

Response to the General Osteopathic Council consultation on hearings and sanctions guidance

December 2017

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the nine health and care professional regulators and report annually to Parliament on their performance
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.
- 1.3 We welcome the opportunity to respond to the General Osteopathic Council's (GOsC) consultation on hearings and sanctions guidance. Please find the Authority's response to the consultation questions below.

2. Consultation response

1. Name of individual or organisation (optional)

Professional Standards Authority for Health and Social Care

2. Are you happy for the GOsC to publish your response to this consultation?

Happy for GOsC to publish my response

I would prefer my response to be published in a non-attributable form

3. Do you think the draft guidance is structured clearly?

Yes

No

If no, please set out your reasons and any suggestions for improvement.

4. Do you think the Draft Hearings and Sanctions Guidance will help Committees make transparent, fair and consistent decisions on sanctions?

Yes

No

If no, please set out your reasons and any suggestions for improvement.

5. The draft Hearings and Sanctions guidance is divided into two parts: an overview of hearings and specific guidance on sanctions, do you find this separation helpful or would you prefer two separate guidance documents:

a. I find this separation helpful

b. I think two separate guidance documents would be better

6. Do you think the draft Hearings and Sanctions Guidance gives clear and helpful guidance to the PCC in relation to:

a. dishonesty Yes

b. sexual misconduct Yes

c. raising concerns Yes

d. duty of candour Yes

If you have answered no to any of the above then please set out your reasons and any suggestions for improvement.

It may be helpful for the Hearings and Sanctions Guidance to have a separate section focusing on indemnity insurance (alongside other sections on dishonesty, sexual misconduct, raising concerns and duty of candour). We note that practising without indemnity insurance is listed as an example of dishonesty in the draft guidance. However, we suggest practising without indemnity insurance is a serious FtP issue in its own right. We have previously suggested that a professional practising without indemnity insurance 'calls into question a

healthcare professional's commitment to patient safety'.¹ The regulatory response should correspond to the seriousness of practising without indemnity insurance. This is highlighted in the case of Briggs, where we stated that: 'practising without insurance places patients at risk, and can justify removal from the register'.²

7. Do you have any further suggestions on how we can improve the guidance?

We suggest the GOsC may wish to consider referring to health in the Conditions of Practice Order (COPO) section on page 13 of the draft guidance. For example, conditions of practice can be a useful regulatory tool to ensure public protection whilst remediating a professional with alcohol abuse problems.

We also note that the guidance states that a Professional Conduct Committee 'must specify the period' of time for which a COPO is to have effect. We suggest that the Professional Conduct Committee (PCC) may wish to set a length of time during which a registrant is required to complete a test of competence in order to return to practise. We direct the GOsC towards the case of Annon, in which Mrs Justice McGowan commented on the usefulness of imposing time limits. In this case, the registrant was not able to return to practice until they completed a Return to Practice order, as requested by the NMC Conduct and Competence Committee. Annon made 30 attempts to obtain a place on the Return to Practice course. The Conditions of Practice order was renewed a number of times until February 2017, when the committee decided Annon should be struck off the register. Mrs Justice McGowan considered that time limits could have helped avoid Annon's 'professional limbo'.³

Regarding suspension of an osteopath's registration, the GOsC may wish to refer to the Fleishman principle. This states that where a registrant is convicted of serious criminal offence, they should not be permitted to resume practice until the criminal sentence is satisfactorily completed. Mr Justice Newman said: 'As a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained'.⁴

¹ Professional Standards Authority, 2014, *Response to General Osteopathic Council (GOsC) consultation on professional indemnity insurance*, pg. 2. Available at: <https://www.professionalstandards.org.uk/docs/default-source/publications/consultation-response/others-consultations/2014/gosc-professional-indemnity-insurance.pdf> [Accessed 11/12/2017]

² Briggs v Professional Standards Authority [2014] EWHC 2190 [Admin], at paragraph 30.

³ Anon v Nursing and Midwifery Council [2017] EWHC 1879 [Admin], at paragraph 10.

⁴ Fleischmann V Council for Healthcare Regulatory Excellence [2005] EWHC 87 (Admin) at paragraph 54.

Finally, the GOsC may wish to consider adding a paragraph to the guidance, clearly setting out the purpose of review hearings and the rationale for imposing sanctions at a review, in the light of the Supreme Court decision in Khan.⁵

8. Please provide us with any other comments you may have.

None

3. Further information

3.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

Professional Standards Authority for Health and Social Care
157-197 Buckingham Palace Road
London SW1W 9SP

Email: michael.warren@professionalstandards.org.uk
Website: www.professionalstandards.org.uk
Telephone: 020 7389 8013

⁵ Habib Khan Khan v General Pharmaceutical Council UKSC [2016] UKSC 64.