



In the matter of Section 22 of the Chiropractors Act 1994 (“the Act”)

and

The General Chiropractic Council (Professional Conduct Committee) Rules 2000 (“the Rules”)

and

The consideration of allegations by the Professional Conduct Committee

NOTICE OF FINDING BY THE PROFESSIONAL CONDUCT COMMITTEE OF THE GENERAL CHIROPRACTIC COUNCIL

Name of Respondent:	Allan Stewart
Address of Respondent:	Castle Clinic 9 Church Street BRIDGWATER Somerset TA6 5AT
Registration Number of Respondent:	01134
Case Reference Number:	0407/01134/01

On the 7 – 9 & 14 – 15 July 2008 the Professional Conduct Committee (“the Committee”) of the General Chiropractic Council met to consider the following allegation against you, referred to it by the Investigating Committee in accordance with Section 20(12)(b)(ii) of the Chiropractors Act 1994 (“the Act”):

THE ALLEGATION:

That being a registered chiropractor you are guilty of unacceptable professional conduct.

PARTICULARS OF THE ALLEGATION:

That, being a registered chiropractor:

- 1. At the material time, you were in practice as a chiropractor at the Castle Clinic, 9 Church Street, Bridgwater, Somerset TA6 5AT;*

2. *On various dates between 12 November 2004 and 8 September 2006, you provided chiropractic treatment to a patient, Mrs A;*
3. *Over the course of the treatment period, Mrs A discussed information concerning her personal circumstances with you, including:*
 - (a) that her husband was suffering from depression;*
 - (b) that she was experiencing difficulties in her marriage;*
 - (c) that she was unhappy in her marriage;*
 - (d) that she felt she was suffering from stress;*
 - (e) in February 2006, that she and her husband had separated;*
4. *During the said period of treatment, you discussed personal matters concerning yourself with Mrs A, including:*
 - (a) your past relationships;*
 - (b) your financial circumstances;*
 - (c) your relationship with your partner;*
5. *During the said period of treatment you made inappropriate comments or suggestions to Mrs A, including:*
 - (a) you suggested that you and she should go out for dinner or lunch;*
 - (b) you told her you found her mentally and physically attractive;*
 - (c) in addition to the occasion in 5(a) above, you asked her on a number of occasions to go out with you;*
 - (d) you asked her to go to bed with you;*
 - (e) you asked her to kiss you;*
 - (f) you suggested during a consultation that she should remove her bra;*
 - (g) you entered into a conversation with her about pornographic magazines;*
6. *During the said period of treatment, you engaged in inappropriate conduct of an increasingly sexual nature with Mrs A during your consultations with her, including:*
 - (a) regularly kissing her at the end of consultations;*
 - (b) hugging her;*
 - (c) lying on the bed next to her during consultations;*
 - (d) kissing her intimately during consultations;*
7. *Being aware that Mrs A was unhappy in her personal life, your conduct as alleged at paragraphs 4 – 6 above encouraged her to believe that you would have a personal relationship together;*
8. *Your conduct as alleged in particulars 4 – 7 above was:*
 - (a) an abuse of your practitioner/patient relationship with Mrs A;*
 - (b) a breach of Mrs A's trust.*

In accordance with the provisions of Rule 18(1) (a) of the General Chiropractic Council (Professional Conduct Committee) Rules 2000 (“the Rules”), notice is hereby given of the decision of the Committee.

DECISION

Dr Stewart

At the start of the Hearing, Mr Robertson, on your behalf, admitted Particulars 1, 2, 3(a) to (e), 5(b), 6(a), (b) and (d) and 8 in its entirety. Just prior to his closing submission, Mr Robertson also admitted Particular 5(e). In accordance with Rule 6(3)(a) of the General Chiropractic Council’s Professional Conduct Committee Rules, those facts and matters are therefore found proved.

Before reaching a decision on the disputed Particulars, the Committee considered carefully all the oral and documentary evidence, including the documents provided by you, and the submissions made on your behalf and on behalf of the GCC. It has also taken into account the advice of the Legal Assessor, and has borne in mind that the burden of proof is on the GCC to prove its case and that the standard of proof is the civil standard, which is the balance of probabilities.

There being no corroboration for any of the disputed Particulars, the Committee was required to decide which version of events it preferred in relation to each Particular not admitted.

The Committee considered Mrs A to be an impressive and credible witness. She was clear in what she could remember and admitted when she was unable to recall details. She was also prepared to question Particular 5(g), concerning the conversation about pornography, when she believed that it was not justified.

The Committee does not accept Mr Robertson’s assertion that Mrs A is prone to exaggeration or invention. On the contrary, the Committee found that she was consistent, thoughtful and restrained when she was under great stress, being prepared to answer personal questions which she clearly found intrusive and embarrassing.

By contrast, the Committee found your evidence to be disingenuous and less than clear. The Committee found the distinctions that you sought to draw between the wording of some of the Particulars and the conduct to which you were willing to admit, entirely specious.

You have admitted Particulars 3(a) to (e) of the Allegation. It is therefore clear to the Committee that Mrs A was a vulnerable patient. The Committee rejects your assertion that she ceased to be vulnerable after the first few consultations with you. Her personal circumstances did not change sufficiently to resolve her vulnerability so quickly.

Turning to the disputed individual particulars, Particular 4 states:

During the said period of treatment, you discussed personal matters concerning yourself with Mrs A, including:

- (a) your past relationships;*
- (b) your financial circumstances;*
- (c) your relationship with your partner;*

The Committee finds all three parts of this Particular proved. You admitted both in your written and oral evidence that you disclosed details on all three of these subjects to Mrs A.

Specifically, in your supplementary statement of 2 July 2008 (page 64, paragraph 2), you stated “In relation to allegation 4(a), I have admitted that I told Mrs (A) that I had divorced 10 years ago.”

With regard to Particular 4(b), on 9 September 2007 (page 51, paragraph 28), you wrote “I did speak with Mrs (A) about my financial situation and this I recognise was inappropriate”. Further, on 20 June 2008 (page 55, paragraph 9), you stated “I told her that I was paying large sums of money to fund both my children through university, in particular, my daughter who required funding for a 6 year veterinary degree.”

In relation to 4(c), you wrote on 9 September 2007 (page 50, paragraph 17) “I probably confided in her that I, too, was unhappy in my own relationship at the time and this may have signalled to Mrs (A) that I was interested in pursuing a relationship with her...”

In that passage, you then went on to say, “in hindsight I probably disclosed far more than I should have about my personal life. I came to regard Mrs (A) as a friend...”

Your only defence was that this did not amount to a “discussion” of these matters. By your own admission, this was as part of a dialogue between you and Mrs A in which she persistently asked questions. The Concise Oxford Dictionary defines discussion as “a conversation especially on specific subjects”. The Committee considers that what was said between you and Mrs A was a discussion. Further, you told the Committee that you felt it necessary to increase the length of Mrs A’s appointments to accommodate the time required for these conversations.

The Committee went on to consider Particular 5. 5(a) states that:

During the said period of treatment you made inappropriate comments or suggestions to Mrs A, including:

- (a) you suggested that you and she should go out for dinner or lunch.*

The Committee accepts Mrs A’s evidence which was consistent and entirely persuasive. She was convinced that you had invited her out for lunch or dinner with you alone. This was clearly her understanding at the time she wrote her handwritten letter of 17 April 2005 (page 60).

The Committee found your evidence on this aspect of the case to be contradictory, implausible and unconvincing.

The Committee is satisfied that your invitation was initially an invitation to Mrs A alone. It was after your partner discovered Mrs A’s letter in your briefcase that you attempted to backtrack and claim that you had always intended it to be an invitation that included Mrs A’s

husband and your partner. In your oral evidence, the Committee understood you to have admitted that your invitation was initially made to Mrs A alone. However, Mr Robertson then submitted on your behalf, as part of his Closing Submissions, that your invitation was only ever meant 'in the context of a foursome with Celia and Mrs A's husband.'

The Committee rejects this evidence. It is wholly inconsistent with the reference in Mrs A's letter to the need to meet outside Wellington 'so as not to attract any unwelcome gossip/comments'. It also makes no sense, as it would be very unlikely that Mrs A would wish to discuss her personal problems in front of her husband and your partner in a public place such as a restaurant. It would be quite inappropriate for such a discussion to take place in this way and for you even to consider initiating it.

The Committee is therefore driven to the conclusion that you have deliberately invented this explanation in an attempt to absolve yourself from responsibility for the improper suggestion that you made to Mrs A regarding a private meal for the two of you.

The Committee therefore finds this Particular proved.

Particular 5(c) states:

During the said period of treatment you made inappropriate comments or suggestions to Mrs A, including:

in addition to the occasion in 5(a) above, you asked her on a number of occasions to go out with you;

The Committee accepts Mrs A's evidence on this particular. In her witness statement (page 4, paragraph 16), she stated that after you issued your first invitation, you said to her many times that you wanted to take her out. In her oral evidence she maintained that you had said this. The Committee is not persuaded by your argument that when you said to Mrs A that you 'would like' to do something, this did not amount to the same thing as asking Mrs A to do it or suggesting that she should do it. It is accepted that nothing came of any of these invitations and you might not have had any intention of putting them into effect. Nevertheless, such an invitation, when delivered to any patient, let alone to a vulnerable one, is inappropriate.

The Committee therefore finds this Particular proved.

Particular 5(d) states:

During the said period of treatment you made inappropriate comments or suggestions to Mrs A, including:

you asked her to go to bed with you.

Your defence to this Particular was that you drew a distinction between telling Mrs A that you would like to go to bed with her and asking her to go to bed with you. You claimed that, by saying you would 'like' to go to bed with Mrs A, you were not 'asking' her to go to bed with you.

The Committee considers this distinction to be specious and finds this Particular proved. It is not appropriate for a chiropractor in his treatment room during a consultation to ask a patient to go to bed with him, however this is expressed.

Particular 5(f) states:

During the said period of treatment you made inappropriate comments or suggestions to Mrs A, including

you suggested during a consultation that she should remove her bra;

Mrs A's evidence was clear and consistent. She remembered arriving at the clinic casually dressed as she was not working that day and told us that she was spending the day with a friend. You remembered this consultation with less clarity than Mrs A. By this time, your interchanges involved intimacies like hugging and kissing in the clinic. The Committee considers that it is more likely than not that you asked Mrs A to remove her bra. This may have been done in a flirtatious, joking manner and not as a necessary preliminary to treatment. Nevertheless, unless it is clinically justified, it is never appropriate to ask a female patient to remove her bra.

Consequently, this Particular is found proved.

Particular 5(g) states:

During the said period of treatment you made inappropriate comments or suggestions to Mrs A, including:

you entered into a conversation with her about pornographic magazines;

There is no conflict between your evidence and that of Mrs A in relation to this Particular. You both agreed that you had a conversation about Mrs A's husband's reading of pornographic magazines. You both also agreed that this conversation was not inappropriate in the context of the issues discussed.

In other circumstances, such a conversation is likely to be inappropriate. However, on this occasion, unusually, it was justified because it was initiated by Mrs A, and it was relevant to her clinical presentation.

Accordingly, the Committee finds this Particular not proved.

Particular 6(c) alleges that:

During the said period of treatment, you engaged in inappropriate conduct of an increasingly sexual nature with Mrs A during your consultations with her, including lying on the bed next to her during consultations;

In her affidavit (page 7, paragraph 38), Mrs A described how, in 2006, the consultations would always end with you laying on the bed next to her, French kissing. In her oral evidence, she said that you were half on top of her on the treatment couch which is 18 to 20 inches wide.

In your oral evidence, you told the Committee that the kissing developed from your very close proximity to Mrs A during an anterior thoracic adjustment. You demonstrated how that adjustment was delivered including how your body weight would have been over and alongside Mrs A and claimed that this close contact spontaneously developed into French kissing.

These two accounts of the circumstances of your intimate French kissing are very similar. In neither version are you and Mrs A described as “lying next to each other”.

The Committee was disturbed to note that this intimate kissing with you lying partly on Mrs A, lasted for a prolonged time on each occasion and was repeated over a period of approximately six months. This could not, in any way, be considered a “spur of the moment” occurrence as suggested by your representative.

Although the Committee is satisfied that you were behaving inappropriately in lying on Mrs A and kissing her whilst she was on the bed, it is not satisfied that you can properly be described as lying “next to her” on the bed.

Accordingly, this Particular is not proved.

Particular 7 states that:

Being aware that Mrs A was unhappy in her personal life, your conduct as alleged at Particulars 4 – 6 above encouraged her to believe that you would have a personal relationship together;

All parts of Particulars 4 – 6 have already been found proved with the exception of 5(g) and 6(c). The conduct found proved has no place in a professional relationship between a chiropractor and a patient.

In your statement of 9 September 2007, you said “I recognise that my conduct sent out a message to Mrs A ..., that I was looking to form a permanent relationship with her” (page 52, paragraph 34). You confirmed this in your witness statement of 20 June 2008 (page 58, paragraph 36).

In contrast, in your oral evidence you initially sought to distinguish between the consequences of your conduct and your personal responsibility. However, in response to Committee questions, you accepted that you were responsible for your conduct. Your representative then asserted that you “did not encourage a relationship” suggesting instead that it was the “explosive chemistry” that existed between you that “led Mrs A to believe that there could be a relationship.” This attempt to displace responsibility is symptomatic of your approach to most of the disputed particulars in seeking to avoid them by resorting to semantics.

Mrs A was encouraged by your conduct. In her witness statement (page 4, paragraph 18) Mrs A said “Allan said that if we were both free, we would be together. I felt that I knew how Allan felt about me. I asked Allan why he was telling me these things if he wasn’t able to do anything about it. He said he just wanted me to know how he felt about me and that it would take time, but that he would do something about it. I believed him and therefore waited for him to sort out his relationship with his partner.”

Your representative also suggested that the absence of a number of features of an intimate relationship undermined the credibility of a realistic expectation of such a relationship. However, you had made it clear to Mrs A that your current status was complicated. It was therefore perfectly reasonable for her to accept that at this stage there were constraints surrounding the relationship.

There are a number of possible meanings of the word “encourage” but one common-sense meaning is “to give hope to”.

The Committee considers that a reasonable person looking at your conduct as a whole would take the view that your behaviour and actions towards Mrs A gave her hope that you would have a personal relationship together.

Therefore this Particular is found proved.

UNACCEPTABLE PROFESSIONAL CONDUCT

The Committee went on to consider whether the facts found proved amounted to Unacceptable Professional Conduct, which is conduct falling short of the standard required of a registered chiropractor in accordance with Section 20(2) of the Chiropractors Act 1994.

The events in question took place over a period of nearly 22 months from November 2004 until September 2006. During this period there were three separate editions of the Standard of Proficiency and Code of Practice governing the conduct of chiropractors. From 15 June 2001 to 31 May 2005 Edition 1 of the Standard of Proficiency and Code of Practice set out the binding requirements for chiropractors registered with the GCC. Edition 2 was effective from 1 June 2005 until 7 December 2005. Edition 3 was effective from 8 December 2005 and is the current edition.

The relevant sections are:

Section 2 of Edition 1 of the Code of Practice, governing the “*Conduct of chiropractors in their dealing with patients*”; and in particular Clause 2.6, governing personal relationships, states:

2.6.1 Chiropractors shall not use their professional position as a means of pursuing an improper personal relationship with a patient ...”

Clause 2.6 further sets out at:

2.6.3 Where it appears that a patient is becoming involved in such an improper personal relationship with the chiropractor, the chiropractor should take care not to encourage the patient, and may well be advised to arrange alternative care.

Editions 2 and 3 have identical provisions in Section C of the Code of Practice. The relevant section is under the heading “*Chiropractors must justify public trust and confidence by being honest and trustworthy*”.

Clause C1, “*Chiropractors must act with integrity and never abuse their professional standing*” applies.

In particular Clause C1.1 states:

Specifically chiropractors must remember that the relationship between chiropractors and their patients is based on trust and on the principle that the welfare of the patient is paramount.

and Clause C1.4.

Specifically chiropractors must not use their professional position as a means of pursuing a sexual relationship with a patient and must end the professional relationship if they find they are becoming involved with a patient, or a patient is becoming involved in such a relationship with them.

All three editions of the Code of Practice are unequivocal in their requirements concerning relationships with a patient. By your own admissions and based on the Committee's findings, you breached the Code in this respect. You did not consider Mrs A's welfare in your care to be paramount. You put your wants and desires above her welfare.

In your written evidence you accepted that Mrs A was a vulnerable patient (page 52 paragraph 33). However, in your oral evidence you disputed that she was vulnerable. You claimed that her vulnerability only lasted for about the first three appointments because of the care and support you had provided. The first three appointments took place in the course of a week. It beggars belief that a patient who was manifestly so vulnerable, could suddenly be transformed in the way you have sought to suggest. You preyed upon a vulnerable patient and in this hearing clearly sought to minimise the seriousness of your behaviour.

As early as March 2005, you initiated the relationship by asking Mrs A to kiss you. You then fanned her inchoate feelings by telling her you found her "mentally and physically attractive" and by saying you would like to go to bed with her. All this was without thought of the impact this would have on your vulnerable patient.

You suggested that you and Mrs A should go out for lunch or dinner. It was clear from Mrs A's letter of 17 April 2005 (page 60) that this was meant to be a clandestine meeting between just the two of you. Your attempt in oral testimony to suggest that you had always intended this to be a foursome with you, your partner, Mrs A and her husband was unconvincing. Given the invitation was issued nearly six months into treatment after twelve appointments the Committee found it incredible that you should suggest that the purpose of this meal-time meeting would be to elicit further clinically helpful information about Mrs A. This would have been inappropriate in a public restaurant and a breach of confidentiality. It would have been a further breach of confidentiality to have your partner hear this personal information. It is also implausible to suggest that the presence of a violent, abusive husband would have facilitated the disclosure of such information.

You toyed with Mrs A's emotions when "flirting" with her by suggesting she remove her bra.

As early as March 2005 you were having an improper, personal relationship with Mrs A. You made no attempt to discourage her. You made no attempt to end the professional relationship and arrange alternative care for her. You were well aware of the requirements of the GCC'S Code of Practice in this regard. As you explained to Mrs A, your conduct, if discovered, would lead to serious consequences for you. You were well aware of the professional

boundaries between you and Mrs A which you deliberately ignored and breached in pursuit of your own gratification.

Quite plainly, you deceived Mrs A and led her on in a manner that was unprofessional and unacceptable under any jurisdiction.

You have shown a blatant disregard for the welfare of your patient, Mrs A, and you have abused her trust thereby breaching the fundamental principle of the Code of Practice - that the welfare of the patient is paramount.

For all these reasons, the Committee has determined that the facts found proved do amount to Unacceptable Professional Conduct.

SANCTION

The Committee has carefully considered the submissions made by Mr Robertson on your behalf and those made by Ms Rollason on behalf of the GCC. The Committee is mindful that its role is to protect patients and the wider public, to maintain public confidence in the profession and to declare and uphold proper standards of conduct. In determining the appropriate sanction, the Committee has taken into account the GCC Indicative Sanctions Guidance, and been mindful that any sanction should be proportionate and is not intended to be punitive, although that may be its effect.

The Committee has taken into account the testimonials that have been submitted on your behalf and the oral evidence given by Dr Turner. It has also taken into account the fact that you have a previous good record.

During the submissions stage, the Committee was directed towards two Council for Healthcare Regulatory Excellence documents (“CHRE”), Clear Sexual Boundaries between Healthcare Professionals and Patients: Responsibilities of Healthcare Professionals, January 2008 and Clear Sexual Boundaries between Healthcare Professionals and Patients: Guidance for Fitness to Practise Panels, January 2008. The Committee was further directed to the case of *CHRE v. Leeper* [2004] and the GCC case of *Scotcher* [2007].

The Committee accepts the advice of the Legal Assessor that, although the decisions on sanction in other cases may be of some assistance for the purposes of general comparison (and in particular the observations made on the general principles of sanction by Collins J. in *Leeper*), the appropriate sanction must depend largely on the facts of each individual case.

It was an important part of Mr Robertson’s mitigation on your behalf that this relationship was consensual and “forged in passion on both sides” and that you do not therefore present any risk to other patients. The Committee does not accept this. Even if the relationship was consensual, this does not diminish your repeated violations of the sexual boundaries between a healthcare professional and a patient. Unlike in the case of *Leeper*, the Committee has not been presented with any evidence to support the assertion that you present no further risk of a repetition of a similar loss of control with another patient in the future.

Mr Robertson further submitted that “whilst the conduct was sexualised behaviour, there was no genital contact” and that this meant that this case fell within the least serious end of cases

of sexual misconduct and that your behaviour did not therefore amount to a sexual relationship.

The Committee does not accept this submission. The absence of genital contact does not mean that this was not a sexual relationship. Over a prolonged time period, during treatment sessions in your consulting room, you deliberately indulged in repeated sessions of intimate kissing with Mrs A. These were not isolated incidents. They were set in the context of other sexualised behaviour:

- You disclosed personal details about yourself and the difficulties you were having with your partner.
- You told Mrs A that you found her physically and mentally attractive.
- You asked Mrs A to go out to lunch or dinner with you.
- You hugged and kissed during consultations.
- You asked Mrs A to take off her bra when not clinically indicated.
- You asked Mrs A to go to bed with you.

Taken together with the intimate French kissing, while lying on Mrs A on the treatment couch, this amounted to a sexual relationship.

Additionally, the seriousness of your conduct must be judged not only by reference to the extent of the sexual conduct, but also by its impact on the patient. You caused Mrs A significant and enduring harm. Furthermore, by your own admission, you abused your position and breached her trust.

Mrs A was a vulnerable patient, who was seriously affected by your wrongdoing. This inappropriate relationship started shortly after Mrs A became a patient of yours in November 2004 and continued until September 2006. You created in her a feeling of dependency. With your encouragement, she separated from her husband and moved house in the expectation that you would enter into a long term relationship with her as soon as you were both free to do so. When you ended the relationship in September 2006, this had a devastating effect on her. She was so distressed that she could not go to work for six weeks, her health was badly affected and she has had great difficulty in getting over the relationship to the extent that she said in her witness statement that at times she felt “close to wrapping (her) car round a tree” (page 11, paragraph 60).

The Committee was not convinced by your limited demonstration of insight that you have any real understanding of what you have done. You denied that you had embarked on a relationship at all, let alone a sexual relationship. You endeavoured to use semantics to deny that you had taken the initiative in developing and perpetuating the relationship.

Mrs A wrote an unsigned letter to you in November 2006 asking you to explain your actions. You must have realised who it was from yet you did not respond. You must also have realised that your lack of response would have been likely to have caused her further distress.

The Committee acknowledges that, a year later, in your letter of 9 September 2007, you accepted responsibility for your actions and offered an apology to Mrs A. However, the way in which you subsequently conducted your defence detracted from this apology. You denied allegations which in essence you had previously admitted and thus required Mrs A to endure the ordeal of giving oral evidence. Also, in your oral evidence, you attempted to shift some of

the responsibility onto Mrs A for having misunderstood your intentions. When you were giving evidence, any apology you gave was guarded. Even for those Particulars which you had admitted at the start of this hearing, you did not take the opportunity to apologise directly to Mrs A (who was at that stage observing). In addition, your demeanour throughout your evidence was not that of a man with genuine insight into the profound impact of your conduct on Mrs A. You further demonstrated your lack of insight in your sworn statement and in your oral evidence by denying the facts you had previously admitted in your letter to the GCC of 9 September 2007.

The CHRE Guidance identifies a number of possible aggravating and mitigating factors that are relevant to sanction. In your case, the aggravating factors include Mrs A's vulnerability (which in your oral evidence you sought to minimise); elements of grooming in your behaviour and repetition of the sexual misconduct over a prolonged period of time.

In mitigation, it was observed that the relationship was consensual. The Committee does not accept that a sexual relationship that was founded on a breach of trust can properly be described as consensual in the normal sense of the term. In any event, there is no place for a consensual sexual relationship between a chiropractor and his patient.

The Committee notes that there have been no complaints since your relationship with Mrs A ended. It has seen testimonials describing your clinical skill as a chiropractor. However the only one that was relevant to any part of these findings was that of Dr Turner, who explained that there were circumstances in which it might be appropriate to reveal some details of one's personal life in order to empathise with the patient. The Committee considered this and concluded that your conversations with Mrs A went into much further detail than could be clinically justified.

The Committee went on to consider what sanction should be imposed on you.

First, it considered whether to impose an Admonishment, as urged by Mr Robertson.

The Committee noted that there is no evidence of repetition of this behaviour since September 2006 and you are of previous good history and have provided some testimonials.

However, the Committee considers that it would be insufficient to conclude this case with an admonishment, given the reasons for the finding of Unacceptable Professional Conduct and for the following reasons.

As set out above, there was evidence that your behaviour caused direct harm to Mrs A. Your behaviour encompassed a course of action deliberately embarked upon over a period of time. You have demonstrated limited insight into your failings and even your expressions of regret and apologies were tainted with attempts to place responsibility on Mrs A for supposedly misinterpreting your actions. Further, there is no evidence that, in the time since you were first informed of the complaint in September 2007, you have taken any effective rehabilitative or corrective steps other than identifying clinical psychologists in your area. The only other evidence that the Committee received was an email to Dr Kennedy from Mr Robertson sent during the course of this hearing and Dr Kennedy's reply.

The Committee went on to consider a Conditions of Practice Order. It acknowledges that there are identifiable areas of your practice in need of review, retraining or assessment. You have offered some limited evidence of a potential willingness to respond positively to further

training and assessment and it might be possible to formulate appropriate, practicable and assessable conditions to impose on your registration. Whilst there is no evidence of a harmful deep seated personality or attitudinal problem, your demonstrable lack of insight gives the Committee great concern that patients could be put at risk, either directly or indirectly, as a result of your continued registration even with conditions.

Notwithstanding these factors, the Committee considers that a Conditions of Practice Order would not be sufficient to reflect the seriousness of your failings as identified, nor would it send out an appropriate message to the public that their interest is being properly safeguarded.

When considering whether or not to impose a Suspension Order, the Committee accepts that there is no evidence of harmful deep-seated personality or attitudinal problems or evidence of repetition of the behaviour that brought you here. However, the Committee considers that the finding of Unacceptable Professional Conduct in your case is very serious. The Committee is satisfied that you have insufficient insight into your failings and there is a risk of you repeating this behaviour. Your lack of candour in your evidence during this hearing gives the Committee no confidence that you would not have an improper relationship with another patient in the future. The Committee has concluded that your behaviour is fundamentally incompatible with continuing to be a registered chiropractor. Therefore, in order to ensure that patients' interests are sufficiently respected, it is insufficient to conclude this case with a Suspension Order.

Your case is unlike the case of *GCC v. Scotcher* in that the physical content of your relationship took place entirely within your consultation room and was with a vulnerable patient. Also, unlike this case, the Committee in *Scotcher* made an express finding that there was no breach of trust involved in that chiropractor's conduct. Further, you have failed to put in place any remedial action, because of your limited insight into the harm caused by your behaviour.

The Committee then went on to consider whether or not to remove your name from the Register of Chiropractors. The Committee has already found that your behaviour is fundamentally incompatible with being a chiropractor. It further considers that your flagrant violation of sexual boundaries and your abuse of your patient represent a serious departure from the relevant professional standards outlined in the Code of Practice and Standard of Proficiency. Your behaviour was utterly reprehensible. You did serious harm to Mrs A. You abused your position of trust with a vulnerable patient and you violated her rights. You have shown a persistent lack of insight into the seriousness of your actions and their consequences.

The Committee concludes that the only sanction in this case which properly protects the public interest by protecting patients, upholding standards of practice and maintaining confidence in the profession, is to remove your name from the Register of Chiropractors.

In accordance with Section 31 of the Chiropractors Act 1994 and Rule 18(1)(a) of the GCC (Professional Conduct Committee) Rules 2000, this Order will come into effect 28 days from the date on which notification of the decision is sent to you, unless you exercise your right of appeal, which must be exercised before the expiry of that 28 day period, in which case it will come into effect only if and when the appeal is withdrawn or dismissed.

INTERIM SUSPENSION

The Committee has considered whether or not to make an Interim Suspension Order in this case pending the coming into force of the substantive Order that it has just made to remove your name from the Register.

The Committee was reminded by the Legal Assessor that, in order to make such an order, Section 24(2) of the Chiropractors Act 1994 requires the Committee to be satisfied that it is necessary to protect members of the public.

Miss Rollason submitted to the Committee that, although the threshold for the making of an Interim Suspension Order was a high one and the Committee had to balance the public interest against the interests of the chiropractor, it was necessary in this case. This was because of the gravity of the findings and the fact that the Committee has determined that the only appropriate sanction was to remove your name from the Register.

Mr Robertson on your behalf has not sought to oppose the making of an Interim Suspension Order and has not put forward any arguments as to why such an order should not be made. He informed the Committee that, under your present working arrangements, your patients could be transferred to other chiropractors in the practices where you work, so that they would not be disadvantaged.

The Legal Assessor has advised the Committee that, although an interim order is not opposed by Mr Robertson, it must still be satisfied that it is necessary to protect the public before an Interim Suspension Order can properly be made.

The findings against you are very serious. The Professional Conduct Committee does not lightly order the removal of a chiropractor's name from the Register. In this case, it was considered the minimum sanction required to protect the public, uphold standards and maintain confidence in the profession.

The Committee considers that allowing you to continue to practise before the substantive Order comes into force would unnecessarily expose patients to risk.

Accordingly, the Committee has determined that it is necessary to impose an Interim Suspension Order in this case.

Chairman of the Professional Conduct Committee

Please note that the decision of this Committee is a relevant decision for the purposes of Section 29 of the National Health Service Reform and Health Care Professions Act 2002.

Signed:

Dated: 15 July 2008

Emma Willis
Specialist Officer (Regulation)
On behalf of the Professional Conduct Committee

Explanatory Notes:

Notices of Findings are normally divided into three sections, which reflect different stages of the hearing process:

1. The Allegation: This section contains the full allegation as drafted by the Investigating Committee and as considered by the Professional Conduct Committee.
2. The Decision: This section contains the findings of fact reached by the Professional Conduct Committee on the allegations and the reasons therefore. In particularly complex cases the reasons may be given separately from the findings of fact for purposes of clarity.
3. The Sanction: This section contains details of the sanction applied by the Professional Conduct Committee. In certain cases the section may be sub-divided for the purposes of clarity.