness C about the Patient A incident was vague, despite the fact that he had initiated that conversation. His evidence was at times muddled and unclear. For instance, his evidence was to the effect that Witness C, Witness B and another therapist at the Clinic already knew about [redacted] yet part of his explanation of the nature of the conversation mself and Witness B on 15 June 2018 was that the latter was angry because he had disclosed [redacted] to Patient A and others. Overall, on the key issues, the Committee found the evidence of Witness C and Witness B to be more plausible.

29. The Committee read and took into account the evidence of Patient A contained in her witness statements. However, it approached her evidence with caution, as she did not attend the hearing. The Committee was not therefore able to assess her evidence in person or to hear her questioned about her account. The Committee did not accept the suggestion on behalf of the Registrant that Patient A had no reason to deny an affair; there were a number of factors in her personal circumstances that might have inclined her to do so.

30. The Registrant called a number of witnesses to support his account of events, namely Jonathan Clarke, Chanel Davies, Christine Macey and his father Ian MacDonald. Though the Committee had no reason to doubt any of their accounts, the Committee found their evidence to be of limited value in determining the key issues. There was no dispute between the parties that the Registrant was with Patient A in his treatment room on 27 November and 5 December 2017 and that some noise was being made by Patient A on both occasions at some point during the consultation, which Witness C heard on the first occasion; and Witness C and Witness B on the second occasion. The question in both instances was whether that noise was of a woman reaching an orgasm or of a woman sobbing in distress. The only witnesses who could give evidence as to the nature of the noise were Witness C, Witness B, Patient A and the Registrant.

31. The Committee received character evidence about the Registrant from Paul Swift and Trudy Williams. The Committee considered the testimonials provided on behalf of the Registrant and took into account his previous good character in its assessment of his credibility. Nonetheless, as outlined above, on the issues in dispute, it preferred the evidence of Witness C and Witness B.

<u>The recording and transcript of the conversation on 15 June 2018</u>

32. The recording and transcript of the conversation between Witness B and the Registrant on 15 June 2018 were significant pieces of evidence for both the Council and for the Registrant. The Council relied on the content of the conversation as demonstrating in terms that the Registrant had admitted sexual activity with Patient A. The Registrant relied to some extent on the transcript as demonstrating that Witness B had in effect invented or exaggerated the incident with Patient A in order to extort money from the Registrant. The Registrant asserted that the recording had been significantly edited to exclude parts of the conversation and that this demonstrated a malign intent on Witness B's part.

33. As for the references in the transcript of the conversation that might implicate him (for instance, the following exchange:

> *TM: Okay. You know, obviously, you know, since what happened happened, you know, it's with me every single day. You know .... I'm not sweeping it under the carpet there. You know, I don't feel we should keep bringing it up and talking .... I know we haven't.*
> Witness B *We haven't.*
> *TM: And I know we haven't. That's why ----*
> Witness B *We haven't. Yes, which is why we're having a meeting now six months down the line.*
> *TM: Yeah, okay.*
> Witness B *So we don't keep bringing it up, but it's not gone.*
> *TM: No, it hasn't gone, okay, and I understand that. The problem is it will never go, okay. There's nothing I can do to make it go away. You know, I've taken actions on my behaviour about the situation. You know, very seriously,* Witness B *You know, it's not .... You know, I .... You know, obviously I'm not proud of it. You know, it caused you a lot of grief, which I never meant to. You know, those are the consequences of my actions, I understand that. Every action has a consequence. I still reiterate I don't want to lose you as a business partner. You know, for many, many years we've worked, you know, I think really well together.*
> Witness B *Mm.*
> *TM: We've complemented one another until this action. I understand that it's compromised you tremendously in that…*"),

the Registrant maintained that that the "it" referred to in the discussion was either [redacted] or the "accidental kiss" (the Registrant said that following an appointment on 30 November 2017, Patient A, intending to kiss him on the cheek, had accidentally kissed him on the lips and that he had told Witness B about this subsequently).

34. The Committee found this explanation of the content of the conversation on 15 June 2018 set out in the transcript implausible for a number of reasons. This included the following references in the conversation: firstly, the passage cited above at paragraph 33; secondly, the reference to a local osteopath who had been struck off for a consensual relationship with a patient:

> "Witness B *It didn't …[name of osteopath] whatever he is, over in Crawley, who got struck off, girl reported him two years later.*
>
> *TM: Okay.*

Witness B *They were in a consensual relationship. She claimed he'd taken advantage of her while she was at a vulnerable time and he got struck off and you know this. I'm sure you know the story.*

TM: Yeah, yeah.

Witness B *And that was a consensual relationship between a therapist and his patient.*

TM: Okay.

Witness B *You don't know and she can tell you till she's blue in the face that she's not going to do it, but if her life suddenly changes, which life does, then…*

TM: Yeah, all right.";

thirdly, the references to the effect on Witness B's career ("…*my career is fucked and so is yours…; …if you take up this role on the Ethics Board I can't give you a reference; …we all have to cover ourselves because of what you did.*"); fourthly, the reference to TM being reported ("*TM: Not because I'm worried about…if you're going to report me, report me now all right?*"); and lastly, the references to blackmail by Witness B ("*…Nor am I blackmailing you…I am not going to blackmail you.*")

were simply inexplicable if not in the context of a discussion about the incident with Patient A on 27 November and/or 5 December 2017.

35. Further, the recording and transcript demonstrated an emotional discussion between the Registrant and Witness B. The Committee considered that a conversation about the Registrant [redacted] or even about the accidental kiss, would be unlikely to warrant the degree of emotion evident from the recording.

36. Overall, the Committee considered that the "it" was much more likely to be a reference to sexual activity with Patient A. The Committee noted the submissions on behalf of the Registrant that the recording had in some way been edited. The Council accepted that the recording of this conversation was incomplete as a result of Witness B deleting part of it. The Committee could not speculate about the content of the missing part

of the recording nor as to how that part was lost. It accepted at face value that part of the recording and the transcript which was presented to it, flowed well enough to give the impression of an authentic conversation, despite a number of redactions. It was notable that the summary of the conversation on 15 June 2018 that the Registrant had given in his statement of 12 October 2018 (which was before he knew there was a recording of the conversation) tallied with the transcript and recording as produced by the Council. For all these reasons, the Committee preferred the evidence given about the conversation by Witness B and the interpretation of its meaning placed on it by the Council.

Findings of fact

37. It was submitted on behalf of the Registrant that there was some significance in the fact that Witness B had not complained to the Council until 7 months after the incidents in question. The Committee dismissed the suggestion that there was anything untoward about this. In fact, given her long association with the Clinic and the Registrant, as well as her own business interests, it was understandable that she might be reluctant to complain. Further, both Witness C and Witness B had raised the Patient A incidents with their respective supervisors/mentors shortly after they had occurred. Having considered all the evidence in the case, the Committee found as follows on the remaining disputed allegations:

2. *At the First Appointment, the Registrant engaged in sexual activity with Patient A;*

Proved. As noted above, there was no dispute that some noise was emanating from the treatment room in which the Registrant was seeing Patient A. The dispute was about the nature of that noise. The Committee found the evidence of Witness C to be more credible on this issue. Her evidence on what she had heard remained consistent during a rigorous cross examination. [redacted] As a rent-paying therapist at the Clinic, she had no motivation to malign the Registrant (which he accepted in evidence). Further, it was clear that something out of the ordinary must have happened and that the sound of a distressed patient was unlikely to have prompted her subsequent actions. There was no dispute that Witness C raised the matter with her professional supervisors on 1 December 2017 and on 4 December spoke to Witness B as the appropriate person in the Clinic, which led to them overhearing the second incident. Though Witness C had not made any contemporaneous notes, the Committee considered that the subsequent sequence of events

lent support to her account. The Committee took account of the fact that both the Registrant and Patient A deny that any sexual activity took place. However, Committee treated both their accounts with caution for the reasons outlined above.

4. *At the Second Appointment the Registrant engaged in sexual activity with Patient A;*

Proved. The Committee considered that the totality of the evidence was compelling. Both Witness C and Witness B had witnessed the incident. The Committee found their accounts to be credible. It was implausible to the Committee that both could have been mistaken about what they heard or had somehow convinced themselves that noises of distress were in fact a woman experiencing sexual arousal or orgasm. The Committee did not find it significant that Witness C did not hear the sounds of a climax on this occasion. She was clear in her evidence that she had heard similar sounds on 5 December to those she had heard on 27 November.

Again, the subsequent sequence of events was significant. The Registrant accepted that Witness B immediately confronted him on 5 December 2017 and that he had also initiated a conversation with Witness C about the incident some days later, though he did not recall any of her responses. The clear implication must be that something had occurred which the Registrant felt the need to explain to Witness C. The Committee preferred the accounts of Witness C and Witness B about these interactions. The Committee found the Registrant's evidence about them particularly confused and confusing. That there had been some sexual activity between the Registrant and Patient A was supported by the conversation between him and Witness B on 15 June 2018. For the reasons set out previously, the conversation would be for the greater part incomprehensible if it were not referring to the Registrant having had a sexual encounter with Patient A.

6. *Over the period of time between August 2016 and December 2017, the Registrant failed to keep/maintain adequate patient records for Patient A;*

Proved. This allegation was admitted by the Registrant as from December 2016, when he said that he assumed responsibility for Patient A from his mother. He conceded in cross examination that he had in fact began treating Patient A from 25 August 2016. The Committee therefore found the allegation proved.

7. *The Registrant's actions as described at paragraphs 2, and/or 4, and/or 5 were:*

a. a transgression of professional and sexual boundaries;

Proved. Sexual activity with a patient in a clinical setting was manifestly inappropriate and clearly engaged Standard D16 of the Osteopathic Practice Standards (1 September 2012) (do not abuse your professional position) as well as the guidance of the CHRE (now the PSA) *Clear Sexual Boundaries between healthcare professionals and patients: responsibilities of healthcare professionals (January 2008*). The Committee therefore found this allegation proved in respect of paragraphs 2 and 4. In the context where the Committee had found the Registrant was engaged in sexual activity with Patient A immediately beforehand, the kiss on the cheek that was the subject of paragraph 5 and which might otherwise seem innocuous, was similarly a breach of appropriate professional and sexual boundaries. The Committee therefore found this allegation proved in respect of paragraph 5.

and/or

b. an abuse of his professional position;

Proved. As above, in respect of paragraphs 2, 4 and 5, the Registrant's conduct towards Patient A clearly engaged Standard D16 (do not abuse your professional position).

and/or

c. not in Patient A's best interests

Proved. In pursuing sexual or physical contact with Patient A on these occasions, the Registrant prioritised his needs above his patient's. This engaged Standard D14 (acting with integrity in your professional practice) in particular paragraph 1.1 (putting your own interest above your duty to the patient). In the absence of any meaningful notes of the appointments of 27 November and 5 December 2017, it was difficult to ascertain what osteopathic purpose either appointment served.

Finding on Unacceptable Professional Conduct

38. The Committee listened carefully to the submissions of Mr Gillespie on behalf of the GOsC and Ms Mauladad on behalf of the Registrant. It accepted the advice of the legal assessor.

39. Mr Gillespie told the Committee that the facts proved amounted to breaches of the following paragraphs of the Osteopathic Practice Standards, namely: D7 (being open and honest when dealing with patients and colleagues); D14 (act with integrity in your professional practice) – in particular, paragraph 1.1 (putting your own interest above your duty to your patient); D16 (do not abuse your professional standing) – in particular, paragraphs 2 (failure to establish and maintain sexual and professional boundaries) and 3.4 (responsibility not to act on feelings of sexual attraction to patients); and D17 (upholding the reputation of the profession through your conduct).

40. Mr Gillespie submitted that the reputation of the osteopathic profession was obviously likely to be undermined by an osteopath conducting a sexual relationship with a patient. The Committee's findings met the threshold of seriousness required by the test in Spencer v General Osteopathic Council. No healthcare regime has a permissive attitude towards sexual relationships between healthcare professionals and patients and the General Osteopathic Council was no different.

41. As regards the allegation of inadequate note taking, Mr Gillespie observed that Patient A's notes were, in the main, non-existent. He submitted that the failure to maintain adequate records would amount to unacceptable professional conduct on its own. Mr Gillespie accepted that this finding was not of the same degree of unacceptability as sexual relations with a patient but was still serious enough to reach the threshold of unacceptable professional conduct. The same was true of paragraph 5 (the allegation, accepted by the Registrant, that he had kissed Patient A on the cheek on 5 December 2017). If this was the only allegation against the Registrant, Mr Gillespie conceded that it would not amount to unacceptable professional conduct. However, in the context (namely the immediate aftermath of sexual activity between the Registrant and Patient A), this was equally a breach of professional and sexual boundaries and did amount to unacceptable professional conduct

42. Ms Mauladad on behalf of the Registrant accepted that the findings that the Registrant had engaged in sexual activity with Patient A were serious enough to amount to unacceptable professional conduct. However, she submitted that the finding under paragraphs 5 (the kiss on the cheek) and paragraph 6 (the failure to maintain adequate records) were not serious enough to amount to pass the threshold for unacceptable professional conduct.

43. The Committee reminded itself that there was no standard or burden of proof at this stage of proceedings. The decision on unacceptable professional conduct was a matter for its judgment. The Committee considered in detail the parts of the Osteopathic Practice Standards to which it had been referred.

44. As had been conceded on his behalf, the Registrant's conduct in engaging in sexual activity with Patient A were clearly serious enough to support a finding of unacceptable professional conduct and would clearly convey a degree of moral blameworthiness and opprobrium to the ordinary, intelligent citizen. The Committee also considered that its findings under paragraph 5 and paragraph 6 of the allegation were similarly capable of supporting a finding of unacceptable professional conduct. The kiss on the cheek followed an appointment during which the Committee had found sexual activity occurred. This was in context a breach of appropriate professional and sexual boundaries, as indeed the Committee had previously found.

45. The failure to maintain adequate notes was a breach of C8 of the Osteopathic Practice Standards (ensure that your patient records are full, accurate and completed promptly). The Registrant's notes for Patient A over a period of more than a year contained no information about her treatment needs, the Registrant's working diagnosis and treatment plan, any investigations or treatment taken or Patient A's consent to such treatment. This was a serious departure from acceptable professional standards and the Committee was clear that it could of itself amount to unacceptable professional conduct.

46. The Committee therefore found unacceptable professional conduct proved.

Decision on Sanction

47. The Committee listened carefully to the submissions of Mr Gillespie on behalf of the Council and to those of Ms Mauladad on behalf of the Registrant. It heard further evidence in mitigation on behalf of the Registrant from the Reverend Karen Acres, Miss Joanne Stratton and from the Registrant himself. The Committee took account of all the testimonials provided on behalf of the Registrant and considered the Council's Hearings and Sanctions Guidance, as well as the relevant CHRE guidance referred to previously. It noted and accepted the advice of the legal assessor, in particular as to the principles it should apply in considering sanction in a case of sexual misconduct to be drawn from the recent case

of Arunachalam v GMC [2018] EWHC 758, which included: (i) the Committee should make and demonstrate in its determination a proper evaluation of the mitigating factors in deciding on sanction; (ii) personal mitigation counts for less than in other contexts because of the need to maintain public confidence in the profession (Bolton v Law Society 1994 1 WLR 512); (iii) the law did not require that in all sexual misconduct cases, removal from the Register should follow. The severity of the sanction required to maintain and preserve public confidence in the profession "must reflect the views of an informed and reasonable member of the public" Giele v GMC [2006] 1 WLR 942; and (iv) despite a zero tolerance attitude towards sexual misconduct, the law is not so inflexible that every transgression of this kind must be met with removal from the Register. The Committee carefully considered the mitigating and aggravating factors of this case.

48. Having found the Registrant guilty of Unacceptable Professional Conduct, the Committee has to decide what sanction to impose. The Committee commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction. Its obligation is to apply the principle of proportionality and its overarching objective is the protection of the public, which includes promoting and maintaining public confidence in the profession of osteopathy and promoting and maintaining proper professional standards and conduct.

49. The Committee considered that the following mitigating factors were present. Firstly, the Registrant was previously of good character. The Committee took into account the glowing testimonials provided for him by a wide range of patients and relatives of patients, which speak to his professional competence and good character. It noted the Registrant's evidence as to the potential effect of any restrictive sanction on his practice, on the financial standing of his family and on the livelihoods of others who work at the Clinic.

50. The Committee was also informed of the Registrant's willingness to be chaperoned in appointments with female clients, if allowed to continue in practice. It noted the submissions that he had amended his own practice, in that Patient A was no longer a patient of the Clinic, had involved his secretary in dealing with emotional female patients and had improved his note taking. Lastly, the Committee recognised that there had been no suggestion of any similar behaviour since the complaint came to light.

51. The Committee found the following aggravating factors to be present. Firstly, this case did not amount to an isolated event. There were two

instances of sexual activity and a course of conduct over a short period of time.

52. Secondly, as was to some extent conceded by the Registrant, Patient A was vulnerable, yet he knowingly engaged in sexual activity with her, notwithstanding (on his own account) her previous emotional distress in treatment sessions.

53. Thirdly, the Registrant had not demonstrated any insight into his behaviour, nor had he made any expression of regret for it. The Committee recognised that in a case where he had vehemently disputed the allegations, it would be difficult for him to do so convincingly in any event. The Committee was conscious that it should not punish the Registrant for having contested the allegation.

54. However, the Committee was not particularly assisted by the submission made on his behalf that the Registrant had demonstrated insight by ceasing contact with Patient A, involving his secretary with emotional female patients; and improving his note taking practice. In the Committee's view, this provided no assurance at all that he had understood the potential for sexual boundary violations in his practice and had addressed them. He might, for instance, have acknowledged that (in accordance with the professional guidance from the Council and the CHRE available to all osteopaths) a number of factors in his therapeutic relationship with Patient A should have prompted reflection on his part, namely: the frequency of his contact with Patient A over a relatively short period; her dependency on him; and the degree of familiarity suggested by [redacted] to her and by the kiss on the cheek.

55. Similarly, it is a core requirement of any competent osteopath to produce full and accurate patient notes. The Registrant had not acknowledged this as a failing, stating instead that he had "…*implemented improvement by ensuring that I add clear notes to my patient's treatment card after each appointment*."

56. Lastly, this behaviour was a gross abuse of the Registrant's professional position, involving sexual misconduct in a clinical context, which was highly likely to damage the reputation of osteopaths and public confidence in the profession generally.

57. The Committee considered first of all whether an Admonishment was appropriate. It had already determined that the Registrant's conduct fell far short of the standard to be expected of a registered osteopath. As set

out in the CHRE guidance: *Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practice panels*, the erosion of proper boundaries between healthcare professionals and patients is not only harmful to the affected patient, but also highly damaging in terms of confidence in healthcare professionals generally and leads to a diminution in trust between patients, their families and healthcare professionals.

58. The Committee did not accept, as was submitted on his behalf, that the Registrant's behaviour was somehow less serious because it involved voluntary sexual contact with a patient on two occasions. Such misconduct, which took place in the course of what were ostensibly appointments for osteopathic treatment, was obviously very serious. The CHRE guidance on sexual boundaries emphasises that such breaches are unacceptable because of the potential for harm to patients; the corrosive effect such breaches have on public trust in healthcare professionals; and because emotional or sexual involvement with a patient may impair professional judgement. The Committee concluded therefore that an Admonishment would not meet the seriousness of the situation.

59. The Committee therefore went on to consider whether a Conditions of Practice Order would be appropriate in this case. The Committee concluded that conditions of practice would not be appropriate or proportionate to address the seriousness of the case. This case was not one were there was a specific deficiency in the Registrant's practice which could be addressed by a condition. Instead it concerned a violation of professional boundaries and behavioural issues.

60. In addition, the Committee was concerned that the Registrant had not demonstrated sufficient insight to merit the imposition of conditions. For the reasons identified above, the Committee was not satisfied on the basis of the evidence before it that the Registrant had yet understood the core issues raised by this case or had begun to address them properly. The relevant remedial activity appeared to be confined to the adoption of new record-keeping software and changes to his note taking practice.

61. The Committee then considered whether a Suspension Order would address the facts of the situation. The Registrant's misconduct represented a serious departure from the relevant professional standards. Taking into account all the mitigation offered on behalf of the Registrant, including the numerous positive testimonials, his unblemished career over many years and his competence as an osteopath, the Committee considered that the Registrant's conduct was not fundamentally incompatible with continued registration. Despite the Committee's

profound concerns about the level of the Registrant's insight, the evidence before the Committee did not suggest that the issues highlighted by this case extended beyond his dealings with Patient A. The Committee concluded that the proportionate outcome was a period of a suspension. The Committee considered that a period of suspension was appropriate to send a message to the Registrant, the profession and members of the public that the behaviour demonstrated by this case was unacceptable for any registered osteopath. No sanction lower than suspension was sufficient to maintain confidence in the profession.

62. The Committee gave serious consideration as to whether the nature of the allegations found proved warranted removal of the Registrant's name from the Register. On balance, it determined that in all the circumstances of this case, that would be disproportionate and punitive.

63. The Committee therefore determined that the Registrant should be suspended from the Register for a period of 18 months.

64. The Committee will review the case at a review hearing to be arranged before the expiry of the period of suspension. In the interim period the Committee directs that the Registrant undertake training on: (i) sexual and professional boundaries in healthcare; and (ii) the duty of candour requirement for healthcare professionals; and reflect on what that training means for his own practice. Prior to the review hearing, the Registrant should prepare a reflective report for the Committee detailing the insights and learning he has gained from this training.

65. There was no application for an order for interim suspension and so the Committee made no such order.

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.

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 that we have applied today.