

GENERAL OSTEOPATHIC COUNCIL
PROFESSIONAL CONDUCT COMMITTEE

Case No: 761/5916

Professional Conduct Committee Hearing

DECISION

Case of:	Amine El-Bacha
Committee:	Andrew Harvey (Chair) Manjit Darby (Lay) David Propert (Osteopath)
Legal Assessor:	Tim Grey
Representation for Council:	Andrew Faux
Representation for Osteopath:	Registrant attended & represented himself
Clerk to the Committee:	Sajinee Padhiar
Date of Hearing:	20 - 21 June 2024

Summary of Decision:

Both factual Particulars 1 & 2 were admitted and thereby found proved.

The Committee found that the Particulars proved were material to the Registrant's fitness to practise and that the Registrant should be removed from the Register.

The Committee determined that it was necessary to impose an order of interim suspension in order to protect the public, pending the substantive order coming into effect.

Allegation and Facts

The allegation is that Amine El-Bacha (the Registrant) has been convicted in the United Kingdom of a criminal offence, contrary to 20(1)(c) of the Osteopaths Act 1993, in that:

1. On 30 June 2023, at Harrow Crown Court the Registrant was tried and convicted on indictment of three counts of sexual assault against Patient C.
2. For the offences set out at particular 1, the Registrant:
 - a. Was sentenced to three years imprisonment;
 - b. Is to sign on the Sex Offenders Register indefinitely;
 - c. Is subject to a Sexual Harm Prevention Order until further order under section 103 of the Sexual Offences Act 2023;
 - d. Was ordered to pay victim surcharge of £170.

Decision

Preliminary Matters

1. At the outset of proceedings Mr Faux, on behalf of the General Osteopathic Council ("The Council"), applied to amend the Allegation to the terms set out above. He submitted that the amendment was both necessary and desirable in order to ensure the Allegation reflected the true position following the Registrant's conviction and that such amendments as were proposed more adequately and properly reflected the current nature of the case as a conviction case rather than, as previously referred prior to conviction, a conduct case. Mr El-Bacha made no submissions neither opposing nor acceding to the application.
2. The Committee received and accepted the advice of the Legal Assessor. It was advised that its power to make such an amendment was governed by Rule 24 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("The Rules"). The Committee thereby has a discretion to amend the Allegation at any time if, having heard from both parties and received legal advice, it considered that an amendment could be made without injustice.
3. Although the current amendment represented a distinction in the case such that it was now a referral pursuant to s.20(1)(c) of the Osteopaths Act 1993

("the Act") rather than s.20(1)(a) of the Act there was nothing within either the primary or secondary legislation that precluded the Committee from tasking that course, so long as it was content that it could do so without injustice pursuant to Rule 24 of the Rules.

4. The Committee concluded that the amendments as sought by the Council could be made without injustice and were both necessary and desirable to properly reflect the nature of the case.

Background

5. The Registrant's conviction arose out of treatment he provided to Patient C on 24 and 28 October 2018.
6. Patient C had attended the Registrant's clinic after a referral from "physio-link services," in relation to issues she had suffered following a road traffic accident in which she had been a rear seat passenger.
7. At the first appointment the Registrant had touched Patient C's breasts repeatedly without any clinical justification. At the second appointment four days later, he again touched Patient C's breasts and also her vagina over her trousers. There was no clinical justification for that touching.
8. On 30 June 2023, following a trial at the Harrow Crown Court, the Registrant was convicted of three counts of sexual assault against Patient C.
9. On 5 September 2023, the Registrant was sentenced to a period of imprisonment, and various ancillary orders were made.
10. Prior to the Council's Investigating Committee's consideration, on 4 April 2020, the Registrant had provided a response to the allegations denying any wrongdoing.

The Committee's Findings On The Facts

11. At the outset of proceedings the Registrant admitted the entirety of the Allegation.
12. In light of the admission and pursuant to Rule 27(1) of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ("The Rules") the Committee found the Allegation proved.

Materiality and Sanction

Submissions of the Parties

13. On behalf of the Council, Mr Faux submitted that the conviction was material to the Registrant's fitness to practice as an osteopath. He took the Committee through those parts of the Hearings and Sanctions Guidance which he submitted were of most relevance to its deliberations. In so doing he submitted that the inevitable consequence, bearing in mind the need for proportionality, was that a sanction of removal from the register was necessary to protect the public, maintain public confidence in the profession and maintain and uphold standards. He submitted that there was a clear risk to the public in the Registrant remaining in practice by reason of the nature of the offences and the context in which those offences were committed.
14. He further submitted that sexual assault on a patient during treatment strikes at the very heart of both public protection and the reputation of the profession. The Registrant repeatedly sexually assaulted the Patient over the course of two treatments.
15. The impact on Patient C continued and resulted in her being unable to attend physiotherapy appointments suffering from mental anxiety and panic. She was scared to walk alone at night and suffered the physical effects of her untreated condition as a result.
16. The Registrant submitted that he had no previous convictions or cautions and no previous disciplinary history. He was therefore of good character having provided treatment to hundreds if not thousands of patients over the years, without incident. It followed that whilst he denied the underlying facts of the conviction, those facts were entirely out of character.

Legal Advice

17. The Committee received the advice of the Legal Assessor. On the issue of materiality the Committee was advised that pursuant to s.22(3) of the Act, if it considered the criminal offence in question had no material relevance to the Registrant's practice of osteopathy it could take no further action.
18. The Committee was further advised that if it found the conviction to be material then by virtue of s.22(4) of the Act it was required to impose a sanction. The Committee was advised that in considering the sanction there is no burden or standard of proof. The question of sanction is a matter for the Committee's judgment. It was advised that the purpose of sanctions is not to

be punitive but to protect patients and the public interest in the wider sense, namely to maintain public confidence in the profession of osteopathy, and to declare and uphold standards.

19. The Committee was reminded that in deciding upon sanction it should have regard to the Guidance, and apply the principle of proportionality, weighing the interests of the public with those of the practitioner and taking the minimum action necessary to protect the public and the wider public interest.

The Committee's Findings on Materiality, Sanction & Referral

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

Material Relevance

21. The Committee noted that both the Council and the Registrant agreed the conviction was of material relevance to the Registrant's fitness to practise as an osteopath.
22. The Committee considered that the Registrant's conviction was a serious one. It reflected a clear and persistent course of conduct that was sexualised and predatory towards a patient, in circumstances where there was a power imbalance between the two. The offences occurred during treatment and in a professional setting. In the Committee's judgment, the convictions were clearly relevant to the Registrant's professional standing and to his fitness to practise.
23. The Committee therefore determined that the conviction was of material relevance to his fitness to practise as an osteopath.

Sanction

24. Having found the conviction was materially relevant to his fitness to practise the Committee turned to consider the necessary and proportionate sanction.
25. The Committee began by considering the aggravating and mitigating factors present in the case. The key aggravating factor was the Registrant's repeated sexual assault of Patient C in breach of trust and in the context of providing treatment as an osteopath. On its face a conviction for sexual assault was extremely serious and was made all the more grave by the apparent lack of insight reported by the Judge in his sentencing comments and demonstrated by the Registrant in his refusal to accept the conviction. The Committee considered that the offence was one which fundamentally undermined the

trust reposed by the public in the profession. The offending behaviour had passed the custody threshold as was clear from the sentence imposed.

26. In terms of mitigating factors the Committee noted and took account of the following: the Registrant had no previous disciplinary or criminal history. In terms of personal mitigation, the Committee noted that the offence was committed against a backdrop of familial difficulties referred to in the Judge's sentencing remarks [REDACTED].
27. Having identified the aggravating and mitigating factors, the Committee then went on to consider what the appropriate sanction was, approaching the sanctions in ascending order of seriousness. It did so clear in its view that this case did involve a real element of risk to the public or patients, and that its main focus in this case was therefore in relation to the risk to the public as well as the wider public interest of upholding confidence in the profession and maintaining standards.

Admonishment

28. The Committee first considered whether an admonishment was the appropriate sanction in this case. The Committee concluded that the nature of the conviction and the persistent and premeditated breach of trust it involved meant that an admonishment was wholly insufficient in protecting the public and in marking the seriousness of the Registrant's behaviour, and was therefore not sufficient to maintain public confidence in the profession of osteopathy and uphold professional standards in the profession.

Conditions

29. Having concluded that an admonishment was not sufficient to reflect the seriousness of the Registrant's conduct, the Committee went on to consider whether to impose conditions on the Registrant's practice. It concluded that conditions were not appropriate, in circumstances where the behaviour underlying the conviction was of sufficient seriousness that conditions alone would not be enough to protect the public, properly mark the nature of the conviction and the underlying conduct. Moreover, the Committee could not conceive of conditions that could be said to be workable, measurable and capable of being monitored.
30. The Committee concluded that protection of the public and the wider public interest would not be met by the imposition of conditions.

Suspension

31. In considering whether to suspend the Registrant's registration, the Committee carefully considered whether the conviction was entirely incompatible with continued membership of the osteopathic profession. The Committee concluded it was. This was an offence of persistent sexual assault over two appointments. It was a gross dereliction of the duty owed by any healthcare practitioner to any patient, represented a breach of trust of the most serious kind and had been commissioned in a situation of a power imbalance.
32. In the circumstances the Committee concluded that a suspension, even for the maximum period was insufficient to protect the public and the wider public interest.

Removal From the Register

33. The Committee had been unable to determine that the Registrant did not present a risk to the public. To the contrary his lack of insight and the nature and extent of his offending behaviour suggested the risk he posed if allowed to remain in practice was a real one. The Committee determined that the fundamental and profound materiality of the Registrant's behaviour was so serious as to be fundamentally incompatible with continued registration. The Committee concluded that it was therefore necessary to impose a sanction of removal from the register in order to protect the public, uphold public confidence in the profession and to promote and maintain proper professional standards.
34. In light of the Committee's conclusion that the Registrant poses a continuing risk to the public, it determined that it was necessary to impose an immediate interim order of suspension.

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 that we have applied today.